

BEFORE ~~THE~~ STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
JUDITH ABELES }

Appearances:

For Appellant: Judith Abeles, in pro. per.

For Respondent:, Paul J. **Petrozzi**
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 Judith Abeles against a proposed assessment of **\$144.71** for the year 1974.

Appeal of Judith Abeles

The sole issue for determination is whether **appellant** was entitled to claim head of household status for 1974.

Appellant filed a timely California personal income tax return for 1974. In that return she claimed head of household status and computed her tax liability accordingly. Appellant identified the individual qualifying her as a head of household as **Ms. Jacoba** Kolber, a Netherlands national, who immigrated to the United States in 1974, and lived in appellant's home during that year. In order to facilitate Ms. Kolber's immigration, appellant executed an affidavit of support in which she agreed to support Ms. Kolber if she was unable to support herself. It is apparently undisputed that appellant did provide for over one-half of Ms. Kolber's support during 1974. However, appellant and Ms. Kolber were not related.

Respondent disallowed appellant's claimed head of household status on the ground that Ms. Kolber, who was unrelated to appellant, was not a **qualifying dependent**. (See Rev. & Tax. Code, §§ 17044(a) and 17056(i).) Respondent did, however, allow appellant an \$8.00 dependent exemption credit for Ms. Kolber pursuant to section 17054, subdivision (c), of the Revenue and Taxation Code. Appellant protested and, upon review, respondent affirmed its disallowance of appellant's claimed head of household status. This appeal followed.

The facts of this case are substantially similar to those presented in the Appeal of Stephen M. Padwa, decided by this board on May 10, 1977. (See also Appeal of Amy M. Uamachi, Cal. St. Bd. of Equal., June 28, 1977; Appeal of Rebecca Smith Randolph, Cal. St. Bd. of Equal., Aug. 16, 1977.)

In the Padwa appeal we sustained the action of respondent and held that the appellant therein was not entitled to head of household status based upon his support of an unrelated friend who lived with him throughout the year in issue. The decision in that case was based upon section 17044 of the Revenue and Taxation Code, which precludes a taxpayer from being considered a head of household when the individual otherwise qualifying as a dependent of the taxpayer is unrelated by blood or marriage.

It is appellant's position that she voluntarily undertook a financial burden to support Ms. Kolber which otherwise **would have** been borne by the taxpaying public.

Since she did not default on this duty, appellant argues that she is being penalized by not being allowed to claim head of household status. However, while we may agree that appellant's action was laudable, we are not at liberty to ignore the plain and unambiguous meaning of the statutory language. (Pipe Line Co. v. State Board of Equalization, 5 Cal. 2d 253 [54 P.2d 18] (1936).)

O R D E R

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 Judith Abeles against a proposed assessment of additional personal income tax in the amount of \$144.71 for the year 1974, be and the same is hereby sustained.

Hollander, Ernest H., Chairman
 Duke, Olen, Member
 J. J. Saphy, Member
 Geo. K. Kelly, Member
 _____, Member