



83-SBE-209

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JAMES R. MACDONALD .)

For Appellant: James R. Macdonald,
in pro. per.

For Respondent: Mark **McEvilly**
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of James **R.** Macdonald for refund of personal income tax in the amount of \$339.47 for the year 1979.

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

Appellant filed a California personal income tax return for 1979 claiming head of household status. He has explained that, during the 1978-1979 academic year, his wife attended graduate school full time and he was on sabbatical leave from Foothill College. Just after the academic year ended in June 1979, his wife withdrew -from the household. Thereafter his wife was not a member of the household, and appellant had full charge of the children and did the housekeeping, gardening, and cooking. No decree of divorce or of separate maintenance was issued during that year.

Section 17042 of the Revenue and Taxation Code provides, in relevant 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 ...

* * *

[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]

* * *

(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.

In addition, section 17173 provides:

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For purposes 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 separate maintenance shall not be considered **as** married.

Since appellant was still married at the close of 1979 and his spouse was a member of the household for part of that year, he did not meet the statutory requirements for head of household and we have no alternative but to 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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of James **R. Macdonald** for refund of personal income ~~tax~~ in the amount of \$339.47 for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this **15th** day of September, 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. **Collis**, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

<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>Walter Harvey*</u>	, Member

*For Kenneth Cory, per Government Code section 7.9