

Appeal of Richard J. Carlson

The question presented is whether appellant was entitled to head of household filing status for the 1975 taxable year.

Following receipt of appellant's return for the year in question, respondent asked appellant to substantiate his right to file as a head of household. In reply appellant indicated that his daughter Nancy qualified him as a head of household, and that he was still married on December 31, 1975, although he and his wife had separated in April 1975. Based on this information, respondent disallowed head of household filing status to appellant and assessed the deficiency now in question.

Section 17042 of the Revenue and Taxation Code provides, in part, that an individual shall be considered a head of **household** if, and only if, he is not married at the close of the taxable year. For purposes of this section, an individual **is "not married"** if he is separated from his spouse under a final decree of divorce or separate maintenance (Rev. & Tax. Code, § 17043, subd. (b)), or if his spouse was not a member of his household for the entire taxable year (Rev. & Tax. Code, §§ 17042, 17173, subd. (c)(3)). Under the circumstances of this case, appellant can be considered **"not married"** only if his former wife was not a member of his household at any time **during** 1975. That, however, does not appear to have been the case. Although at various stages of this dispute appellant has alleged that his ex-wife moved out of his house in 1974, the petition appellant filed in his divorce action corroborates his original statement to respondent that the date of initial separation was in April 1975. We cannot **conclude, therefore, that respondent erred** in determining that appellant and his ex-wife lived together during **a portion** of 1975. Accordingly, we must sustain respondent's disallowance of head of household filing status.

In anticipation of this ruling, appellant has argued that he and his ex-wife should be allowed to file a joint return for 1975. If such a return is filed, respondent has indicated that it is willing to review the return and make any adjustments to this proposed assessment that may be necessary.





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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 Richard J. **Carlson** against a proposed assessment of additional personal income tax in the amount of \$326.89 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, **California**, this **10th** day of **April, 1979**, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member