



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
WALDO R. AND RACHEL M. TOBLER)

For Appellants: Rachel M. Tobler,
 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 claim of Waldo R. and Rachel M. Tobler for refund of personal income tax in the amount of \$71 for the year 1982.

Appeal of Waldo R. and Rachel M. Tobler

The sole issue is whether appellants were entitled to a renter's credit for 1982.

Rachel Tobler rented her residence until October 1982. In September 1982 she married Waldo Tobler. Thereafter appellants lived in a residence owned by Mr. Tobler for which he claimed a homeowners' property tax exemption for 1982. Appellants also claimed, a renter's, credit on their joint income tax return based upon Rachel's rental of her residence before the marriage. Respondent disallowed the credit on the ground that the renter's credit is not available to a taxpayer whose spouse was granted the homeowners' property tax exemption during the taxable year, unless each spouse maintained a separate residence for the entire year.

Revenue and Taxation Code section 17053.5 limits **the renter's** credit to qualified renters. Subdivision (c) of that section provides, in pertinent part:

The term "qualified renter" does not include an individual who has been granted or whose spouse has been granted the homeowners' property tax exemption during the taxable year. This paragraph shall not apply in the case of an individual whose spouse has been granted the homeowners' property tax exemption if each spouse maintained a separate residence for the entire taxable year.

Under the plain language of the statute, the renter's credit is not available to a person whose spouse received a homeowners' exemption unless each spouse maintained a separate residence for the entire year. Mrs. Tobler rented a residence for nine months in 1982. Since she did not maintain a separate residence for the entire year as required by the statute, respondent properly disallowed the credit.

Appeal of Waldo R. and Rachel M. Tobler

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 Waldo R. and Rachel M. Tobler for refund of personal income tax in the amount of \$71 for the year 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