



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal Of)
DAVID R. SUDERMAN)

For Appellant: David R. Suderman,
in pro. per.

For Respondent: Mark McEvilly
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 David R. Suderman against a proposed assessment of additional personal income tax in the amount of \$234.75 for the **year** 1978.

Appeal of David R. Suderman

The question presented by this appeal is whether appellant was entitled to claim head of household status for the year 1978,

Appellant and his wife received a final decree of the dissolution of their marriage in September 1978. They had lived together, with their son, David, during January and February of 1978, David apparently lived with the appellant from March through July and in September. The rest of the year he lived with his mother.

In his 1978 California personal income tax return, appellant claimed head of household status, naming David as his qualifying dependent. Respondent determined that appellant did not qualify for that status because David did not occupy appellant's household for the entire year. Appellant's tax liability was redetermined on the basis of rates applicable to single persons, with a dependent exemption credit allowed for David. Appellant has paid respondent \$130.98, which respondent has agreed to credit to appellant's deficiency,

Revenue and Taxation Code Section 17042 provides, in pertinent part:

For 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 . . .

(a) Maintains as his home a household which constitutes for such taxable year the principal place of abode, as a member of such household, of ---

(1) A son . . . of the taxpayer

For appellant's household to qualify as David's principal place of abode for 1978, David and appellant must have occupied that household for the entire year, except for temporary absences due to special circumstances.

(~~Appeal of Henry C. H. Hsiung~~, Cal. St. Bd. of Equal., Dec. 17, 1974; ~~Appeal of Edward J. Rozcicha~~, Cal. St. Bd. of Equal., March 4, 1980; see also former Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (b)(1) (repealer filed 12-23-81, reg. 81, no. 52).) Absences are considered temporary when due to "illness, education, business, vacation, military service, or a custody agreement under which a child . . . is absent for less than six months in the taxable year of the taxpayer." (Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (b)(1), supra.)

Appeal of David R. Suderman

It is undisputed that appellant was an unmarried individual at the end of 1978, that David was a "qualifying individual" under subdivision (a)(1) of section 17042, and that David occupied appellant's household during part of 1978. What remains in question, however, **is** whether, during 1978, appellant's household was David's principal place of abode which he occupied for the entire year except for temporary absences. Appellant must bear the burden of proof on this question, and we find that he has failed to present the evidence necessary to carry that burden.

Although David occupied appellant's household for the greater part of 1978, this **by' itself** is insufficient to show that such household was David's principal place of abode during that year. From the sparse record before us, we do not know whether David lived with appellant only temporarily and, after the divorce was final, his mother's household was his **principal** place of abode or whether his move to his mother's household was a temporary absence from appellant's household. Without more specific information, such as the terms of a custody agreement and the circumstances of David's absences, showing that appellant's home was David's **principals** place of abode and that his absences were temporary, we **are** unable to conclude that appellant qualified as head of household in 1978. If such additional information were available, it could appropriately be considered in a petition for rehearing. However, restricted by **the** present record, we must conclude that respondent's determination **was** correct.

Appellant argues that he should be allowed head of household status for at least half of 1978 and states that the federal government allowed such treatment when his federal tax return for 1978 was audited. However, there is no provision in the California statute or regulations allowing head of household status for less than a full year.

Appellant also contends that when he sent respondent a check for \$130.98, he indicated that if the check were cashed, that amount should be considered payment in full. Because respondent did cash the check, appellant argues that a settlement for that amount was agreed to. We have previously held, however, that respondent's negotiation of a check tendered upon condition that it be accepted as full payment of a disputed tax does not effect a settlement in the absence of a statutory closing agreement as provided in Revenue and Taxation Code section 19132. (Appeal of Joseph K. and Ella L. Borges,

Appeal of David R. Suderman

Cal. St, Bd. of Equal,, Sept. 25, 1979; Appeal of Melvin D. Collamore, Cal. St. Bd. of Equal,, Oct. 24, 1972.)

For the reasons stated above, **respondent's** action is sustained.

ORDER

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 David R. Suderman against a proposed assessment of additional personal income tax in the amount of \$234.75 for the year 1978, be and the same is hereby sustained.

Stallman to Burnett Chairman
 Peter Klein Member
 Ernest Brownburg Member
 [Signature] Member
 [Signature] Member