



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
MARY A. HARBISON )

For Appellants: Mary A. Harbison,  
in pro. per.

For Respondent: James T. Philbin  
Supervising Counsel

OPINION,

This appeal is made pursuant to section 18553 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Mary A. Harbison against a proposed assessment of additional personal income tax and penalty in the total amount of \$241.25 for the year 1977.

Appeal of Mary A. Harbison

The sole issue is whether appellant qualified to file as a head of household for the year 1977.

Appellant filed her 1977 personal income tax return as a head of household claiming her daughter Patty as the qualifying dependent. Respondent sent appellant a head of household questionnaire. When appellant did not respond, respondent issued a notice of proposed assessment (NPA) of additional tax due based upon the rates applicable to a single person rather than the rates applicable to a head of household. In addition, respondent included a penalty for failure to furnish information. (Rev. & Tax. Code, § 18683.) Respondent mailed another blank head of household questionnaire to appellant along with the NPA. Appellant protested and returned the completed questionnaire indicating she had been married in 1977. In later correspondence, appellant explained that she had lived with her husband from November 1, 1977 to December 10, 1977. Respondent affirmed its proposed assessment. This appeal followed.

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 to be 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 . . . 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.

Here appellant did not qualify as head of household under the direct provisions of section 17042 because she was married at the end of 1977. In addition, she did not qualify as head of household under the combined provisions of section 17042 and 17173 because appellant's husband lived in the household during part of 1977.

Therefore, appellant did not qualify, for head of household status, and we must sustain respondent's action.

