



Appeal of Cheryl Long

The question presented by this appeal is whether respondent properly disallowed appellant's claimed head of household status for 1979.

Appellant filed her 1979 California personal income tax return as a head of household. On a questionnaire regarding her claimed status, she indicated that her daughter was the individual qualifying her as a head of household. Appellant also stated that her spouse had lived with her until March 19, 1979. In her **appeal** before this board, she stated that she had filed for a legal separation in April 1979, but did not state when or if a final decree **of** divorce or separate maintenance was issued. Respondent disallowed the claimed head **of** household status, recomputed appellant's tax, **and** issued a proposed assessment. Appellant protested, but respondent affirmed, the notice of assessment and this timely appeal followed.

Section 17042 of the Revenue and Taxation Code provides, in part: "For purposes of this part, an individual shall be **considered** a head of household if, and only if, such individual is not married at the close of his taxable year . . ." The phrase "not married" is defined to include "[a]n individual legally separated from his spouse under a final decree of divorce or of separate maintenance . . ." (Rev. & Tax. Code, § 17173, **subd. (b).**) In addition, a person who is legally married may still be considered not married for head of household purposes if, during the entire taxable year, her spouse is not a member of her household. (Rev. & Tax. Code, § 17173, **subd. (c)(3).**)

Since appellant's husband was a member of her household during part of 1979, she cannot qualify under subdivision **(c)** of section 17173, and since there is no proof of a final decree of divorce or separate maintenance before the end of 1979, she cannot qualify under subdivision **(b)** of section 17173. We must conclude **that** appellant was married at the close of 1979 and ineligible for head of household filing status. (See Appeal of Lynn F. Wallace, Cal. St. Bd. of Equal., March 1, 1978.) Respondent's action, therefore, must be sustained.

