

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
RICHARD NEVILLE)

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For Appellant: Richard Neville, 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 Richard Neville against a proposed assessment of additional personal income tax in the amount of \$242.87 for the year 1973.

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

Appellant filed his California personal income tax return for the year 1973 as head of household, **claiming** his son, Gregory, as the person qualifying him for that status. Respondent determined that appellant did not qualify for such status in 1973 because his son had not occupied appellant's household for the entire year. He was allowed a dependent exemption credit for his son.

While the record before us is limited, it does indicate that appellant was divorced prior to the year 1973. It also appears that his son lived with him during part of 1973, but lived most of that year with appellant's ex-wife. Appellant paid \$1,800 per year to his ex-wife for his son's support and made other expenditures for his son's benefit.

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 Dennis Clyde Hamilton, Cal. St. Rd. of Equal., April 6, 1978; Appeal of Willard S. Schwabe, Cal. St. Bd. of Equal., Feb. 19, 1974; Appeal of Harlan D. Graham, Cal. St. Rd. of Equal., Oct. 18, 1977; see also Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (b) (1).) In the present appeal appellant's son did not 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

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not indicate the existence of any special circumstances. Therefore, appellant cannot qualify for head of household status.

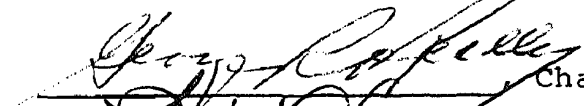
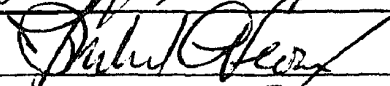


Appellant nevertheless contends that the purpose of the head of household legislation is to allow head of household status to persons who contribute substantially to their children's support and maintain a suitable living establishment. This argument, however, is not supported by the applicable statutory 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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Richard Neville against a proposed assessment of additional personal income tax in the amount of \$242.87 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.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member