



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
A. S. KALSI)

For Appellant: A. S. Kalsi, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Jon Jensen
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 A. S. Kalsi against a proposed assessment of additional personal income tax in the amount of \$135.00 for the year 1975.

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The sole issue presented by this appeal is whether appellant qualified to file his 1975 California personal income tax return as a head of household.

Appellant, a single man, has two daughters aged nine and twelve. During 1975, appellant's daughters attended school in India. Appellant filed his 1975 return as a head of household, claiming his oldest daughter as the individual qualifying him for that status. In response to a questionnaire sent by respondent, appellant indicated that his daughters did not live with him for all of 1975. Respondent disallowed the claimed head of household status because appellant's home did not constitute the principal place of abode of his daughters during 1975.

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

[A]n 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 ...

(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 ... daughter ... of the taxpayer

In prior appeals we have held that the provision of section 17042 which requires that the taxpayer's home constitute the principal place of abode of a qualifying individual for the "taxable year" means that such individual must occupy the household for the entire taxable year. (Appeal of Harlan D. Graham, Cal. St. Bd. of Equal., Oct. 18, 1977; Appeal of Gwen R. Fondren, Cal. St. Bd. of Equal., May 10, 1977; Appeal of Willard S. Schwabe, Cal. St. Bd. of Equal., Feb. 19, 1974.) However, a qualifying individual will be considered as having occupied the household for the entire taxable year notwithstanding temporary absences from the household due to special circumstances. For example, "[a] nonpermanent failure to occupy the common abode by reason of illness, education, business, vacation, military service, or a child custody agreement ... shall be considered temporary absence due to special circumstances." (Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (b)(1).) (Emphasis added,)

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The **evidence** contained in the record on appeal does not clearly establish that appellant's daughters were temporarily absent from the household due to special circumstances. Apparently, the daughters remained in India after the death of their mother in 1970. Appellant has failed to present any evidence that his daughters resided with him in California before, during, or after the taxable year in question. Appellant has presented evidence that he periodically sends money to India for the support of his daughters. However, the fact that appellant provided such support during the year in question is not relevant to the question whether his household constituted the principal place of abode of his daughters during that year. (See Appeal of Willard S. Schwabe, supra.)

On the basis of the record before us, we conclude that **respondent's** action in this matter must be sustained.


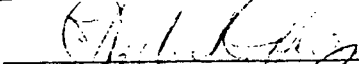

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O R D E R

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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of A. S. Kalsi against a proposed assessment of additional personal income tax in the amount of **\$135 .00** for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 9th day of January, 1979, by the State Board of Equalization.

 Chairman
 , Member
 , Member
_____, Member
_____, Member