

Appeal of Norma Vaccaro (Alvarez)

The **sole issue** for determination is whether appellant qualified as a head of household for 1978.

Appellant and her husband separated on June 4, 1978, and lived separate and apart for the remainder of that **year**. Although appellant filed for a dissolution of the marriage during June 1978, she remained legally married as of the end of the year. During the entire year of 1978 appellant was the sole support of her two minor children.

Appellant filed her 1978 California personal income tax return as a head of household naming her daughter as the qualifying dependent. Respondent denied the claimed head of household status because appellant was still legally married at the end of 1978 and because she and her husband had not lived separate and apart 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 her 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 her **spouse**, she is still considered as being married for purposes of claiming head of household status, unless, at the close of the taxable year, she was legally separated from her spouse under a final judgment of dissolution of marriage or of 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.) **Since** during 1978 appellant did not receive a final decree of dissolution or of legal separation, she was still legally married as of the close of the year. Therefore, appellant could not qualify as a head of household under section 17042.

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 where she lives separate and apart from her spouse during the entire year and maintains a home for a dependent child under certain conditions. In this appeal appellant cannot qualify as a head of household under section 17173 **because** her spouse lived with her during part of 1978. (Appeal of Charley Hurst, Cal. St. Bd. of Equal., May 4,

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1978; Appeal of Lynn F. Wallace, Cal. St. Bd. of Equal.,
March 1, 1978.)

Appellant contends that she was legally separated as of the close of 1978. In support of her contention, she submitted a copy of her petition for dissolution of marriage which indicated that she and her spouse separated on June 4, 1978. From this appellant concludes that June 4 was the date of her legal separation. We cannot agree. The petition merely indicates the date that appellant and her spouse physically separated. In order to have been legally separated for head of household purposes, appellant would have to have received a final decree of legal separation or separate maintenance during 1978. She did not. Therefore, for the reasons set out in this opinion, we must conclude that appellant did not qualify as 'a head of household for 1978.

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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 Norma Vaccaro (Alvarez) against a proposed assessment of additional personal income tax in the amount of \$302.00 for the year **1978**, be and the same is hereby sustained.

Done at Sacramento, California, this 3rd day of March , 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Reilly, Mr. Dronenburg, Mr. Nevins and Mr. Cory present.

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