



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
 )  
**RICHARD H. BKOOKE** )

For Appellant: Richard H. Brooke,  
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 Richard H. Brooke against a proposed assessment of additional personal income tax in the amount of **\$293.00** for the year 1979.

Appeal of Richard H. Brooke

The sole issue for decision is whether appellant qualified as a head of household for the year 1979.

Appellant filed his 1979 personal income tax return claiming head of household status. He named his son Richard as the individual qualifying him for that status. In response to respondent's request for additional information, appellant, **indicated** Richard did not live with him for the entire year of 1979. The record **indicates that** Richard lived with his mother from January 1, 1979, to March 20, 1979, thereafter living with appellant. Based on this information, respondent determined that appellant did not qualify for head of household status for that year.

The term "head of household" is defined in section 17042 of the Revenue and Taxation Code which provides in relevant part:

[A]n individual shall be considered a head of a household if, and only if, such individual is not married at the close of the 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 . . .

In prior appeals, we have held that the statute which requires that the taxpayer's home constitute the principal place of abode of another individual **for the "taxable year" means** that such person must occupy the household for the taxpayer's entire taxable year. (Appeal of Armando Bassas, Cal. St. Bd. of Equal., June 28, 1979; Appeal of George Goodwin, Cal. St. Bd. of Equal., March 7, 1979; Appeal of Richard Neville, Cal. St. Bd. of Equal., June 29, 1978; Appeal of Willard S. Schwabe, Cal. St. Bd. of Equal., Feb. 19, 1974.) In the present appeal, appellant's son did not occupy his household for the entire taxable year. While the relevant regulations (Cal. Admin. Code, tit. 18, reg. 19253; Treas. Reg. § 1.2-2(c)(1) (1956)) permit "head of household" status in spite of a "temporary absence due to special circumstances," there is no evidence in the record which would permit us to find that the absence of appellant's son from his household was temporary. Therefore, since appellant's son did not live with him for the entire year, he cannot **qualify** as a head of household.

Appeal of Richard H. Brooke

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

Appeal of Richard H. Brooke

O R D E R

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 Richard H. Brooke against a proposed assessment of additional personal income tax in the amount of \$293.00 for the year 1979, be and the same is hereby sustained.

Done at Sacramento; California, this 5th day of April , 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. **Dronenburg**, Mr. Nevins and Mr. Harvey present.

|                                  |           |            |
|----------------------------------|-----------|------------|
| <u>William M. Bennett</u>        | _____     | , Chairman |
| <u>Conway II. Collis</u>         | - _____   | , Member   |
| <u>Ernest J. Dronenburg, Jr.</u> | _____     | , Member   |
| <u>Richard Nevins</u>            | - - _____ | , Member   |
| <u>Walter Harvey*</u>            | _____     | , Member   |

\*For Kenneth Cory, per Government Code Section 7.9