



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
SHEILA R. JOHNSON)

For Appellants: Sheila R. Johnson, 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 Sheila R. Johnson against a proposed assessment of additional personal income tax in the amount of \$204.00 for the year 1977.

Appeal of Sheila R. Johnson

The issue presented is **whether** appellant qualified for head of household status in 1977.

Appellant, a California resident, was legally married throughout the entire year of 1977. She and her then husband were members of the same household from March through July of that year but were separated thereafter. Appellant apparently supported herself and her daughter without any financial assistance from her husband during that entire taxable year. **She** was granted an interlocutory judgment for **dissolution** of marriage on July 25, 1978 and final judgment of dissolution was entered on November 6, 1978.

On her 1977 California personal income tax return, appellant claimed head of household status. Respondent determined that she was not eligible to file as head of household and issued the proposed assessment in question.

Section 17042 of the Revenue and Taxation Code provides, in 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, ...

The phrase "not married," as it is used in that **statutory** provision, is defined to include "[a]n individual who is legally separated from his spouse under a final decree of divorce or a decree of separate maintenance . . ." (Emphasis added.) (Rev. & Tax. Code, § 17043, **subd. (b).**) In addition, a person who is legally married may still be considered as not married **for** purposes of head of household status if during the entire taxable year such individual's spouse **is** not a member of the taxpayer's household. (Rev. & Tax. Code, § 17173, subd. (c)(3).)

Since appellant was not legally separated **from** her spouse under a final decree of divorce or separate maintenance at the end of 1977, and since her spouse was a member of her household during a portion of that year, she was not eligible to file as head of household for the taxable year 1977. (Appeal of Fred Dowdle, Cal. St. Bd. of Equal., Aug. 1, 1980; Appeal of Barbara D. Johnson, Cal. St. Bd. of Equal., June 29, 1978.) Consequently, we must sustain respondent's action.

Appeal of Sheila R. Johnson

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 Sheila R. Johnson against a proposed assessment of additional personal income tax in the amount of \$204.00 for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 19th day of May, **1981**, by the State Board of Equalization, with all **Board** members present.

Ernest J. Dronenburg, Jr., Chairman

George R. Reilly, Member

William M. Bennett, Member

Richard Nevins, Member

Kenneth Cory, Member