



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JOYCE A. FOREMAN)

For Appellant: Joyce A. Foreman, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

James C. Stewart
Counsel

O P I N I O N

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Joyce A. Foreman for refund of personal **income** tax of \$15.3.05 for the year 1975.

The question Presented is whether appellant qualified **as** a head of household for the year 1975.

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Appellant separated from her spouse on May 4, 1975 and lived apart from him for the remainder of that year. An interlocutory decree of dissolution was filed in November, 1975, and a final decree was entered in 1976.

On her 1975 return, appellant claimed head of household status, naming her daughter, **Coleen**, as her qualifying dependent. Respondent denied the claimed **status** because appellant's husband was a member of the household for part of the taxable year. In addition, under the terms, of Revenue and Taxation Code section 17262, in effect during **the appeal** year, respondent disallowed a **\$58.00 deduction** for child care. Appellant protested only the denial of head of household status. After respondent affirmed its denial, appellant paid the proposed assessment and filed a claim for refund, which was denied. This appeal followed.

Section 17042 of the Revenue and Taxation Code provides, in part:

For purposes of this part, an individual shall be considered a head of household if, and only if, such individual is not married at the close of the taxable year, ...

The phrase "not married" is defined to include individuals who are legally separated under a final decree of divorce or a decree of separate maintenance. (Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. **(a) (D)**.) Appellant's interlocutory decree of dissolution clearly does not meet this requirement. (Appeal of George Kephart; Cal. St. Bd. of Equal., April 10, 1979.)

Furthermore, appellant did not **qualify** for head of household status under Revenue and Taxation Code section 17173, subdivision **(c)**, which extended the benefits of that status to certain **married** individuals for taxable years beginning on or after January 1, 1974. That subdivision requires, among other things, that the taxpayer and her spouse live apart for the entire taxable year. Since appellant's husband was a member of her household during a portion of 1975, she was not eligible to file under this section. (Appeal of George Kephart, supra.)

Finally, appellant contends that respondent's instructions accompanying **Form** 540 in 1975 led her to believe that she could file as a head of **household if** she provided a home for her child for the entire year. We have previously considered the problem of allegedly **misleading instructions** and have determined that **absent** a showing of great injustice or detrimental reliance, this Board is compelled to enforce the law

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as it is written. (See Appeal of Amy M. Yamachi, Cal. St. Bd. of Equal., June 28, 1977.)

For the foregoing reasons, we conclude that 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,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Joyce A. Foreman for refund of personal income tax of \$153.05 for the year 1975, be and the same is hereby sustained.

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

William B. Brown, Chairman :
Frank M. ..., Member :
Philip ..., Member
Scott ..., Member
_____, Member