



BEFORE THE STATE BOARD OF EQUALIZATION
 OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
 ROBERT JAMES DESMOND)

For Appellant: Robert J. Desmond, in **pro. per.**

For Respondent: Bruce W. Walker
 Chief Counsel

James C. Stewart
 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 Robert James Desmond against a proposed assessment **of additional** personal income tax in the amount of \$216.72 for the year 1974.

Appeal of Robert James Desmond

The sole issue presented 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 he claimed head of household status and computed his tax liability accordingly. Appellant identified the individual qualifying him as a head of household as **Maryjane** Allen, his fiancée, who lived with him and received over one-half of her support from him during 1974. Appellant and Miss Allen were married in 1975; however, during 1974 they were not related.

Respondent disallowed appellant's claimed head of household status on the ground that Miss Allen, who was unrelated to appellant by blood or marriage, 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 Miss Allen 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 two recent appeals to this board. (See Appeal of Stephen M. Padwa, Cal. St. Bd. of Equal., May 10, 1977; Appeal of Amy M. Yamachi, Cal. St. Bd. of Equal., June 28, 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 living arrangement with a dependent female friend. 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.

We also sustained respondent's action in the Yamachi appeal notwithstanding the taxpayer's argument which was in the nature of estoppel. In Yamachi the taxpayer argued, as does appellant here, that respondent's instructions were incomplete. After reviewing the nature of estoppel, however, we determined that the taxpayer did not rely to her detriment in selecting her living arrangement during 1974, since respondent's instructions were not issued until 1975. The inability of **the taxpayer** to establish detrimental reliance precluded an application of the doctrine of estoppel.

Appeal of Robert James Desmond

We believe our decision in the instant appeal must be governed by the same principles set forth in the Padwa and Yamachi opinions and, for the reasons stated therein, we must sustain respondent's denial of appellant's claimed head of household status for 1974.

ORDER

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 Robert James Desmond against a proposed assessment of additional personal income tax in the amount of \$216.72 for the year 1974, be and the same is hereby **sus-**tained.

Done at Sacramento, California, this 6th day of December, 1977, by the State Board of Equalization.

William W. Bernard, Chairman
John A. Ober, Member
Jim Spink, Member
Bob Kelly, Member
_____, Member