



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
JUDY L. POINTER)

For Appellant: Judy L. Pointer,
 in pro. per.

For Respondent: Vasio Gianulias
 Counsel

 O P I N I O N

This appeal is made pursuant to section 19061.1 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Judy L. Pointer against a proposed assessment of additional personal income tax in the amount of \$177.00 for the year 1976. Appellant has paid the proposed assessment in full, and, in accordance with section 19061.1 of the Revenue and Taxation Code, the appeal therefore will be treated as an appeal from the denial of a claim for refund.

Appeal of Judy L. Pointer

The sole issue is whether appellant qualified for head of household status in 1976.

Appellant supported a household throughout 1976. Appellant, her spouse, and her daughter were members of the household until April 1976, when appellant's spouse left. The daughter remained. An interlocutory decree of dissolution of the **marriage** was entered in June 1976, and the final judgment of dissolution was entered in October 1978.

Appellant claimed head of household status on her 1976 return. After corresponding with appellant, respondent determined that she was not **eligible** to file as head of household for 1976 and issued a proposed assessment, which appellant paid.

Section 17042 of the Revenue and Taxation Code defines a head of household. It provides, in part, that an individual shall be considered a head of household if, and only if, the individual is not married at the close of his taxable year. For purposes of section 17042, in order to be considered "**not married**," an individual must either be legally separated from his spouse under a final decree of divorce or a decree of separate maintenance (Rev. & Tax. Code, § 17043, subd. **(b)**), or the individual must meet all the requirements of subdivision **(c)** of section 17173 of the Revenue and Taxation Code. One of those requirements is that the married individual live apart from his or her spouse for the entire taxable year.

Since the final decree **of** divorce was not entered until late in the year 1978 and appellant's spouse was a member of her household during **the** first four months of 1976, she failed to qualify as a head of household for that taxable year. Consequently, we must sustain respondent's action.

