



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DENNIS M. VORE)

Appearances:

For Appellant: Dennis M.. Vore,
in pro. per..

For Respondent: Richard A. Watson
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Dennis 'M. Vore against a proposed assessment of additional personal income tax in the amount of \$136.54 for the year 1968.

The issue presented is whether appellant qualified as a head of a household for the taxable year 1968.

In February 1968 appellant entered into a property settlement agreement with his wife and initiated divorce proceedings. On June 13, 1968, appellant was granted an interlocutory decree of divorce which

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incorporated the property settlement agreement, and was awarded custody of his child. A final **divorce decree** was rendered on March 1, 1969.

In his 1968 California personal income tax **return** appellant claimed head "of household status and took the \$2,000 standard deduction allowed by Revenue and Taxation Code section 17171, subdivision (a)(2). Respondent limited the standard deduction to \$1,000, ~~the~~ amount allowed to a married individual filing separately. (Rev. & Tax. Code, § 17171, subd. (a)(1).)

To qualify as a "head of a household," appellant must fit within the meaning of that term as defined by section 17042 of the Revenue and Taxation Code. The applicable **part of** section 170'42 states **that:**

...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....

The term "not married" as used in section 17042 is clarified by section 17043, which provides in part:

For purposes of section 17042--

* * *

(b) An individual who is legally separated from his spouse under a final decree of divorce or a decree of separate maintenance shall not be considered as married....

The language of section 17042 is clear in its requirement that an individual be unmarried at the close of his taxable year in order to qualify as a head of a household. In the instant case, appellant had obtained an interlocutory decree of divorce before the close of 1968, but a final decree was not forthcoming until March 1, 1969, well after the close of the taxable year in question. It is settled in California that an interlocutory decree of divorce does not sever the marital bonds, and the relationship of husband and wife exists until the final decree is entered. (Former Civ. Code, §§ 132 and 133, now §§ 4514 and 4515;

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Paulus v. Bauder, 106 Cal. App. 2d 589 [235 P. 2d 422].)
Insofar as California law is concerned, appellant was
still married at the close of 1968 .

The cases construing section 17043, subdivision (b) , clearly indicate that a taxpayer in appellant's position must receive either a final decree of divorce or a decree of separate maintenance before the close of his taxable year if he is to qualify as a head of a household for that year. (See Appeal of Lolita W. Hamilton, Cal. St. Bd. of Equal., Oct. 27, 1964; Appeal of J. Albert and Augusta F. Hutchinson, Cal. St. Bd. of Equal., Aug. 5, 1968.) Appellant obtained neither. Nevertheless, he contends that a property settlement agreement plus an interlocutory decree is tantamount to a final decree of divorce for tax purposes. He cites no authority for this contention and we know of none. On the contrary, all available authority holds against appellant 's position. A good example is Merle Johnson, 50 T.C. 723, a case which presents very similar facts. In that case the parties had executed a property settlement agreement and had obtained an interlocutory decree of divorce during the taxable year in question. However, they did not receive a final decree until the following year.. The court held that under California law -they were not legally separated under a final decree of divorce for federal income tax purposes and denied petitioner head of household status.

Based on the foregoing, we must conclude that at the close of 1968 appellant did not qualify as "not married" within the meaning of sections 17042 and 17043, subdivision (b), and consequently is not entitled to head of household status for that year.

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,

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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 Dennis M. Vore against a proposed assessment of additional personal income tax in the amount of \$136.54 for the year 1968, be and the same is hereby sustained.

Done at Sacramento, California, this 31st day of July, 1973, by the State Board of Equalization.

William B. Reynolds, Chairman
John S. Sweeney, Member
John W. Lynch, Member
Paul H. [unclear], Member
_____, Member

ATTEST: W. W. Dunlop, Secretary