

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
HERBERT T. FELTS)

For Appellant: Herbert T. Felts, 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 Herbert T. Felts against a proposed assessment of additional personal income tax in the amount of \$54.16 for the year 1974.

Appeal of Herbert T. Felts

The sole question for decision is whether appellant qualified as a head of household for the taxable year 1974.

Appellant and his wife separated on November 14, 1974, and lived apart thereafter. The record does not reveal when, or if, appellant's marriage was legally dissolved. Appellant claimed head of household filing status on his separate 1974 personal income tax return. Respondent's disallowance of that status gave rise to this appeal.

The facts of this case are substantially similar to those presented in a number of recent appeals to this board. (See, e.g., Appeal of Albert Ferguson, Cal. St. Bd. of Equal., Feb. 8, 1979; Appeal of Jean E. Davidson, Cal. St. Bd. of Equal., Dec. 5, 1978; Appeal of Richard E. Shoemaker, Cal. St. Bd. of Equal., Sept. 27, 1978.) In each of those cases we held that for-taxable years beginning on or after January 1, 1974, in order for a separated but still legally married taxpayer to qualify for head of household status, the taxpayer's spouse must not have been a member of the taxpayer's household for any part of the taxable year. (Rev. & Tax. Code, §§ 17042, 17173.) Even though appellant herein may have fulfilled all other requirements of the law, since his wife **lived with** him until November 14, 1974, he was not eligible to file as a head of household for that year. Accordingly, 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,

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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 Herbert T. Felts against a proposed assessment of additional personal income tax in the amount of \$54.16 for the year 1974, be and the same is hereby sustained.

Done at Sacramento, California, this 28th day of June , 1979, by the State Board of Equalization.

Stallman *for Barry H.* Chairman
James A. ... Member
Philip ... Member
... Member
Geo. ... Member