BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
ALFONSO G. RODRIQUEZ   )

For Appellant: Alfonso G. Rodriquez, in pro.per.

For Respondent: Bruce W. Walker
                  Chief Counsel

                  Kathleen M. Morris
                  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 Alfonso G. Rodriquez against a proposed assessment of additional personal income tax in the amount of $236.00 for the year 1975.

The issue for determination is whether appellant qualified for head of household status in 1975.

Appellant, an unmarried person, resided in California during the entire appeal year. Appellant filed his state personal income tax return for 1975 claiming head of household status. The basis for the claimed head of household status was that appellant maintained a home for four dependent relatives including his unmarried son, whom he listed as the qualifying dependent. The home maintained by appellant was located in Mexico. Apparently appellant did not live there at any time during 1975 with **his** son or his other three dependent relatives.

Respondent disallowed head of household status to appellant and issued a proposed assessment of additional tax based upon appellant being a single person. Respondent, however, did allow appellant an additional exemption credit for his son. Appellant has appealed from respondent's action.

The term "head of household" is defined in section 17042 of the Revenue and Taxation Code which provides, in 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 either--
>
> (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 son ... or
>
> (2) Any other person who is a dependent of the taxpayer, if the taxpayer is entitled to a credit for the taxable year for such person under Section 17054; ...

The-regulations interpreting section 17042 provide, in part:

> In order for the taxpayer to be considered a head of household by reason of any individual described in subsection (a) of Section 17042, the household must actually constitute the home of the taxpayer for his taxable year.

A physical change **in the** location of such **home**
will not prevent a taxpayer from qualifying
as a head of household. Such home must also
constitute the principal place of abode of at
least one of the persons specified in such
subsection (a). It is not sufficient that the
taxpayer maintain the **household without** being
its occupant. The taxpayer and such other **per-**
son must occupy the household for the entire
taxable year of the taxpayer. (Cal. Admin.
Code, tit. 18, reg. 17042-17043, subd. **(b)(1)**.)

In previous appeals, relying on the statute
and regulation quoted above, we have concluded that it
is not sufficient that the taxpayer maintain the house-
hold without being its occupant. In order to qualify
for head of household status, the taxpayer and such other
person must occupy the household during the taxable year.
(See Appeal of John V. Durand, Cal. St. Bd. of Equal.,
Nov. 5, 1963; see also Appeal of Dora B. Van Westerhuyzen,
Cal. St. Bd. of Equal., Oct. 18, 1977.)

In line with the aforementioned authority, we
conclude that respondent's action was correct and must
be sustained.

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,

<u>Appeal of Alfonso G. Rodriquez</u>

        IT IS HERFBY 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 Alfonso G. Rodriquez against a proposed assess- ment of additional personal income tax in the amount of $236.00 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