

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
HENRY C. H. HSIUNG)

Appearances:

For Appellant: Henry C. H. Hsiung, in pro. per.

For Respondent: Kendall Kinyon
Counsel

OPINION

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Henry C. H. Hsiung for refund of personal income tax in the amount of \$126. 93 for the year 1969.

The sole issue for our determination is whether appellant qualified as a head of household for the taxable year 1969.

Appellant filed his 1969 California personal income tax return as an unmarried head of household claiming his sister, An Sing Shoong, as his qualifying dependent. In September of 1969, Ms. Shoong came to California from Taiwan for the purpose of

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continuing her college education. Upon her arrival here, and throughout the remainder of 1969, she lived in appellant's home and was totally dependent on him for her financial support. In addition, appellant stated that for two years prior to his sister's arrival in California he had contributed to the furtherance of her education by sending money to his parents in Taiwan who, in turn, applied a portion of this money to defray her educational expenses.

Respondent denied appellant head of household status on the ground that appellant's sister had not occupied his household throughout the entire taxable year in question, as required by California law. In this regard, Revenue and Taxation Code, section 17042, 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, and ...

(a) Maintains as his home a household which constitutes for such taxable year the principal abode, as a member of such household, of --

* * *

(2) Any other person who is a dependent of the taxpayer ... 1/

Further clarification of section 17042 is to be found in respondent's regulation 17042-17043, which states in part:

(b)(1) In order for the taxpayer to be considered a head of a household by reason of any individual described in subparagraph (a) of Section 17042, the household must actually constitute the home of the taxpayer for his taxable year.... Such home must also constitute the principal place of abode of at least one of the persons specified in such subparagraph (a). It is not sufficient that the taxpayer maintain the household without being

1/ It is undisputed that appellant's sister qualified as his dependent during the time she was in his household.

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its occupant. The taxpayer and such other person must occupy the household for the entire taxable year of the taxpayer. .. The taxpayer and such other person will be considered as occupying the household for such entire taxable year notwithstanding temporary absences from the household due to special circumstances. A nonpermanent failure to occupy the common abode by reason of ... education, ... shall be considered temporary absence due to special circumstances. Such absence will not prevent the taxpayer from qualifying as the head of a household if (i) it is reasonable to assume that the taxpayer or such other person will return to the household, and (ii) the taxpayer continues to maintain such household or a substantially equivalent household in anticipation of such return. (Emphasis added.) (*Cal.* Admin. Code, tit. 18, reg. 17042-17043.)

Application of the cited regulation to the facts of this case compels us to conclude that appellant's sister did not occupy his household "for the entire taxable year of the taxpayer. " Our conclusion is based on the fact that Ms. Shoong did not become a member of appellant's household until more than eight months after the start of the year in question. Although respondent's regulation provides for a "temporary absence due to special circumstances, " it also implies that the individual so absent must have been a member of the household prior to such absence. This implication is clearly evidenced by use of the word "return" in the last few lines of the regulation quoted above. Since appellant's sister became a member of his household for the first time in September of 1969, it is impossible to say, with respect to the months prior to her arrival, that it was reasonable to assume that she would return to the household or that appellant continued to maintain the household in anticipation of her return. Accordingly, she did not occupy appellant's household for the entire year of 1969.

Appellant contends, generally, that the requirement that a qualifying dependent be an occupant of the taxpayer's household for the entire taxable year is unreasonable. He further argues that, since the instructions accompanying his 1969 tax return failed to mention this requirement, respondent should be estopped from applying it to deny him head of household status.

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We find appellant's unsupported contention regarding the unreasonableness of the occupancy requirement to be without merit. With respect to appellant's estoppel argument, the identical position was taken by the appellant in Appeal of Willard S. Schwabe, decided by this board on February 19, 1974. In rejecting appellant's argument on that occasion; we indicated that only in cases where the facts are clear and the injustice great would estoppel be raised against a taxing authority. That decision went on to point out that no detrimental reliance could be claimed by appellant therein since the facts fatal to his case 'had occurred long before he received the instructions in issue'; Likewise, in the instant case, the facts fatal to appellant's claimed status as a head of household for 1969 had taken place months before he received the 'allegedly' faulty instructions -and- we must therefore reject appellant's estoppel argument.

Based upon the foregoing, it is our opinion that respondent properly denied appellant head of household status for the taxable year 1969.

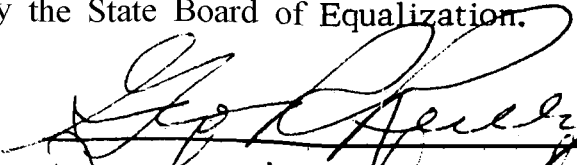
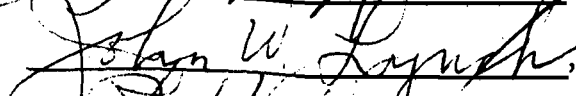

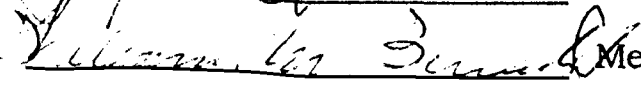
ORDER

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Henry C. H. Hsiung for refund of personal income tax in the amount of \$126.93 for the year 1969, be and the same is hereby sustained.

Done at Sacramento, California, this 17th day of December, 1974, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member

ATTEST:  Secretary