



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
LINDA L. WHITE)

Appearances:

- For Appellant: Harry G. Bangerter
- For Respondent: James C. Stewart
 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 Linda L. White against a proposed assessment of additional personal income tax in the amount of \$205.94 for the year 1974. Subsequent to the filing of this appeal, appellant paid the proposed assessment; accordingly, pursuant to section 19061.1 of the Revenue and Taxation Code, the appeal is treated as an appeal from the denial of a claim for refund.

Appeal of Linda L. White

The sole issue presented by this appeal is whether appellant qualified to file her 1974 California personal income tax return as a head of household.

Appellant filed her 1974 return under the status of head of household. In response to an inquiry from respondent, appellant indicated that although she was married at the close of 1974 she and her husband had separated on February 18 of that year.

Section 17173 of the Revenue and Taxation Code provides, in effect, that a married taxpayer does not **qualify** as a head of household if the taxpayer's spouse was a member of the household during any portion of the taxable year. Respondent denied appellant the head of household status on the ground that her husband was a member of the household until February 18 of the taxable year in question. Respondent's disallowance of head of household status under similar circumstances has consistently been upheld in a number of recent appeals to this board. (See, e.g., Appeal of Henry A. Charles, Cal. St. Bd. of Equal., April 6, 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.)

Appellant contends that she correctly followed respondent's filing instructions in determining that she qualified as a head of household for 1974 and, therefore, that respondent should be estopped from assessing the additional tax in question.

As a general rule, the doctrine of equitable estoppel will be applied against the state in tax matters only where the case is clear and the injustice great. (United States Fidelity and Guaranty Co. v. State Board of Equalization, 47 Cal. 2d 384, 389 [303 P.2d 1034] (1956) Appeal of Arden K. and Dorothy S. Smith, Cal. St. Bd. of Equal., Oct. 7, 1974.) An essential prerequisite for application of the doctrine is a clear showing of detrimental reliance on the part of the taxpayer. (Appeal of Patrick J. and Brenda L. Harrington, Cal. St. Bd. of Equal., Jan. 11, 1978; Appeal of Arden K. and Dorothy S. Smith, *supra*.) In the instant case, the facts that are fatal to appellant's claim to head of household status occurred well before she followed respondent's instructions. Thus, since appellant did not rely to her detriment on the instructions, we must reject appellant's estoppel argument. (See Appeal of Amy M. Yamachi, Cal. St. Bd. of Equal., June 28, 1977; Appeal of Michael M. and Olivia D. MaKieve, Cal. St. Bd. of Equal., Nov. 19, 1975; Appeal of Willard S. Schwabe, Cal. St. Bd. of Equal., Feb. 19, 1974.)

Appeal of Linda L. White

For the reasons stated above, we conclude that respondent's action in this matter 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,

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 Linda L. White for refund of personal income tax in the amount of \$205.94 for the year 1974, be and the same is hereby sustained.

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

William A. Duvall Chairman
William A. Duvall, Member
George C. Kelley, Member
_____, Member
_____, Member