

Appeal of **Bergin Ruse** (Formerly Donna B. Ruse)

The questions presented are whether respondent correctly determined that appellant was not entitled to file as a head of household, and that she had improperly claimed a deduction for child care expenses.

Appellant filed her 1975 personal income tax return as a head of household, premised on her support of her daughter Danette. She also claimed a deduction in the amount of **\$1,524.00** for the expense of child care services for Danette. In response to an inquiry from respondent regarding her filing status, appellant stated that she was still married at the end of **1975**, but that she had separated from her spouse in October of that year. On the basis of this information, respondent ruled that appellant could not file as a head of household and that she was not entitled to a deduction for child care expenses. These **determinations** led to the deficiency assessment now before us.

Revenue and Taxation Code section 17042 provides, in part, that an individual will be considered a head of household if, and only **if**, he or she is not married at the close of his or her taxable year. For the purposes of this section, an individual is not considered to be married when legally separated from his or her spouse under a final decree of divorce or separate maintenance (Rev. & Tax. Code, § 17043; subd. (b)), or when the spouse is **not a** member of the individual's household during the **entire** taxable year (subject to certain other conditions not **here in** issue). (Rev. & Tax. Code, §§ 17042, subd. (b), 17173, subd. (c)(3).) Under these rules, it is readily apparent that appellant was not an unmarried person at the end of 1975. Consequently, respondent properly denied her the right to file as a head of household. (See Appeal of John R. Mitchell, Cal. St. Bd. of Equal., Jan. 11, 1978.)

During the taxable year in question, Revenue and Taxation Code section 17262 allowed a deduction for the expenses of caring for certain individuals, such as a dependent child of the **taxpayer** under the age of 13, if the expenses were incurred to enable the taxpayer to be gainfully employed. Among many other limitations on this deduction, subdivision **(e) (1)** of **section 17262** specifies that, if the taxpayer is married at the close of the taxable year, the deduction will be allowed only if the taxpayer files a joint return with his or her spouse. Since appellant was **married** on December 31, **1975**, but did not file a joint return for that year with her **spouse**, her **claimed deduction** for *child care* expenses cannot be allowed.

For the reasons expressed above, respondent's action in this matter will be sustained.

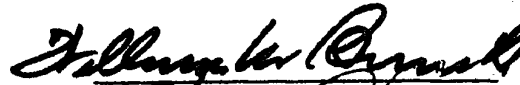
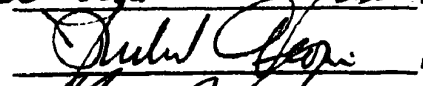

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O R D E R

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 **Bergin** Ruse (formerly Donna B. Ruse) against a proposed assessment of additional personal income tax in the amount of \$178.04 for the year 1975, be and the same is hereby sustained.

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

 Chairman
 Member
 Member
_____, Member
_____, Member