



e.

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
BARBARA D. JOHNSON )

For Appellant: Barbara D. Johnson, in pro. per.

For Respondent: Bruce W. Walker  
Chief Counsel

R. L. Koehler  
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 Barbara D. Johnson against a proposed assessment of additional personal income tax in the amount of \$35.78 for the year 1973.

Appeal Of Barbara D. Johnson

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

Appellant claimed head of household status on her 1973 return, naming her son as her qualifying dependent. During that entire year appellant lived apart from her husband but had not obtained a final decree of divorce nor a decree of separate maintenance. A final decree of divorce was entered in February 1975. Because appellant was still married at the end of 1973, respondent denied her head of household status, but allowed appellant a dependent exemption for her son.

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 appellant was separated from her husband throughout 1973, absent a final decree of divorce or separate maintenance she was still considered married for income tax purposes. (Rev. & Tax. Code, § 17043, subd. (b); Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (a) (D).) <sup>1/</sup> Therefore, she was not eligible to file as a head of household. (Appeal of John R. Mitchell, Cal. St. Bd. of Equal., Jan. 11, 1978; Appeal of Shirley A. Gillespie, Cal. St. Bd. of Equal., June 28, 1977; Appeal of Robert J. Evans, Cal. St. Bd. of Equal., Jan. 6, 1977.)

Accordingly, respondent's action in this matter must be sustained.

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1/ For years beginning on or after January 1, 1974, Rev. & Tax. Code, § 17173, subd. (c), provides that if 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, assuming all other requirements were met, the taxpayer would qualify as head of household.

Appeal of Barbara D. Johnson

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 Barbara D. Johnson against a proposed assessment of additional personal income tax in the amount of \$35.78 for the year 1973, be and the same is hereby sustained.

Done at Sacramento, California, this 29th day of June, 1978, by the State Board of Equalization.

George R. Heath Chairman  
John A. Lee Member  
William W. Bennett Member  
Les Sankey Member  
\_\_\_\_\_, Member