



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DORIS E. SEALS)

For Appellant: Doris E. Seals,
in pro. per.

For Respondent: Lazaro L. Bobiles
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 claims of Doris E. Seals for refund of personal income tax in the amount of \$77 for each of the years **1981** and 1982.

Appeal of Doris E. Seals

The question presented is whether appellant was entitled to the \$137 renter's credit allowable to heads of households for each of the years in question.

In filing her returns for the 1981 and 1982 taxable years, appellant claimed a renter's credit in the amount of \$137, on the ground that she qualified as a head of household in each of those years. (See Rev. & Tax. Code, § 17053.5, subd. (a).) She apparently claimed that her son James was the individual qualifying her for head of household filing status. For each year, respondent determined that appellant did not qualify as a head of household. Accordingly, it reduced each of her claimed renter's credits to \$60, the amount allowable to a single individual who is not a head of household or a surviving spouse. (Id.)

It is clear that respondent's action in this case was correct unless appellant qualified for head of household filing status. Among other requirements, the head of household provisions stipulate that the taxpayer must maintain as his home a household which constitutes for the taxable year the principal place of abode of the taxpayer's son or daughter,, or other qualifying individual. (Rev. & Tax. Code, § 17042, subd'. (a).) In prior cases, we have held that this requirement means, that the **qualifying** individual must occupy the household for the entire year, except for temporary absences due to special circumstances. (Appeal of Gwen R. Fondren, Cal. St. Bd. of Equal., May 10, 1977; Appeal of Henry C. H. Hsiung, Cal. St. Bd. of Equal., Dec. 17, 1974; Appeal of Willard S. Schwabe, Cal. St. Bd. of Equal., Feb. 19, 1974.) The record in this case indicates that appellant's son was absent from her household from February 4, 1981, to April 15, 1981, when he was serving in the California Conservation Corps., and from December 26, 1981, to sometime in April 1982, during which period he was married and living with his wife. There is no evidence in the record from which we could conclude that either of these absences was temporary. Accordingly, we must find that appellant did not qualify as a head of household, since her son did not occupy her household as his principal place of abode during the entire taxable years of **1981** and **1982**.

For the above reasons, respondent's action in reducing appellant's claimed renter's credit from \$137 to \$60 for each year must be **sustained**.

Appeal of Doris E. Seals

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 claims of Doris E. Seals for refund of personal income tax in the amounts of \$77 for each of the years **1981** and 1982, be and the same is hereby sustained.

Done at Sacramento, California, this 17th day of January , 1984, by the State **Board** of Equalization, with Board **Members** Mr. Nevins, Mr. Dronenburg and Mr. Bennett present.

Richard Nevins , Chairman
Ernest J. Dronenburg, Jr. , Member
William M. Bennett , Member
_____, Member
_____, Member