



BEFORE THE STATE BOARD OF EQUALIZATION
OF **THE** STATE OF CALIFORNIA

In **the Matter** of the Appeal of)
MARJORIE LEHRER)

Appearances:

For Appellant: Marjorie Lehrer, in pro. per.
For Respondent: Jack E. Gordon
Supervising 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 Marjorie Lehrer against proposed assessments of additional personal income tax in the amounts of \$12.00 and \$16.00 for the years 1966 and 1967, respectively.

The sole issue presented is whether appellant was entitled to claim two of her children as dependents in the years 1966 and 1967. The factual situation giving rise to this appeal also gave rise to the Appeal of Alfred and Fanchon Lehrer, decided this **same day**.

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Appellant was divorced from Alfred Lehrer in **1962**. The final decree of **divorce awarded** custody of their **three** minor children to appellant, and at all relevant times they resided in her home. By a 1965 modification to the decree, Alfred was ordered to pay child support in the amount of \$22.00 per week per child. It is conceded that he made these support payments as ordered by the court, amounting to **\$3,432.00** per year total. He alleges, without substantiation, that he spent \$300.00 per year in the course of visitations, and on other occasions. Appellant **denies that he** spent any amount **in excess of \$3,432.00**.

Alfred Lehrer was unable even to estimate the total cost of **support** for each child. In answer to an inquiry by respondent, Marjorie Lehrer stated that the total support cost per child was **\$2,600.00** in 1966 and **\$2,633.00** in 1967.' On her appeal she reduced these figures to **\$2,448.98** and **\$2,454.17**, respectively. She contends that, she provided the entire difference between these amounts and the **\$1,144.00** per year per 'child provided by Alfred under the court order.

Appellant filed separate California personal income tax returns for 1966 and 1967. One of the children **qualified her** as the head of household: she claimed the other two as dependents. In those years Alfred Lehrer, who had remarried, filed joint California personal income tax returns with his wife, Fanchon Lehrer, claiming all three of the children as dependents. Respondent requested and received supplementary information from both Marjorie and Alfred, then denied dependent deductions to both parties for lack of proof that either had provided more than half of the children's support in 1966 and 1967. That determination gave rise to this appeal and to the Appeal of Alfred and Fanchon Lehrer.

In 1966 section 17181 of the Revenue and Taxation Code allowed a taxpayer a deduction for each dependent. Section 17182 defined "dependent" to include

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a son or daughter of the taxpayer who received over half of his support in the taxable year from the taxpayer. In 1967 the definition of "dependent" remained the same, but was renumbered as **section 17056**. Section 17181 was repealed, and the deduction allowed thereunder was replaced by a credit for personal exemptions under section 17054.

The burden of establishing dependency is on the taxpayer. To sustain his burden he must show the total cost of support and that he provided over half of that total cost. (Appeal of William C. Fay, Cal. St. Bd. of Equal., March 25, 1968.) The figures provided by Marjorie as being the total cost of supporting the three children **during the** years in question were substantiated by audit except for about \$300.00 in 1966 and about \$400.00 in 1967. From evidence presented at the hearing before this board we believe that appellant did make undocumented cash expenditures for support in at least the amounts she claimed. We are also convinced by the evidence that she provided over half the total cost of supporting the **children in 1966 and 1967**. **We conclude** that appellant has sustained her burden of proof and is entitled to claim two of the children as dependents on her returns for the years in issue.

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 Marjorie Lehrer against proposed assessments of additional personal income tax in the amounts of \$12.00 **and \$16.00** for the years 1966 and 1967, respectively, be and the same is hereby reversed.

Done **at Sacramento,** 'California, this 11th day of December, 19.73, by the State Board of Equalization.

W. J. ..., Chairman
... Member
John W. Ryneck, Member
..., Member

_____, Member

ATTEST: W. A. ..., Secretary