

BEFORE THE STATE BOARD OF EQUALIZATION  
'OF THE **STATE** OF CALIFORNIA

In the Matter of the **Appeal** of }  
JOHN R. MITCHELL )

For Appellant: John R. Mitchell, 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 John R. Mitchell against a proposed **assessment** of additional personal income tax in the amount of \$149.70 for the year 1974.

Appeal of John R. Mitchell'

The sole issue for determination is whether appellant qualified for **head** of household status in 1974.

Appellant filed a California personal income tax return for 1974, claiming head of household status and naming his daughter **as** his qualifying dependent. In November of 1974, **appellant** and his wife separated and proceedings for the dissolution of the marriage were initiated in December of that year. However, the final decree was not entered until October 1976.

Because appellant was still married at the end of **1974**, respondent **denied** the claimed head of household status but allowed appellant an \$8.00 dependent exemption for his daughter.

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 ...

Although the taxpayer **was** separated from his wife at the end of 1974, he was **still** considered married, for income tax purposes, unless he was legally separated under a decree of separate maintenance or a final decree of dissolution. (Rev. & Tax. Code, § 17043; Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (a)(D).)

Absent a decree of separate maintenance or a final decree of divorce, appellant was not eligible to file as a head of household. (Appeal of Shirley A. Gillespie, Cal. St. Bd. of Equal., June 28, 1977; Appeal of Robert J. Evans, Cal. St. Bd. of Equal., 6, 1977; Appeal of Glen A. Horspool, Cal. St. Bd. of Equal.: March 27, 1973.) The result is not changed by the fact that appellant and his wife were living apart at the end of 1974, **because** they did not live apart during the entire taxable year, as required by Revenue and Taxation Code Section 17173, subdivision (c). That subdivision applies to taxable years beginning on or after January 1, 1974; thus appellant's case is clearly covered by the provisions thereof.

The statute and regulations are **specific** and we cannot agree with appellant's construction of them. (Appeal of Lolita W. Hamilton, Cal. St. Bd. of Equal., Oct. 27, 1964.) Accordingly, respondent's action in this matter must be sustained.

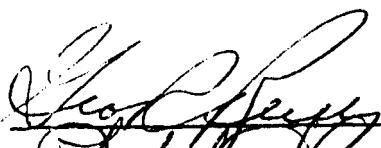

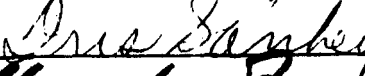
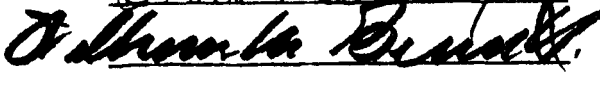
Appeal of John R. Mitchell

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 John R. Mitchell against a proposed assessment of additional personal income tax in the amount of \$149.70 for the year 1974, be and the same is hereby sustained.

Done at Sacramento, California, this 11th day of January, 1978, by the State Board of Equalization.

 \_\_\_\_\_, Chairman  
 \_\_\_\_\_, Member  
 \_\_\_\_\_, Member  
 \_\_\_\_\_, Member  
\_\_\_\_\_, Member