

Appeal of Lottie D. Murray

The issue presented is whether appellant qualified as head of household in 1975.

On **May** 15, 1976, appellant filed her 1975 income tax return **as a** head of household, naming her son, Kevin, as the qualifying dependent. Appellant was married, but had separated from her husband in January, 1976. Respondent denied the claimed head of household status because appellant was married at the end of the year in question, and did not separate from her husband until the following year. In addition, respondent imposed a 5 per cent penalty, pursuant to Revenue and Taxation Code section 18681, for appellant's late filing of her return. Appellant's protest against these **actions** was denied and this appeal followed.

Section 17042 of the Revenue and Taxation Code provides that in order to claim head of household status, an individual must be unmarried and maintain a home which is the principal place of abode of a qualifying dependent. For purposes of this section, a taxpayer is "unmarried" only if she is **legally** separated from her spouse under a final decree of divorce or a decree of separate maintenance. (Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (a)(D).) This determination of the taxpayer's marital status is made at the close of the taxable year in question. (Ibid.)

Clearly, appellant did not meet the requirements for filing as a head of household in 1975, and **respondent's** denial of the claimed status must be sustained.

Furthermore, the imposition of a late filing penalty by respondent is presumed correct and will be upheld where appellant fails to prove the penalty was improperly assessed. (Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) Here the appellant has not shown that the failure to file a timely return was due to reasonable cause and not due to willful neglect. Therefore, the penalty imposed pursuant to Revenue and Taxation Code section 18681 will also stand.

