

Appeal of Manciel L. Smith

The sole issue is whether appellant qualified for head of household status in 1973.

For the years 1973 and 1974 appellant filed California personal income tax returns claiming head of household status. On the returns appellant reported the name of **Sam** Hambrick, his uncle, as the person qualifying him as a head of household. During 1973 and 1974 appellant was separated from his wife and was the sole support of his two children and his uncle. However, appellant states that there has never been a final decree of divorce entered in the proceedings between him and his wife.

Respondent denied the claimed head of household status for 1973, but, due to a change in the law, allowed appellant to claim head of household status for 1974. Respondent also allowed an additional dependency credit for appellant's uncle.

Section 17042 of the Revenue and Taxation Code provides, in part.:

For purposes of this part, an individual shall be considered a head of household if, and only if, such individual is not married at the close of his taxable year, and
either--

(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 son, stepson, daughter...of the taxpayer...or

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

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During 1973, although a taxpayer was separated from his spouse, he was still considered as being married for purposes of claiming head of household status unless, at the close of the taxable year, he was legally separated from his spouse under a final decree of divorce or separate maintenance.

(Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (a)(D).)

Since appellant was legally married on the last day of 1973, he was not eligible to file as a head of household for that year. This conclusion is not changed by the fact that

appellant was separated from his wife at the end of the year.^{1/} Without a final decree of divorce or separate maintenance, a married individual could not qualify as a head of household in 1973, even though separated from his spouse.

(Appeal of Robert J. Evans, Cal. St. Bd. of Equal., Jan. 6, 1977; Appeal of Glen A. Horspool, Cal. St. Bd. of Equal., March 27, 1973.) Accordingly, respondent's action in this matter must be sustained.

^{1/} For years beginning on or after January 1, 1974, Rev. & Tax. Code section 17173, subd. (c), provides that if, under circumstances such as those present in this appeal, a taxpayer's spouse is not a member of his household during the entire taxable year such taxpayer shall not be considered as married.

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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,

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 Manciel L. Smith against a proposed assessment of additional personal income tax in the amount of \$161.27 for the year **1973**, be and the same is hereby sustained.

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

John B. ... , Chairman
Richard ... , Member
George ... , Member
Iris ... , Member
_____ , Member

ATTEST: *J.A. ... Bell* , Executive Secretary