



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CLIFFORD AND GRACE ROBERTSON)

For Appellants: Clifford Robertson,
in pro. per.

For Respondent: Charlotte A. Meisel
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 Clifford and Grace Robertson against a proposed assessment of additional personal income tax in the amount of \$400 for the year 1980.

Appeal- of Clifford and Grace Robertson

Appellants filed a joint personal income tax return for 1980 showing adjusted gross income of **\$52,929.59**. They also claimed a child care expense credit of **\$400**, which respondent disallowed.

Revenue and Taxation Code section **17052.6**, subdivision (a), provides that a child care expense credit is not available **where** adjusted gross- income equals or **exceeds** \$20,000. Appellants contend that this statute is discrimina-tory and denies them equal protection under the law.

Appellants' constitutional argument is mis-directed. This board is prohibited by section **3.5** of article III of- the California Constitution from refusing to enforce a statute on the ground that it is **unconstitu-tion-al**. The statute, on its face, does not allow them their claimed credit and, therefore, we must sustain respondent's action.

