

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
FRED AND JOAN WIESE)

For Appellants: W. E. Mimmelmann
Public Accountant

For Respondent: Bruce W. Walker
Chief Counsel

John A. Stilwell, Jr.
Counsel

OPINION

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 Fred Wiese against a proposed assessment of additional personal income tax in the amount of \$164. 22 for the year 1962, and on the protest of Fred and Joan Wiese against a proposed assessment of \$90.08 for the year 1963. Joan Wiese is involved in the appeal only because she filed a joint return with her husband, Fred, for the year 1963.

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The issue is whether exemptions for a claimed dependent should have been allowed.

Fred Wiese (hereinafter referred to as appellant) and his previous wife, Eve, were divorced by a California court in 1957. The divorce decree granted to Eve custody of their three minor children, Patricia, Phillip and Gary, and directed appellant to provide \$75 per month toward the support of each child. The decree also stated that:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that husband may claim the oldest child, PATRICIA WIESE, as a dependent, and that wife may claim the two younger children, GARY WIESE and PHILLIP WIESE, as dependents, on income tax returns.

In 1962 appellant actually made payments totaling \$2,290 for the support of the children: \$790 for Patricia, and \$750 for each of the boys. In 1963 he contributed \$2,200, divided equally among the children. The record does not reveal, and appellant has made no attempt to prove, the total amounts spent for the support of the children during those years.

On his 1962 and 1963 California income tax returns appellant claimed exemptions for each of the three children. Respondent disallowed the exemptions, however, on the ground that appellant had failed to prove that he had provided over half the children's support during those years, and assessed deficiencies of \$164.22 for 1962 and \$90.08 for 1963. Appellant acquiesced in the denial of the exemptions claimed for the two younger children, but protested the denial of the exemptions claimed for Patricia. The protest was denied, and this appeal followed. The Franchise Tax Board has informed us that if the appeal succeeds, appellant's liability will be reduced \$24 for 1962 and \$18 for 1963.

During the years in question Revenue and Taxation Code section 17181, subdivision (d), authorized an exemption from gross income of \$600 for each dependent of the taxpayer. The term "dependent" was defined in section 17182 as follows:

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For the purposes of this part, the term "dependents" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer. ...:

(a) A son or daughter of the taxpayer; ...

Under this section a taxpayer may claim a child as a dependent only if he furnished over half the child's support, and the burden of proving support is on the taxpayer. (Appeal of Ernest Zeno, Cal. St. Bd. of Equal. , Oct. 1, 1963.)

Appellant bases his appeal on the above quoted statement in the divorce decree, arguing that it entitles him to an exemption for Patricia without the necessity of proving support. The decree, however, merely fixes the rights of the parties to the divorce as between themselves, and authorizes appellant, rather than his former wife, to "claim" Patricia as a dependent. It does not purport to bind the Franchise Tax Board to allow the claim without regard to its merits, or to relieve appellant of his burden of proving that the claim meets the requirements of the Personal Income Tax Law.

To be entitled to an exemption for his daughter, therefore, appellant must prove that he contributed over half her support. Appellant, however, has presented no evidence of the total amount spent for Patricia's support during the years in question, and without such evidence it is impossible to determine whether he provided over half that amount. (Appeal of J. Albert and Augusta F. Hutchinson, Cal. St. Bd. of Equal. , Aug. 5 1968.) He has accordingly failed to carry his burden of proof, and the exemptions claimed for Patricia were therefore properly denied.

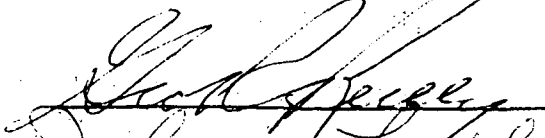
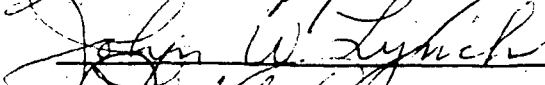
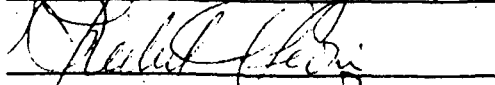
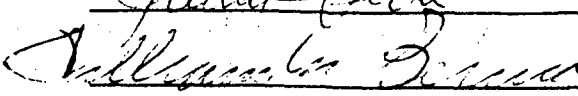
O R D E R


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 Fred Wiese against a proposed assessment of additional personal income tax in the amount of \$164.22 for the year 1962, and on the protest of Fred and Joan Wiese against a proposed assessment of \$90.08 for the year 1963, be and the same is hereby sustained.

October, -Done at Sacramento, California, this 7th day of
1974, by the State board of Equalization.

 , Chairman
 , Member
 , Member
 , Member
_____, Member

ATTEST:  , Secretary