

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
JEAN E. DAVIDSON )

For Appellant: Jean E. Davidson, in pro. per.

For Respondent: Bruce W. Walker  
Chief Counsel

Jean Harrison Ogrod  
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 Jean E. Davidson against a proposed assessment of additional personal income tax in the amount of \$238.00 for the year 1975.

Appeal of Jean E. Davidson

Appellant filed her 1975 personal income tax return as a head of household. In response to an inquiry from respondent regarding her filing status, appellant stated that she had lived with her husband until May 1975, when he deserted the household and left appellant to care for the couple's two teenage daughters. For the remainder of the year, appellant was the sole supporter of the family. However, since appellant apparently did not secure a final decree of divorce or separate maintenance during 1975, and lived with husband a part of the year, respondent determined that she was not entitled to head of household filing status for that year. The correctness of that determination is the only issue we must resolve.

Revenue and Taxation Code section 17042 provides, in part, that an individual shall be considered a head of household if, and only if, he or she is "not married" at the close of the taxable year. As we have pointed out many times before, other provisions of the Code specify that an individual is "not married" when legally separated from his or her spouse under a final decree of divorce or separate maintenance (Rev. & Tax. Code, § 17043, subd. (b)), or when the individual's spouse is not a member of such individual's household during the entire taxable year. (Rev. & Tax. Code, §§ 17042, subd. (b), 17173, subd. (c)(3).)

Since appellant was not legally separated from her husband under a final decree of divorce or separate maintenance by the end of 1975, and since her husband was a member of her household for a part of that year, she was not eligible to file as a head of household for 1975. (Appeal of Charley Hurst, Cal. St. Bd. of Equal., May 4, 1978; Appeal of Lynn F. Wallace, Cal. St. Bd. of Equal., March 1, 1978; Appeal of John R. Mitchell, Cal. St. Bd. of Equal., Jan. 11, 1978.) Accordingly, respondent's determination in this case must be sustained.

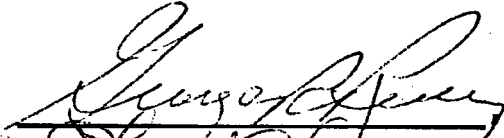
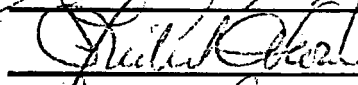

Appeal of Jean E. Davidson

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 Jean E. Davidson against a proposed assessment of additional personal income tax in the amount of \$238.00 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of December, 1978, by the State Board of Equalization.

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