



83-SBE-018

BEFORE **THE** STATE **BOARD** OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
STEVE E. SHERMAN)

For Appellant: Steve E. Sherman,
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 Steve E. Sherman **against** a proposed assessment of additional personal income tax in the amount of \$301 for the year 1978.

Appeal of Steve E. Sherman

The only question for decision is whether **respondent** should be estopped from disallowing appellant's use of the head of household filing status for the year 1978.

Appellant timely filed his personal income tax return for the year 1978 using the head of household filing status. Pursuant to **information** provided in the head of household questionnaire submitted by appellant, respondent disallowed appellant's head of household status on the ground that appellant's son did not live in appellant's home for the entire year (1978) as required by California law. (Rev. & Tax. Code, § 17042.) This disallowance resulted in a proposed assessment of \$301.

Respondent's disallowance of head of household status under **similar** circumstances has consistently been upheld in appeals to this board. (See, e.g., Appeal of Henry C. H. Hsiung Cal. St. Bd. of Equal., Dec. 17, 1974; Appeal of Willard S. Schwab, Cal. St. Bd. of Equal., Feb. 13, 1974.) Appellant does not dispute **respondent's** determination that appellant was ineligible to use the head of household filing status. Rather, appellant protests the proposed assessment by contending that he relied on advice concerning the head of household filing status received from one of respondent's employees during a telephone conversation. Therefore, he argues, respondent should be estopped from 'denying' appellant's eligibility for head of household and **from imposing** the assessment.

As a general rule, 'an estoppel will be applied against the government in a tax case only where the facts clearly establish that grave injustice would otherwise result. (California Cigarette Concessions, Inc. v. City of Los Angeles, 53 **Cal.2d** 865, 869 [**3 Cal.Rptr. 675**] (1960); Appeal of Allen L. and Jacqueline M. Seaman, Cal. St. Bd. of Equal., Dec. 16, 1975.) An essential prerequisite for **application** of the doctrine is a clear showing of detrimental reliance on the part of the taxpayer. (Appeal of Patrick J. and Brenda L. Harrington, Cal. St. Bd. of Equal., Jan. 11, 1978; Appeal of Arden K. and Dorothy S. Smith, Cal. St. Bd. of Equal., Oct. 7, 1974.) In the instant **case**, the facts that were fatal to appellant's claim to head of **household** status occurred well before he sought advice from one of respondent's employees. Thus, **since** appellant **did** not rely to his detriment on the advice we must reject appellant's estoppel argument. (See Appeal of Linda L. White, Cal. St. Bd. of Equal., Jan. 9, 1979; Appeal of Amy M. Yamachi, Cal. St. Bd. of Equal., June 28, 1977; Appeal of Michael M. and Olivia D. McKieve, Cal. St. Bd. of Equal., Nov. 19, 1975.)

For the reasons stated above, we conclude that respondent's action in this matter must be sustained.

a

- 532 -