



Appeal of George W. Mojica

The issue presented is whether appellant is entitled to claim head of household status for the year 1978.

Appellant filed his 1978 California personal income tax return claiming head of household status. Upon audit, he revealed that during all of 1978 he resided with his wife and daughter. Respondent determined appellant to be ineligible for head of household status, and issued a proposed assessment. Responder; t denied appellant's subsequent protest, and this appeal followed.

In order to qualify as a head of household, the taxpayer must, in addition to other requirements, be unmarried at the end of the taxable year. (Rev. & Tax. Code, § 17042.) A taxpayer is considered unmarried if he is either separated from his spouse, and this separation is evidenced by a final decree of divorce or a decree of separate maintenance, or if he and his spouse lived apart during the entire taxable year. (Appeal of Charley Hurst, Cal. St. Bd. of Equal., May 4, 1978; Cal. Admin. Code, tit. 18, reg. 17042-17043 subds. (a) & (d) (Repealer filed Dec. 23, 1981, Reg. 81, No. 52).)

Apparently, appellant has misread code section 17042 in that he bases his claim for head of household status on the fact that he and his wife lived together for the entire year at issue. On the contrary, since he and his wife were neither legally separated nor divorced at the end of 1978, the fact that they lived together during 1978 causes appellant to be ineligible for head of household status. Therefore, we must sustain the action of respondent.

