

### BEFORE THE STATE BOARD OF EQUALIZATION

OF TEE STATE OF CALIFORNIA

In the Yatter of the Appeal of )
CHERYL LONG )

For Appellant:

Cheryl Long,

in pro. per.

For Respondent:

Mark McEvilly

Counsel

# OP IN IO N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax  ${\tt Board}$  on the protest of Cheryl Long against a proposed assessment of additional personal income tax in the amount of \$81.00 for the year 1979.

#### 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 qualffying 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  $\mathbf{of}^{\circ}$  divorce or separate maintenance was issued. Respondent disallowed the claimed head  $\mathbf{of}$  household status, recomputed appellant's tax,  $\mathbf{and}$  issued a proposed assessment. Appellant protested, but respondent affirmed, the notice of assessment and this timely appeal followed.

Section 17042 of the Revenue and 'Tazation Code provides, in part: "For purposes of this part, au 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 tazable 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.

### Appeal of Cheryl Long

# ORDER

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 Cheryl Long against a proposed assessment of additional personal income tax in the amount of \$81.00 for **the** year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 3rd day **of** January , 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett	, Chairmar
Ernest J. Dronenburg, Jr.	, Member
Richard Nevins	, Member
	_, Member
_	, Member