BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
SEBASTIAN A. RABASA, JR.   )

Appearances:

    For Appellant: Sehastian A. Rabasa, Jr.
                   in pro. per.

    For Respondent: Kendall E. Kinyon
                  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 Sebastian A. Rabasa, Jr., against a proposed assessment of additional personal income tax in the amount of $312.00 for the year 1978.

The issue in this matter is whether respondent properly denied appellant head of household filing status.

Appellant filed his personal income tax return for 1978, claimed head of household status, and named Nicole Ann, his daughter, as his qualifying dependent. En a head of household questionnaire dated September 22, 1981, which respondent had requested, that appellant file, appellant indicated that he had lived with his wife from January 1'978 to April 197'8. The questionnaire also noted that a final decree of dissolution of marriage was not issued until May 17, 1979.

On the basis of this information, respondent. determined that appellant did not qualify for head of household status under section 17042 of the Revenue and Taxation Code. Respondent's determination was correct.

Section 17042 of the Revenue and Taxation Code 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 his taxable year . . ...

* * *

> For purposes of this section, an individ--
> ual who, under subdivision'(c) of Section 17173
> is not to be considered as married,. shall not
> be considered as married.

An individual is considered as legally married unless separated from his spouse under a final decree of divorce or of separate maintenance at the close of the taxable year. (Rev, & Tax. Code, § 17043; Appeal of Enis V. Harrison, Cal. St. Bd. of Equal., June 28, 1977.) Since appellant was regally married at the end of '1973, he was not entitled to head of household status for that year unless he qualified as "an individual who, under subdivision (c) of Section 17173 is not to be considered as married." Subdivision (c) of section 17173, in part, provides:

> If--

> (1) An individual who is married ...
> and who, files a separate return maintains as

his home a household which constitutes for
more than one-half of the taxable year the
principal place of abode of a dependent (A)
who . . . is a son, stepson, daughter, or
stepdaughter of the individual, and ...

* * *

(3) During the entire taxable year such
individual's spouse is not a member of such
household, such individual shall not be con-
sidered as married.

Since appellant did not live apart from his
wife for all of 1978 but instead shared the same house-
hold with her for four months of that year, subdivision
(c) of section 17173 does not apply. Therefore, for
purposes of determining head of household status for
1978, appellant was not unmarried. Consequently,
respondent acted properly in denying head of household
status to appellant.

Appeal of Sebastian A. Rabasa, Jr.

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 Sebastian A. Rabasa, Jr., against a proposed
assessment of additional personal income tax in the
amount of $312.00 for the-year **1978, 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.

                    _ William M. Bennett   , Chairman

                    Conway H. Collis   , Member

                    Ernest J. Dronenburg,. Jr.   , Member

                    Richard Nevins   , Member

                    Walter Harvey*.   , Member

*For Kenneth Cory, per Government Code Section 7.9