

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

In the Matter of the Appeal of)
CARL B. **ANGENET**)

For Appellant: Carl B. Angenet, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

John A. Stilwell, Jr.
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 Carl B. Angenet, against a proposed assessment of additional personal income tax and penalty in the total amount of \$392.51 for the year 1974.

Appeal of Carl B. Angenet

Appellant filed his 1974 California personal income tax return as a head of household and declared Thelma Bertelsen as the qualifying dependent. Respondent requested information from appellant in support of the claimed head of household status. As a result of appellant's failure to provide such information, respondent issued a notice of proposed assessment in which it disallowed the head of household status. Respondent also assessed a 25 percent penalty, equal to **\$78.50, for** appellant's failure to provide the information requested. (Rev. & Tax. Code, § 18683.)

Subsequent to the filing of this appeal, respondent conceded that the \$78.50 penalty should be withdrawn. Accordingly, the sole issue presented for our resolution is whether appellant was entitled to claim head of household filing status for the year 1974.

Section 17042 of the Revenue and Taxation Code provides, in pertinent part, that "**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." In a letter to respondent dated September 14, 1976, appellant stated "... my divorce to the mother of the children is not final yet." Appellant has provided no information to respondent or this board which might support the conclusion that he was "not married at the close of his taxable **year**" within the meaning of section **17042**. In this connection we note that **respondent's** determination of a tax deficiency, and its proposed assessment based thereon, is presumed to be correct. The burden is upon the taxpayer to prove that respondent's action is erroneous or improper. (Appeal of Patricia A. Green, Cal. St. Bd. of Equal., June **22, 1976**; Appeal of Charles R. Penington, Cal. St. Bd. of Equal., **Jan. 20, 1954**.)

On the basis of the record before us, we must conclude that appellant has failed to prove that **he was** entitled to claim head of household filing status for the year 1974. Accordingly, respondent's **action in** this matter must be sustained.

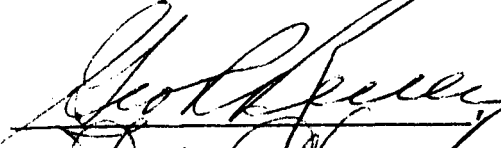



Appeal of Carl B. Angenet

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 Carl B. Angenet against a proposed assessment of additional personal income tax and penalty in the total amount of \$392.51 for the year 1974 be and the same is hereby modified to reflect respondent's concession that the penalty should be withdrawn. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 27th day of **September**, 1978, by the **State Board of Equalization**.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member