

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
STEPHEN **M.** PADWA)

For Appellant: Stephen M. Padwa, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Jon Jensen
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 Stephen M. Padwa against a proposed assessment of additional personal income tax in the amount of \$229.68 for the year 1974.

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The sole question presented for decision **is** whether appellant was entitled to claim head of household status for the taxable year 1974.

Appellant filed a timely California personal income tax return for 1974. In that return he claimed head of household status and computed his tax liability accordingly. He indicated that the individual qualifying him as a head of household was a Ms. Murphy, who lived with him and allegedly received over one-half **of** her support from him during 1974. Ms. Murphy bears no relationship to appellant other than as a friend.

Respondent disallowed appellant's claimed head of household status but allowed him an \$8.00 dependent exemption credit for Ms. Murphy, pursuant to section 17054, subdivision **(c)**, of the Revenue and Taxation Code. Appellant protested that action, and this timely appeal followed respondent's affirmation of the proposed assessment.

Section **17042** of the Revenue and Taxation Code 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 place of abode, as a **member of such household, of--**

(1) [A dependent child or stepchild, etc.]; **or**

(2) Any other person who is a dependent of the taxpayer, if the taxpayer is entitled to a [dependent exemption] credit for the taxable year for such person under Section **17054;...**

Section 17054, subdivision (c), of the Revenue and Taxation Code provides for an \$8.00 exemption credit for each qualified dependent, as defined in section 17056 of the same code. The pertinent language in section 17056 is:

For the **purposes of** this part, the term "dependents" means any of the following individuals over half of **whose** support, for-the

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calendar year in which the taxable year of the **taxpayer** begins, was received from the taxpayer...

* * *

[Subdivisions (a) through (h) describe individuals directly or indirectly related to the taxpayer by blood or marriage.]

(i) An individual...who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household:...

Appellant argues that Ms. Murphy qualifies as his dependent under the above quoted subdivision (i) of section 17056, and that he is therefore a head of household under the provisions of section 17042, subdivision (a)(2).

Respondent has apparently conceded that Ms. Murphy qualifies as a dependent for purposes of the dependent **exemption** credit (Rev. & Tax. Code, § 17054, **subd. (c)**), and has accordingly allowed appellant one \$8.00 credit against his tax liability. Respondent's disallowance of appellant's head of household status, however, is based upon section 17044 of the Revenue and **Taxation** Code, which provides, in pertinent part:

Notwithstanding Section 17042, for purposes of this part a taxpayer shall not be considered to be a head of household by reason of an individual who would not be a dependent for the taxable year but for--

(a) Subdivision (i) of Section 17056,...

Clearly Ms. Murphy's status as a dependent of appellant is derived solely from subdivision (i) of section 17056, since she is not related to him by blood or marriage. We must therefore agree with respondent that the express language of section 17044 precludes appellant's **qualification as** a head of household on the basis of his arrangement with Ms. Murphy.

In support of his position, appellant has brought to our attention the California Supreme Court's recent decision in the case of Marvin v. Marvin, 18 Cal. 3d 660 (1976). The court there recognized that in the

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situation where a man and woman live together for a period of years, without marrying, and that nonmarital relationship is then terminated, both parties may have certain contractual rights with respect to property acquired during their period of cohabitation. We fail to see the relevance of the Marvin decision to the appeal now before us. That case was not a tax case, and the language contained therein is not applicable in interpreting sections of the California Personal Income Tax Law. Our decision in the instant appeal must be governed by the clear language of those provisions of the Revenue and Taxation Code relating to an individual's eligibility to file his or her income tax return as a head of household.

For the reasons stated above, we conclude that respondent properly denied appellant's claimed head of household status for the taxable year 1974.

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 Stephen M. Padwa against a proposed assessment of additional personal income tax in the amount of \$229.68 for the year 1974, be and the same is hereby sustained.

Done at Sacramento, California, this **10th** day
of May , 1977, by the State Board of Equalization.

John Bennett, Chairman
Richard D. ..., Member
George ..., Member
Mrs. ..., Member
_____, Member

ATTEST: *W. H. Bell*, Executive Secretary