



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
VERNON R. TWYMAN)

For Appellant: Vernon R. Twyman,
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 Vernon R. Twyman against a proposed assessment of additional personal income tax in the amount of \$262.30 for the year 1977.

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'The sole issue for determination is whether appellant qualified as a head of household for the year 1977.

Appellant and his former wife were **divorced** in 1977. At the time of the divorce, they had **two** minor sons, Rodney and Eric. Their marital settlement **agree-**ment provided that custody of their sons would be awarded to them jointly. Appellant's former wife received) physical custody of the children and appellant received rights of reasonable visitation.

For the year **1977**, appellant filed his personal income tax return claiming head of household **status**. He named his **son Rodney** as the person qualifying him for that status. Respondent determined that appellant did not qualify for such status in 1977 because Rodney was not a member of appellant's household for the entire year. Appellant does not dispute the finding that his son did not reside with him for the entire year, but rather contends that he should be **granted** head of household status because he provided Rodney with complete housekeeping facilities, **supervision, and** support during the time his son resided with him.

The **term** "head of household" is defined in **section** 17042 of the Revenue and Taxation **Code** which provides in pertinent 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 his 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

Thus, whether or not appellant qualifies as a head of household depends on whether Rodney maintained his principal place of abode in appellant's household for the 1977 taxable year.' In prior appeals, we have held **that** this requirement means that the qualifying individual must occupy the household for the taxpayer's entire taxable year. (Appeal of Douglas R. Railey, Cal. St. Bd. of **Equal.**, Aug. 15, 1978; Appeal of Harlan D. Graham, Cal. St. **Bd. of Equal.**, Oct. 18, 1977; Appeal of

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Willard S. Schwabe, Cal. St. Bd. of Equal., Feb. 19, 1974; see, construing the similar federal statutory provision (Int. Rev.-Code of 1954, § 2(b)(1)), Stanback, Jr. v. United States, 39 Am. Fed. Tax R.2d 805 (1977).

In a letter to the Franchise Tax Board, appellant states **that** his son lived with him "from time to time during the period in question." Therefore, although the record does not state exactly how much of the year Rodney lived at appellant's residence, it is clear that he did not reside with appellant for the entire taxable year. Further, the marital settlement agreement expressly provides that his mother's home is to be **Rodney's** place of physical custody except during times allotted for visitation with appellant. There is nothing in the record which indicates that the time Rodney spent at appellant's residence was anything other than appellant's allotted time for visitation. For these reasons we conclude that appellant cannot qualify for head of household status.

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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 Vernon R. **Twyman** against a proposed **assessment** of additional personal income tax in the amount of **\$262.30** for the year 1977, 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