



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JAMES H. ROONEY)

Appearances:

For **Appellant:** James H. Rooney
in pro. per.

For Respondent: John A. Stilwell, Jr.
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 James H. Rooney against a proposed assessment of additional personal income tax in the **amount of** \$228.16 for the year 1977.

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

Appellant and his wife were separated on February 23, 1977. Thereafter, an interlocutory judgment for dissolution of marriage was issued on September 7, 1977; a final judgment of dissolution of marriage was not issued until January 16, 1978. Appellant claimed head of household status when he filed his personal income tax return for 1977 naming his daughter as the individual qualifying him for that status. **Respondent** denied the claimed head of household status because appellant was still legally married at the end of 1977 and had not been separated from his spouse for the entire year.

Section 17042 of the Revenue and Taxation Code provides that in order to claim head of household status an individual must be unmarried and maintain as his home a household that is the principal place of abode of an individual who is within specified classes of relationship. In general, although a taxpayer is separated from his spouse, he is still considered as being married for purposes of claiming head of household status, unless, at the close of the taxable year, he was legally separated from his spouse under a final judgment of dissolution of marriage or legal separation. (Appeal of Robert J. Evans, Cal. St. Bd. of Equal., Jan. 6, 1977; Appeal of Glen A. Horspool, Cal. St. Bd. of Equal., March 27, 1973.)

For years beginning on or after January 1, 1974, Revenue and Taxation Code section 17173 extended the benefits of head of household status to certain married individuals. This was accomplished by considering a married person as unmarried for purposes of classification as a head of household when he lives separate and apart from his spouse during the entire year and maintains a home for a dependent child under certain conditions. Although appellant, who was still legally married on the last day of 1977, did maintain a home for his dependent child, he cannot qualify as a head of household because his spouse lived with him during part of 1977. (Appeal of Dale L. Wilson, Cal. St. Bd. of Equal., Sept. 25, 1979; Appeal of Charley Hurst, Cal. St. Bd. of Equal., May 4, 1978.)

Appellant contends that he was legally separated by virtue of an informal separation agreement concluded between him and his wife on March 21, 1977,

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and the subsequent interlocutory judgment for dissolution of marriage issued on September 7, 1977. Therefore, appellant concludes, he was entitled to qualify as head of household for 1977. We cannot agree. A judgment for legal separation is issued pursuant to Civil Code section 4508 and is distinct from the informal separation agreement and the interlocutory judgment for dissolution of marriage relied upon by appellant.

For purposes of claiming head of household status, appellant remained married at the close of 1977. The statutes and regulations are specific in this regard; in order to qualify as a head of household, the taxpayer must be legally separated pursuant to a final judgment of dissolution of marriage or legal separation at the end of the taxable year, **or**, if still legally married at the end of the taxable year, he must have lived separate and apart from his spouse for the entire year. Appellant simply did not satisfy the statutory requirements to claim head of household status for 1977. Accordingly, **respondent's** action in this matter must be sustained.

