



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the **Matter** of the Appeal of)
ERVIN JOHNSON)

For Appellant: Ervin Johnson,
in pro. per.

For Respondent: Terry Collins
Counsel

OP 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 Ervin Johnson against a proposed assessment of additional personal income tax in the amount of \$304.30 for the year 1978.

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The sole question presented is whether **appellant** was entitled to head of household filing status for the year 1978.

On his **1978** California personal income tax return, appellant claimed head of household filing status. On the head of household questionnaire (FTB **4803**), appellant stated that he had been divorced since 1974 and that the person qualifying him for head of household filing status was his 17-year-old son. However, **appellant** also stated that his son had been absent from his household since 1974. Appellant's son **apparently** lives full time with appellant's former spouse. Respondent disallowed appellant's claimed head of household filing status and issued a proposed assessment reflecting that disallowance, but allowing an additional dependency exemption.

Revenue and Taxation Code section **17042** provides, in pertinent 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, and either---

(a) Maintains, as his home a household which constitutes for such taxable year the principal place of abode, as a member of such household; or--

(1) A son ... of the taxpayer

We have consistently held that section 17042 **requires** that a qualifying dependent must occupy **the** taxpayer's household for the entire year except for temporary absences due to special circumstances. (Appeal of Richard H. Brooke, Cal. St. Bd. of Equal., April 5, 1983; Appeal of Douglas P. Railway, Cal. St. Bd. of Equal., Aug. 15, 1978.) **Appellant** does not deny that his son lived elsewhere during 1978, but states that he was an unmarried man and should, therefore, be **allowed** to use head of household filing status. However, section 17042, on its face, requires more than unmarried status, and respondent's disallowance of head of household **filing** status was correct.

Appellant also contends that the income reported on his W-2 form for 1978 was incorrect and that an \$80.00 adjustment was made to his account in **1978**.

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However, appellant has not shown that an error was made in his reported income, and the adjustment to which he refers was to his federal tax liability for the year 1975.

For the reasons stated above, 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 Ervin Johnson against, a **proposed** assessment of additional personal income tax in the amount of \$304.30 for the year 1978, 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