

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
BILLY R. CUMMINGS)

For Appellant: Billy R. Cummings,
 in pro. per.

For Respondent: Mark McEvilly
 Counsel

O P I N I O N

This appeal is made pursuant to section 19057,
subdivision (a), of the Revenue and Taxation Code from
the action of the Franchise Tax Board in denying the
claim of Silly R. Cummings for refund of personal income
tax in the amount of \$331.48 for the year 1979.

Appeal of Billy R. Cummings

The sole issue for determination is whether appellant Billy R. Cummings qualified as a head of household for the year **1979**.

Appellant and his former wife were divorced in 1976. During 1979, their minor son Jonathan resided with her from January 1 until April 1, at which time he **moved** in with appellant for financial and other reasons. Jonathan lived with appellant **for** the remainder of that year. Appellant paid his former wife child support for the first three months of the year. Appellant claimed head of household status on his California personal income tax return for 1979, naming Jonathan as the qualifying dependent. Since the son did not live with appellant during the entire year, respondent denied the head of household status and made a proposed assessment, **which appellant paid**. Subsequently, he **filed a claim** for refund which respondent denied, and appellant then filed this appeal.

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

For 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 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

Respondent's regulations, effective during the year at issue, explain that 'the taxpayer and the dependent specified in subdivision (a)' must **occupy** the household for the entire taxable year. (Former Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (b)(1), repealer filed Dec. **23, 1981** (Register 81, No. 52); Appeal of Harlan D. Graham, Cal. St. Bd. of Equal., Oct. 18, 1977; Appeal of Gwen R. Fondren, Cal. St. Bd. of Equal., May 10, 1977) Here, Jonathan physically occupied his **father's** household for only nine months of the year in question.

Respondent's regulation does provide an exception to the above requirement, in the case of "temporary

Appeal of Billy R. Cummings

absences from the household due to special circumstances," such as:

[a] nonpermanent failure to occupy the common abode by reason of ... a custody agreement under which a child or stepchild is absent for less than six months in the taxable year of the taxpayer . . . if (A) it is reasonable to assume that the ... person will return to the household, and (B) the taxpayer continues to maintain such household or a substantially equivalent household in anticipation of such return. (Former Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (b)(1), repealer filed Dec. 23, 1981 (Register 81, No. 52).)

This "special circumstance" does not appear to apply here, inasmuch as appellant has not mentioned the presence of a custody agreement or other evidence to indicate that Jonathan's living arrangement prior to April 1, 1979, was a "temporary absence" from appellant's household and that appellant anticipated or expected his son's arrival. (See Appeal of Frank P. Chiappara, Cal. St. Bd. of Equal., Aug. 16, 1979; Appeal of Jose Malberti, Cal. St. Bd. of Equal., Feb. 8, 1979.) Therefore, appellant cannot qualify for head of household status, and respondent's determination must be sustained.

Appeal of Billy R. Cummings

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 15060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying **the claim** of Billy R. Cummings for refund of personal income tax in the amount of \$331.48 for the **year 1979**, be and the same is hereby sustained.

Done at Sacramento, California, this **5th** day of April , **1993**, by the State Board of Equalization, with Board **Members** Mr. Bennett , Mr. Collis, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

William M. Bennett , Chairman
Conway ii. Collis , Member
Ernest J. Dronenburg, Jr. , Member
Richard Nevins , Member
Walter Harvey* , Member

*For Kenneth Cory, per Government Code Section 7.3