

Appeal of Charles F. Parsons

The issue in this appeal is whether appellant was qualified for head of household status in 1978.

Appellant filed his personal income tax return for 1978 claiming head of household status and naming his daughter as the qualifying dependent. During 1978, appellant's daughter lived with appellant for 163 days: the remainder of the year she resided with her mother, appellant's ex-wife. Appellant paid the expenses of maintaining both households.

Respondent determined that appellant was not qualified for head of household status, and issued a proposed assessment reflecting this determination. Subsequent to appellant's protest, respondent reaffirmed its proposed assessment, and this timely appeal was filed.

Revenue and Taxation Code section 17042 provides, in pertinent part, that an individual shall be considered a head of household if he is unmarried and maintains as his home a household which is his child's principal place of abode for the taxable year.

Although appellant was unmarried and supported his daughter, he was not eligible for head of household status in 1978 since neither of the households he maintained was both his home and his daughter's principal place of abode. Appellant's household was not the child's principal place of abode since she spent less than half the year in that household. (Appeal of John William Branum, Cal.- St. Bd. of Equal., Aug. 16, 1979; Cal. Admin. Code, tit. 18, reg. 17042-17043 (Repealer filed Dec. 23, **1981**; Reg. 81, No. 52).) The household occupied by appellant's ex-wife was not appellant's home since he did not occupy that household. (Former Cal. Admin. Code, **tit. 18**, reg. 17042-17043.) Appellant argues that he is nonetheless entitled to head of household status since he maintained both households. Identical **circumstances** were present in the Appeal of Richard Neville, decided by this board on June 29, 1978. T h e we concluded that since there was not one household which met the statutory requirements, appellant did not qualify for head of household status. We have been presented with nothing to cause us to depart from that decision.

There is one case in which a taxpayer who maintained two households was held to qualify for head of household status. (Smith v. Commissioner, 332 F.2d

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671 (9th Cir. 1964).) That case dealt with the federal statute which is substantially similar to Revenue and Taxation Code section 17042. **In the Smith case,** the taxpayer's son resided in one of the homes maintained by the taxpayer. The taxpayer resided part of the year with her son and the remainder of the year in her second home. The court held that the taxpayer was eligible for, head of household status since there was one household which was the child's principal abode and which was occupied for some time by the taxpayer. In the instant appeal, no such household exists: therefore, the Smith case does not support appellant's position, and we do not need to determine whether or not we agree with the reasoning of that case.

For the reasons stated above, appellant was ineligible to file his return in 1978 as a head of household, and respondent's action must be sustained.

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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 Charles F. Parsons against a proposed **assessment** of additional personal income tax in the amount of \$312.83 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 29th day of June , 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett , Chairman

Ernest J. Dronenburg, Jr. , Member

Richard Nevins- , Member

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