

The second and third full paragraphs on the third page of the opinion are deleted and replaced with:

First, we note that respondent attributed the income earned by each appellant solely to that individual. However, wages earned during a marriage are presumed to be community property. (Civ. Code, § 5110; Phillipson v. Board of Administration, 3 Cal.3d 32, 40 [89 Cal.Rptr. 61] (1970); Hicks v. Hicks, 211 Cal.App.2d 144 [27 Cal.Rptr. 307] (1962).) Respondent acknowledges that appellants were husband and wife before and during 1978 and 1979. (See, e.g., Resp. Br. at 1.) Respondent's regulations require that community income be divided equally between the spouses when separate returns are filed by a married couple. (Cal. Admin. Code, tit. 18, reg. 18402, subd. (c).) Because appellants did not file a valid joint return, respondent was entitled to treat each of them as married filing separate returns to compute their tax liability. However, under the particular facts of this case, we do not believe that respondent was entitled to ignore the presumed community nature of appellants' income when computing their tax liability. To the extent that the Appeal of Christina Gee Davis, decided by this board on April 8, 1980, held that Revenue and Taxation Code section 18555 allows the Franchise Tax Board to ignore the community nature of income when computing a taxpayer's liability, that holding is overruled. Appellants' total income, therefore, must be divided equally between them to determine their tax liability.

Done at Sacramento, California, this 8th day of May, 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Collis, Mr. Bennett and Mr. Harvey present.

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

*For Kenneth Cory, per Government Code section 7.9