

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
HARLAN D. GRAHAM )

For Appellant: Harlan D. Graham, 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 Harlan **D. Graham** against a proposed assessment of additional personal income tax in the amount of \$243.55 for the year 1974. During the course of these proceedings appellant paid the proposed assessment. Therefore, pursuant to section 19061.1 of the Revenue and Taxation Code this appeal is treated as an appeal from the denial of a claim for refund.

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The sole issue for our determination is whether appellant qualified as a head of household for the year **1974**.

Appellant was separated from his wife in **1972** and divorced in September of 1973. During the separation and after the divorce, appellant's wife had custody of their son, Bradley D. Graham. Bradley lived with his mother **until** March 29, 1974. Prior to that time he only visited appellant on weekends and for approximately two weeks each summer. On March 29, 1974, however, appellant moved to a larger home in order that Bradley could live with him. On that date Bradley, then seven years old, moved to appellant's new home, lived with him for the remainder of the year 1974, and has continued to reside with appellant.

Appellant filed his California personal income tax return for the year 1974 as head of household, claiming Bradley as the person qualifying him for that status. Respondent determined that appellant did not qualify for such status in 1974 because his son had not occupied appellant's household for the **entire year**. Consequently, this proposed assessment was issued. Appellant protested, and, after due consideration, respondent affirmed its action. Appellant then filed this timely appeal.

The term "head of a household" is defined in section 17042 of the Revenue and Taxation Code which provides, in pertinent part:

[A]n 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 . . . son ... of the taxpayer . . .

In prior appeals we have held that the statute, which requires that the taxpayer's home constitute the principal place of abode of another individual for the **'taxable year,'** means that such person must occupy the household for the taxpayer's entire taxable year. (Appeal of Willard S. Schwabe, Cal. St. Bd. of Equal., Feb. **19, 1974**; Appeal of Gwen R. Fondren, Cal. St. Bd. of Equal.,

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May 10, 1977; see also Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (b)(1).) In the present appeal appellant's son did not physically occupy appellant's household for the entire taxable year. Although respondent's regulations provide for a "temporary absence due to special circumstances," the record in this appeal does not indicate the existence of any special **circumstances**. Therefore, appellant cannot qualify for head of household status.

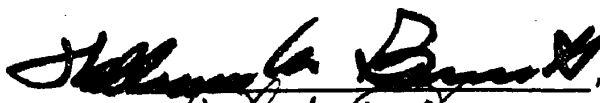
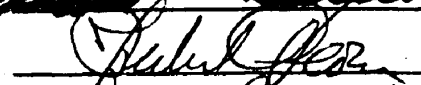
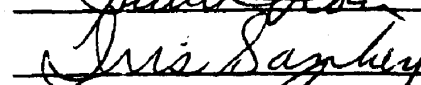
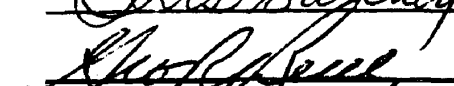

Appellant contends that inasmuch as during the entire year either he or his ex-wife provided a household for their child, one of them should be entitled to head of household status. This argument, however, is not supported by the applicable statutory and case law. Consequently, we must sustain respondent's action in this matter.

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Harlan D. Graham against a proposed assessment of additional personal income tax in the amount of \$243.55 for the **year 1974**, be and the same is hereby sustained.

Done at Sacramento, California, this 18th day of October , 1977, by the State Board of Equalization.

 , Chairman  
 , Member  
 , Member  
 , Member  
 , Member