

Appeal of Herman Shulman

The issue presented here is whether appellant qualified for **head** of household status for 1979.

Due to the difficulty in finding employment, appellant and his wife have generally lived apart since 1977. Since September of 1977, appellant's wife has taught near New York City, while appellant has taught in California, Virginia; and Maryland.

In the beginning of the year at issue, appellant was teaching in Los Angeles, California, where he maintained a household for his children. In June of 1979, that school was dissolved and appellant attempted to find other work in California. Since this proved to be unsuccessful, appellant left California permanently) went to New York to look for **work**, and resided there with his wife during July and August of 1979. In September of 1979, he found work in Washington, **D.C.**, where he established residency. On his part-year California personal income tax return for 1979, he claimed head of household status.

After learning that appellant was still married at the close of 1979 and that he and his wife resided together for two months, respondent recomputed appellant's tax liability as that of a single person with dependents, and issued a notice of tax proposed to be assessed. Denial of appellant's protest led to this appeal.

The term "head of household" is defined in section 17042 of the Revenue and Taxation Code, which provides, in pertinent 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

* * *

For purposes of this section, an individual who, under subdivision (c) of Section 17173 is not to be considered as married, shall not be considered as married.

Since appellant was legally married at the close of calendar year 1979, he was not entitled to head of household status for that year unless he qualified as "an individual who, under **subdivision** (c) of Section

Appeal of Herman Shulman

17173 is not to be considered as married." Subdivision (c) of section 17173, in part, provides that an individual will not be considered as married if "[d]uring the entire taxable year such individual's spouse is not a member of such household"

On appeal, appellant's only contention is that since he and his wife were members of the same household only subsequent to his residency in California, that fact should have no bearing on his status while he was a resident of California. In essence then, appellant **contends** that for California taxation purposes, his taxable year ended when he moved from California to New York and that the determination required by section 17173, subdivision (c), should be made at that time rather than at the end of the calendar year.

Revenue and Taxation Code section 17010 provides, in relevant part, that "in the case of a return made for a fractional part of a year ... [taxable year means] the period for which the return is 'made.'" The record indicates that California's **sole basis** for taxation here was appellant's residency in this state so **that the** period for which his 1979 California tax return was made coincided only with his residency here. Accordingly, appellant's taxable year for 1979 for California taxation purposes terminated upon his move to New York, and his status for section 17173, subdivision (c), purposes must be made at that time. As indicated above, during appellant's residency in California, his spouse was not a member of his household. Accordingly, appellant qualified for head of household status for 1979 for California taxation purposes and respondent's action must be reversed.

Appeal of Herman Shulman

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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Herman Shulman against a proposed assessment of additional personal income tax in the amount of \$205.29 for the year 1979, be and the same is hereby reversed.

Done at Sacramento, California, this **13th day** of December, **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