

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
JERRY R. **BARHAM** )

For Appellant: Jerry R. **Barham**,  
in pro. per.

For Respondent: Mark **McEvelly**  
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 Jerry R. **Barham** against a proposed **assessment** of additional personal income tax in the amount of \$293.00 for the year 1979.

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

Appellant filed his 1979 personal income tax return and claimed head of household status. He named his daughter Jennifer as his qualifying dependent. In a head of household questionnaire dated August 5, 1981, appellant stated that he had lived with his wife from January 1979 to July 1979. The questionnaire also noted that a final decree of **dissolution** of marriage was not obtained until January 15, 1980. On the basis of the above information, respondent determined that appellant was not entitled to head of household status.

. 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 individual who, under subdivision (c) of Section 17173 is not to be considered as married; shall not be considered as married.

An individual is considered legally married unless he was 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 legally married at the end of 1979, 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 provides, in part:

(c) 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 ...

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\* \* \*

(3) During the entire taxable year such individual's spouse is not a member of such household,,

such individual shall not be considered as married.

Since appellant did not live apart from his wife for all of 1979 but instead shared the same household for at least six months of that **year**, subdivision (c) of section 17173 does not apply. Therefore, for purposes of determining head of household status, appellant was married. Consequently, respondent acted properly in denying head of household status to appellant.

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## 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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Jerry R. Barham 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 21st day  
Of June , 1903, by the State Board of Equalization,  
with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg  
and Mr. Nevins present.

William M. Bennett, Chairman  
Conway I-I. Collis, Member  
Ernest J. Dronenburg, Jr., Member  
Richard Nevins, Member  
\_\_\_\_\_, Member