



Appeal of Richard F. Savage

The sole issue is whether appellant qualified as a head of household for 1977.

Appellant maintained a home for himself and his dependent son throughout 1977. Appellant's wife was a member of his household for about 40 to 45 days during 1977. An interlocutory decree of dissolution of that marriage was entered on October 19, 1977. On his personal income tax return for 1977, appellant claimed head of household status, although the final judgment of dissolution of that marriage was not entered until March 16, 1978.

Later, respondent sent appellant a routine questionnaire regarding his claimed head of household status. On the basis of the above information from appellant, respondent determined that he was not entitled to head of household status in 1977 and issued a notice of additional tax proposed to be assessed. Appellant protested on the ground that he maintained the sole home of his son throughout 1977, and therefore he should not be taxed at the rates specified for a single person. Respondent affirmed its assessment, and this appeal followed.

The statute in question is clear.. Section 17042 of the Revenue and Taxation Code provides:

For the 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, and ... [f]or purposes of this section, an individual who, under subdivision (c) of Section 17173 is not considered as married, shall not be considered as married.

Section 17173 of that Code. provides in part:

(c) If--

(1) An individual who is married ... [and who] maintains as his home a household which constitutes ... the principal place of abode of a dependent ... [and]

(3) During the entire taxable year such individual's spouse is not a member of such household,

such individual shall not be considered as married.

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In addition, section 17773 provides:

For the purpose of this article--

(a) The determination of whether an individual is married shall be made as of the close of his taxable year; ....

(b) An individual legally separated from his spouse under a final decree of divorce or separate maintenance shall not be considered as married.'

It is settled that an interlocutory decree of dissolution of marriage **is** not, as appellant argues, the same as a final decree of legal separation. (Appeal of Robert J. Evans, Cal. St. Bd. of Equal., January 6, 1977; Appeal of Glen A. Horspool, Cal. St. Bd. of Equal., March 27, 1973). During the interval between the interlocutory judgment and the final judgment, the petitioner and his spouse were still married. (Grannis v. Superior Court, 146 Cal. 245 [79 P. 891] (1905); Louis v. Louis, 7 Cal.App.3d 851 [86 Cal.Rptr. 834] (1970). Accordingly, appellant does not qualify as head of household under the direct provisions of section 17042. In addition, since appellant's wife did live in the household for part of the taxable year in question (about 40 to 45 days), appellant cannot be considered as unmarried under section 17173 for the purposes of section 17042.

Therefore, appellant was not entitled to head of household status, and we must sustain respondent's action.

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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 Richard F. Savage against a proposed assessment of additional personal income tax in the amount of \$256.97 for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 26th day of July, 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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