



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

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In the Matter of the Appeal of)
NELSON J. SCHWARTZ)

For Appellant: Nelson J. Schwartz
in pro. per.

For Respondent: Daniel A. Borzoni
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 Nelson J. Schwartz against a proposed assessment of additional personal income tax in the amount of \$204.06 for the year 1977.

Appeal of Nelson Schwartz

The question presented by this appeal is whether appellant was entitled to file his return as a head of household for 1977.

Appellant lived with his **spouse** and two children from January 1, 1977 until July 1977, when his spouse left the home, taking the children with her. Appellant's marriage was finally dissolved in August 1977. **His** children did not reside with him for the rest of the year.

Appellant filed his 1977 California personal income tax return as a head of household, claiming his daughter as the qualifying dependent and his son as an additional dependent. Based on the information received from appellant, respondent denied his claimed head of household status, recomputed his tax as a single **taxpayer** with two dependents, and issued the subject proposed assessment reflecting these changes.

Under Revenue and Taxation Code section 17042, the taxpayer's qualifying dependent must have lived with him for the entire year, except for temporary absences due to special circumstances. (See Appeal of Kermit K. Purcell, Cal. St. **Bd. of Equal.**, May 21, 1980, and appeals cited therein.) Appellant does not dispute the fact that he failed to qualify for head of household status under that section. Rather, he contends that section 17042 is unconstitutional when applied to one who has lived with his children for over half the year. Even if appellant had explained the basis for his contention, which he has not, we would be precluded from ruling on his constitutional challenge by article III, section 3.5 of the California Constitution.

Respondent's action, therefore, is **sustained**.

Appeal of Nelson J. Schwartz

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 Nelson J. Schwartz against a proposed assessment of additional personal income tax in the amount of \$204.06 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

_____, Member

_____, Member