



In the Matter of the Appeal of)
)
ENIS V. HARRISON)

Paul J. Petrozzi
Counsel

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Appeal of Enis V. Harrison

The sole issue for determination is whether appellant qualified as head **of** household for 1973.

Appellant was separated from her husband on February 2, 1972, and remained separated from him from that time, including the entire year in issue. However, a final decree of divorce was not entered until August 7, 1974. Since her separation, appellant has supported her minor daughter, **Staci**, and has maintained a home for her.

For 1973, appellant filed a return indicating that she was a married person filing separately. Subsequently, the Internal Revenue Service disallowed certain child care expenses because appellant was still legally married during 1973. However, since appellant was separated from her husband for the entire year 1973 the federal authorities recomputed her income tax liability under the more favorable head of household rates rather than as a married person filing separately. Since, during the year in **issue**, the federal and California laws **concerning** the deductibility of child care expenses were similar, respondent followed the federal action and disallowed the child care deduction claimed on appellant's state tax return. The federal and California laws concerning head of household were not the same during 1973. **Therefore, respondent computed appellant's** tax liability as a married person filing separately rather than as a head of household. Appellant does not contest the disallowance of the child care deduction, but does contend that she should be allowed to file as a head **of** household for 1973.

Appellant argues that if respondent follows the federal action in disallowing the child care expense deduction, it should also follow the federal action in allowing her to file as a head of household. While the California Personal Income Tax Law is substantially similar to the federal income tax law, it is not identical. For example, during the year in issue, both the California and federal provisions concerning the deduction of child care expenses were similar. This is the reason respondent required information concerning the final federal action: so that it could conform its action in this regard to the **final** federal adjustment. However, with respect to the requirements for head of household status the California and federal laws were not the same during 1973.

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During 1973, section 17042 of the Revenue and Taxation Code provided, in pertinent 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,...

During 1973, although a taxpayer was separated from her spouse, she was still considered married for purposes of claiming head of household status unless, at the close of the taxable year, she was legally separated from her spouse under a final decree of divorce or of separate maintenance. (Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (a)(D).) Since appellant was legally married on the last day of 1973, she 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 her husband at the end of the year. 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 her spouse for the entire year. (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.

I/ 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 her household during the entire taxable year such taxpayer shall not be considered as married. Under such circumstances, and assuming all other requirements are fulfilled, the taxpayer would qualify as head of household. The federal law had contained a similar provision which was effective for years beginning after December 31, 1969. (See IRC of 1954, § 143(b).)

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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 Enis V. Harrison** against a proposed assessment of additional personal income tax in the amount of \$94.64 for the year 1973 be and the same is hereby sustained.

Done at Sacramento, California, this **28th** day of June , 1977, by **the** State Board of Equalization.

J. L. B. B. B. Chairman
Paul D. B. , Member
S. S. S. , Member
W. W. W. , Member
 , Member