

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
EDUARDOA. PIANO)

For Appellant: Eduardo A. Piano, 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 Eduardo A. Piano against a proposed assessment of additional personal income tax in the amount of \$230.16 for the year 1975. At the time this appeal was filed, appellant paid the proposed assessment. Accordingly, the appeal will be treated as an appeal from the denial of a claim for refund, pursuant to section 19061.1 of the Revenue and Taxation Code.

Appellant filed his 1975 California personal income tax return claiming head of household status. In reply to respondent's request for more information regarding his eligibility for that status, appellant indicated that his mother was his qualifying dependent. He also reported that although he was still legally married as of December 31, 1975, he and his wife had lived apart continuously since October 1974. Respondent disallowed appellant's claimed head of household status for 1975 and treated him as a married person filing a separate return. That action gave rise to this appeal,

As a general rule, in order to qualify as head of household a taxpayer must be unmarried at the close of his taxable year and must be maintaining a household which constitutes for such taxable year the principal place of abode of one or more qualifying individuals. (Rev. & Tax. Code, § 17042.) For taxable years prior to 1974, a taxpayer who was living apart from his spouse was ineligible for head of household filing status unless, at the close of the taxable year, he was legally separated under a final decree of divorce or of separate maintenance. (Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (a) CD)..)

In 1973 the Legislature liberalized the California law defining head of household so as to extend the benefits of that status to certain married individuals for taxable years beginning on or after January 1, 1974. To that end, the following final paragraph was added to section 17042 of the Revenue and Taxation Code:

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.

At the same time, subdivision (c) was added to section 17173, providing in pertinent part:

(c) 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 [personal exemption] credit for the taxable year under Section 17054,

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(2) Such individual furnishes over half of 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.

These amendments brought California law into substantial conformity with the federal income tax law regarding head of household status. (See Int. Rev. Code of 1954, §§ 2(b), 2(c) and 143(b).)

Appellant concedes he was legally married as of the close of 1975. That being so, he was ineligible to file as head of household for that year unless he met all the requirements of subdivision (c) of section 17173 of the Revenue and Taxation Code. We agree with respondent that he did not. In order to be considered as not married under that subdivision, appellant had to have maintained as his home a household which was the principal place of abode for over half the taxable year of a dependent who was his child or stepchild. If appellant had any children, they did not reside with him in 1975, and his mother was not a qualifying dependent under that special provision. Accordingly, respondent properly disallowed his claimed head of household status for 1975.

Appellant contends that in filing as head of household in 1975, he followed the specific instructions contained in respondent's Form 540 instruction pamphlet for that year. We have reviewed those instructions and do not find them misleading or incomplete on this point. Even if they were, however, in earlier opinions we have held that the incompleteness of respondent's instructions regarding eligibility to file as head of household could not alter the law or serve as a basis for invoking the doctrine of estoppel against respondent. (Appeal of Amy M. Yamachi, Cal. St. Bd. of Equal., June 28, 1977; Appeal of Rebecca Smith Randolph, Cal. St. Bd. of Equal., Aug. 6, 1977.)

For the reasons stated above, respondent's action in this matter must be sustained.

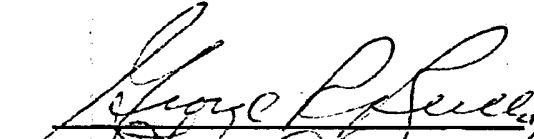
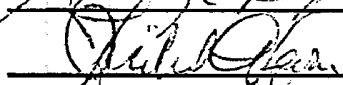
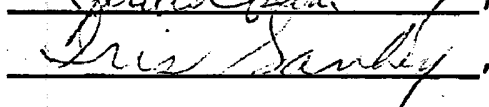
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O R D E R

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 19060 of the Revenue and **Taxation Code**, that the action of the Franchise Tax Board in **denying** the claim of Eduardo A. Piano for refund of personal income tax in the amount of \$230.16 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