

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
MARY L. LEWIS)

For Appellant: Mary L. Lewis, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Jacqueline W. Martins
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 Mary L. Lewis against a proposed assessment of additional personal income tax in the amount of \$193.00 for the year 1975.

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The sole issue for determination is whether, appellant qualified as head of household for **1975**.

Appellant separated from her husband in 1974 and initiated dissolution proceedings in October 1975. However, since appellant's marriage was not formally dissolved until May 1976, she was legally married for the entire year 1975. During 1975 appellant contributed over one-half of the support of her mother. Appellant filed her 1975 state personal income tax return as a head of household naming her mother as the qualifying individual. Respondent disallowed the claimed head of household status **and** computed appellant's tax liability on the basis of a married person filing a separate return. Appellant brings this appeal from respondent's determination.

The term "head of household" is defined in section 17042 of the Revenue and Taxation Code which provides, pertinent 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, and ...

(b) Maintains a household which **constitutes** for such taxable year the principal place of abode of the father or mother of the taxpayer, if the taxpayer is entitled to a credit for the taxable year for such father or mother under Section **17054**:

* * *

For purposes of this section, an individual who, under subdivision (c) of Section 17173 is not to be considered as married, shall not be considered as married.

An individual is **considered** as legally married unless separated from her spouse under a final decree of divorce or of separate maintenance **at** the close of the taxable year. (See Appeal of **Enis V. Harrison**, Cal. St. Bd. of Equal., June 28, 1977; Appeal of **Mohammed M. Siddiqui**, Cal. St. Bd. of Equal., Sept. 14, 1972.) Since appellant was legally married throughout the year in issue, she is not entitled to head of household status for that year unless she can qualify as "an individual who, under subdivision (c) of Section 17173 is not **to** be considered as married." Subdivision (c) of section 17173 provides:

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If--

(1) An individual who is married ... and who files a separate return maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a dependent (A) who ... is a son, stepson, daughter, or stepdaughter of the **individual**, and (B) with respect to whom such individual is entitled to a credit for the taxable year under Section 17054,

(2) Such individual furnishes over half the **cost of maintaining** such household during the taxable year, and

(3) During the entire taxable year such individual's spouse is not a member of such household, such individual shall not be considered as married. (Emphasis added.)

Appellant did furnish over half the cost of maintaining the household during the taxable year and **her spouse was not a member of the household** for the entire year as required by subdivision (c) (2) and (c) **(3)**, respectively, of section 17173. However, appellant's qualifying dependent was her mother and not a son, stepson, daughter or stepdaughter as required by subdivision (c) (1) of section 17173. Therefore, for purposes of determining head of household status, we cannot conclude that during 1975 appellant was an individual who is not to be considered as married.

Appellant also contends that respondent's filing instructions accompanying the 1975 personal income tax return were incomplete in that all of the qualifying requirements were not set forth. In view of this omission, appellant argues that she should be treated as if she qualified as a head of household. In prior appeals we have resolved similar contentions adversely to the taxpayers. (See Appeal of Rebecca Smith Randolph, Cal. St. Bd. of Equal., Aug. 16, 1977; Appeal of Amy M. Yamachi, Cal. St. Bd. of Equal., June 28, 1977.) For the reasons set out in those decisions, we conclude that appellant's argument must be rejected.

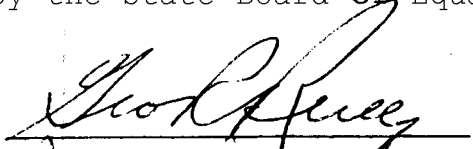
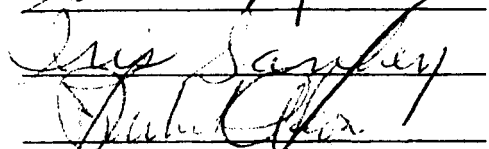
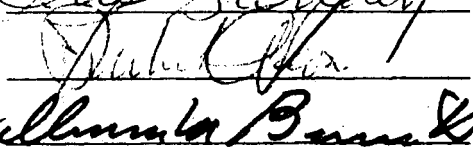
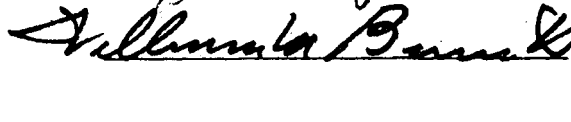
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O R D E R

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 Mary L. Lewis against a proposed assessment of additional personal income tax in the amount of **\$193.00** for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this **18th** day of **October** , 1978, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member