



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
KATHERINE C. AKER)
(formerly KATHERINE LITTLE))

For Appellant: Katherine C. Aker, in pro. per.

For Respondent: Jacqueline W. Martins
Counsel

O P L 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 Katherine C. Aker (formerly Katherine Little) against a proposed assessment of additional personal income tax in the amount of \$232.00 for the year 1976.

Appeal of Katherine C. Aker

The sole question for decision is whether appellant qualified as a head of household for the taxable year 1976.

Appellant filed her 1976 personal income tax return as a head of household, naming her daughter, Bronwen, as the individual qualifying her for that status. In response to an inquiry from respondent, appellant indicated that she separated from her former husband in the spring of 1976. Thereafter she filed an action for dissolution of the marriage, receiving an interlocutory decree on October 27, 1976, and a final decree of dissolution in February of 1977. On the basis of this information, respondent disallowed appellant's claimed head of household status for 1976 but allowed her a dependent exemption credit for her daughter. That action gave rise to this appeal.

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 or she is not married at the close of the taxable year. For purposes of section 17042, in order to be considered "not married" an individual must either be separated from his or her spouse under a final decree of divorce or a decree of separate maintenance at the close of the taxable year (Cal. Admin. Code, tit. 18, reg. 17042 - 17043, subd. (a)(D)), or the individual's spouse must not be a member of the individual's household during the entire taxable year. (Rev. & Tax. Code, §§ 17042, 17173, subd. (c)(3).) Since the dissolution of appellant's marriage was not final until February 1977, and since her former husband was a member of her household for part of 1976, appellant clearly fails to meet the statutory qualifications for head of household filing status for the taxable year 1976.

Appellant's primary argument is that the head of household provisions are unfair and discriminatory against single parents, particularly women like herself. She urges that the disallowance of her claimed head of household status for 1976 is unjust, in view of her limited financial resources and her former husband's alleged failure to contribute anything to the support of their daughter in that year. While we are sympathetic with appellant's circumstances, we nevertheless are obligated to enforce the existing law. Arguments such as appellant's should be addressed to the Legislature, since it is that body that has the power to make changes in the law.

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

Appeal of Katherine C. Aker

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 1859.5 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Katherine C. Aker (formerly Katherine Little) against a proposed assessment of additional personal income tax in the amount of \$232.00 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 16th day of August, 1979, by the State Board of Equalization.

William W. Brown, Chairman

Ernest A. Wornburg, Jr., Member

Richard H. Dean, Member

George A. Spence, Member

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