



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
RAMAN H. PATEL)

For Appellant: Raman H. Patel, in pro. per.

For Respondent: James T. Philbin
Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Raman H. Patel against a proposed assessment of additional personal income tax in the amount of \$168.00 for the year 1977.

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The issue in this appeal is **whether** appellant qualified as a head of household for 1977.

Appellant was legally married during **the** entire appeal year and provided the sole support for his mother and his sister. However, during 1977 appellant's wife resided in India where she cared for her **ailing** parents. Appellant filed his 1977 personal income tax return as a head of household claiming his mother and sister as his qualifying dependents. Respondent disallowed appellant's claimed head of household status since appellant was still legally married at the end of 1977. Respondent did, however, allow additional dependent exemption credits for appellant's qualifying dependents.

The term "head of household" is defined **in** section 17042 of the Revenue and Taxation Code, which provides, in pertinent part:

For purposes of this part, an individual shall be considered a head of a household if, and only if, such individual is not married at the close of his taxable year, and . . .

* * *

(b) Maintains **a household which consti-**tutes for such taxable year the principal place of abode of the father or mother of the taxpayer, if the taxpayer is entitled to a credit for the taxable year for such father or mother under Section 17054.

* * *

For purposes of this section, an individual who, under subdivision (c) of Section 17173 is not to be considered as married, shall not be considered as married.

An individual is considered as legally married unless separated from his spouse under a final decree of divorce **or** of separate maintenance at the close of the taxable year. (See Appeal of Enis V. Harrison, Cal. St. Bd. of Equal., June 28, 1977; Appeal of Mohammed M. Siddiqui, Cal. St. Bd. of Equal., Sept. 14, 1972.) Since appellant was legally married throughout the year in issue, he is not entitled to head of household status for that year unless he can qualify as "an individual

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who, under subdivision (c) of Section 17173 is not to be considered as married." Subdivision (c) of section 17173 provides:

If--

(1) An individual who is married ... and who files a separate return maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a dependent (A) who . . . is a son, stepson, daughter, or stepdaughter of the individual, and (B) with respect to whom such individual is entitled to a credit for the taxable year under Section 17054,

(2) Such **individual furnishes** over half of the cost of maintaining such household during the taxable year, and

(3) During the entire taxable year such individual's spouse is not a member of such household, such individual shall not be considered as married. (Emphasis added.)

Appellant did furnish over half the cost of maintaining the household during the taxable year and, apparently, his spouse was not a member of the household for the entire year as required by subdivisions (c)(2) and (c)(3), respectively, of section 17173. However, appellant's qualifying dependents were his mother and sister, and not a son, stepson, daughter or stepdaughter as required by subdivision (c)(1) of section 17173. Therefore, for purposes of determining head of household status, we cannot conclude that during 1977 appellant was an individual who is not to be considered as married.

Appellant contends that respondent's filing **instructions** accompanying the 1977 personal income tax return were misleading and incomplete, and argues that he should be treated as if he qualified as a head of household. In prior appeals we have resolved similar contentions adversely to the taxpayers. (See Appeal of Rebecca Smith Randolph, Cal. St. Bd. of Equal., Aug. 16, 1977; Appeal of Amy M. Yamachi, Cal. St. Bd. of Equal., June 28, 1977.) For the reasons set out in those decisions, we conclude that appellant's argument must be rejected.

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Appellant also contends that ~~if~~ he cannot file as a head of household because he was still married, he should be taxed as if he and his wife filed a joint return. We disagree. A joint return cannot be filed by a husband and wife if one spouse was a nonresident for all or a part of the taxable year. (Rev. & Tax. Code, § 18402, subd. (b)(1); Appeal of Patricia A. Green, Cal. St. Bd. of Equal., June 22 1976; Appeal of Richard D. and Mary Jane Niles, Cal. St. Bd. of Equal., **March 26, 1974**) Since appellant's wife was a nonresident for 1977, they were not authorized to file a joint return for that year.

Finally, appellant challenges respondent's addition of interest to the proposed assessment. It is well settled that the imposition of interest on an assessed deficiency is mandatory pursuant to the clear language of section 18688 of the Revenue and **Taxation** Code and cannot be waived. (See, e.g., Appeal of Amy M. Yamachi, supra; Appal of Audrey C. Jaegle, Cal. St. Bd. of Equal., June 22, 1976) The interest is not a penalty imposed on **the taxpayer**; it is merely compensation for the use of money, which accrues upon the deficiency. (Appeal of Amy M. Yamachi, supra; Appeal of Audrey C. Jaegle a .)

While the loyalty and sense of responsibility displayed by appellant and his wife to their **families** is commendable, we must conclude that, for the reasons expressed above, respondent's action be sustained.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of **Raman H. Patel** against a proposed assessment of additional personal income tax in the amount of \$168.00 for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 2nd day of February, 1981, by the State Board of Equalization, with **Members Bennett, Nevins, Reilly and Dronenburg** present.

Ernest J. Dronenburg, Jr.	, Chairman
William M. Bennett	, Member
Richard Nevins	, Member
George R. Reilly	, Member
_____	, Member