

Appeal of Beverly A. Jardin

The sole question is whether appellant qualified as a head of household for **1979**.

In the first part of **1979**, appellant and her husband maintained a household which included her two dependent children from a prior marriage. Her **husband** left the household in March **1979**, and appellant continued to maintain the household for herself and her children. Appellant and her husband were not legally **separated** by a decree of separate maintenance or divorce during **1979**; they were divorced in December **1980**.

On her **income** tax return for **1979**, appellant claimed head of household status. On the basis of the information supplied by appellant on respondent's head of household questionnaire, however, respondent determined that she was not entitled to 'head of household status for **1979** and issued a Notice of Additional Tax Proposed to be Assessed. Appellant protested that she maintained the household for **her children**, who were dependent upon her, and that she was regarded as the head of household by the Ventura County Department of Social Services for the purposes of Aid to Families with Dependent Children. Respondent affirmed its assessment, and this appeal followed.

The definition of head of household for personal income tax purposes is determined by specific provisions of the Personal Income Tax Law, which is part of the Revenue and Taxation Code. Section **17042** of the Revenue and Taxation Code provides:

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, and ...

* * *

[F]or purposes of this section, an individual who, under subdivision (c) of section **17173** is not considered as married, shall not be considered as married.

Section 17173 of that Code provides in part:

(c) If--

(1) An individual who is married ...
[and who] ... maintains as his home a household which constitutes ... the principal place of abode of a dependent ... [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.

Section 17173 also provides, in part:

For the purpose of this article--

(a) The determination of whether an individual is married shall be made as of the close of his taxable year; ...

(b) An individual legally separated from his spouse under a final decree of divorce or of separate maintenance shall not be considered as married.

Appellant and her spouse were still legally married at the close of 1979. Under section 17173, appellant could not be considered as unmarried for the purposes of the head of household qualifications because her spouse was a member of the household for part of 1979. So appellant could not qualify as a head of household under the Personal Income Tax Law, whether or not she qualified as head of household under some other statute or administrative regulation or practice.

We note, for instance, that a provision of the California Administrative Code, title 22, section 63-402.5, setting forth part of the household concept for the administration of food stamp benefits, explains that:

The CWD [county welfare department] shall permit the household to designate a responsible household member to serve as head of household. The head of household classification shall not be used to impose special requirements on the household, such as requiring that the head of household, rather than another responsible, member of the household, appear at the certification office to make application for benefits.

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The head of household designation for food stamp administration is different than the head of household definition in the Personal Income Tax Law. Clearly, no absolute congruity between the head of household concepts used in the administration of the different laws was intended, and none should be inferred.

Since appellant clearly does not meet the conditions necessary to attain head of household status for 1979 for the purposes of the personal income tax, we must sustain respondent's action.

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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 Beverly A. **Jardin** against a proposed assessment of additional personal income tax in the amount of \$145.50 for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 28th day of July , 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