

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JOSEPH R. **MATTIACCIA**)

For Appellant: Joseph R. Mattiaccia,
in pro. per.

For Respondent: Lazaro L. Bobiles
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 Joseph R. **Mattiaccia** against a proposed assessment of additional personal income tax in the amount of \$411.42 for the year 1978.

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The issue for determination is whether appellant Joseph R. Mattiaccia qualified as a head of household for the year 1978.

Appellant claimed head of household status on his California **personal** income tax return for 1978, naming his minor daughter Stephanie as the qualifying dependent. In **answer** to a questionnaire sent to him by respondent, appellant stated that his qualifying dependent was his wife, Maria Mattiaccia, and that she lived with him during the entire year in question. Appellant also claimed Stephanie and his stepdaughter Esther as dependents. Respondent rejected his head of household status and issued a proposed assessment. Appellant filed a protest to this action, arguing that he has "been divorced since **1972**" and since 1972 has been supporting Stephanie, Esther and Maria. He submitted with his protest a copy of an interlocutory decree of divorce, dated October 18, 1972, which named himself as petitioner and a Rachel Carmen Mattiaccia as respondent. When appellant did not reply to respondent's subsequent requests for information which might establish his 1978 marital status, respondent affirmed its proposed assessment. In this appeal, appellant states that his dependent daughter Stephanie qualifies him for head of household status.

Under section 17042 of the Revenue and Taxation Code, a "head of household" is a taxpayer who is not married at the close of the taxable year, and **maintains as his or** her home the principal place of abode of a qualifying **individual**. According to this and related sections and to respondent's regulations in effect during the appeal year, a taxpayer is, considered unmarried, for purposes of **head** of household status, either **if the** taxpayer and spouse are legally separated under a **final** decree of divorce or of separate maintenance, or if they lived apart during the entire taxable year. (Rev. & Tax. Code, §§ 17042, 17043 & 17173; former Cal. Admin. Code, tit. 18, reg. 17042-17043, subs. (a)(D) & (d), repealer filed Dec. 23, **1981** (Register 81, No. 52); Appeal of Sheila R. Johnson, Cal. St. Bd. of Equal., **May 19, 1981.**)

Appellant has not shown that at the end of **1978** he was unmarried in accordance with the above definition. 'We do not know whether he was legally separated from Rachel Carmen Mattiaccia **because** he has neither provided us with a copy of their final decree of divorce, nor shown that they lived apart during the entire year. We also do not know **whether he** was **married to** Maria Mattiaccia: at

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various stages in these proceedings, he has made inconsistent statements that she was and was not his wife during the appeal year. In support of his claim for head of household status, he has failed to present any evidence showing either that he and Maria were not married prior to 1979, or that they had been married but obtained a legal separation prior to 1979. Having failed to demonstrate that he was unmarried at the close of the year in question, he cannot satisfy the statutory requirements for head of household filing status. (Appeal of Timothy J. Evans, Cal. St. Bd. of Equal., July 26, 1982; Appeal of George W. Mojica, Cal. St. Bd. of Equal., June 29, 1982.) We must therefore affirm respondent's denial of that 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 Joseph R. Mattiaccia against a proposed assessment of additional personal income tax in the amount of \$411.42 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 21st day of June, 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

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| <u>William M. Bennett</u> | - - , | Chairman |
| <u>Conway H. Collis</u> | , | Member |
| <u>Ernest J. Dronenburg, Jr.</u> | , | Member |
| <u>Richard Nevins</u> | , | Member |
| <u> </u> | , | Member |