



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DALE L-. WILSON)

For Appellant: Dale L. Wilson, in pro. per.

For Respondent: Jacqueline W. Martins
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Dale L. Wilson against a proposed assessment of additional personal income tax in the amount of \$201.47 for the year 1976.

The sole issue is whether appellant qualified for head of household status in 1976.

Appeal of Dale L. Wilson

Appellant and his wife were **separated** in July 1976. Thereafter, appellant filed for a **dissolution** of the marriage and an order pendente lite was issued on August 23, 1976. The order granted appellant custody of his two **children** and the exclusive **use and possession** of the residence. For the remainder of 1976 appellant retained custody of the two children and provided all their support. A final judgment of dissolution was not issued until May 3, 1977. Appellant claimed head of household status when he filed his personal income tax return for 1976 naming his son as the individual qualifying him for that status. Respondent denied the claimed head' of household status because appellant was still legally married at the end of 1976 and had not been separated from his spouse for the entire year. Respondent did, however, allow appellant an additional dependency exemption credit for his son. Appellant's **protest** 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** as his home a household that is the **principal place** of abode of an individual who is within specified classes of relationship. In **general**, although a taxpayer is separated from **his spouse**, he is still considered as being married for purposes of claiming head of household status, unless, **at** the close of the taxable year, he was legally separated from his spouse under a final judgment of dissolution of marriage or legal separation. (Appeal of Robert J. Evans, Cal. St. Bd. of Equal., Jan. 6, 1977; Appeal of Glen A. Horspool, Cal. St. Bd. of Equal., March 27, 1973.)

For years beginning on or after January 1, 1974, Revenue and Taxation Code section 17173 extended the benefits of head of household status to certain married individuals. This was accomplished by considering a married person as unmarried for purposes of classification as a head of household, where he lives separate and apart from his spouse during the entire year and maintains a home for a dependent child under certain conditions. Although **appellant**, who was still legally married on the last day of 1976, did maintain a home for his dependent child, he cannot qualify as a head of household because his spouse lived with him during part of 1976. (Appeal of Charley Hurst, Cal. St. Bd. of Equal., May 4, 1978; Appeal of Lynn F. Wallace, Cal. St. Bd. of Equal., March 1, 1978.)

Appeal of Dale L. Wilson


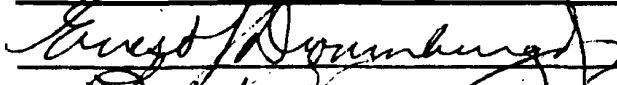

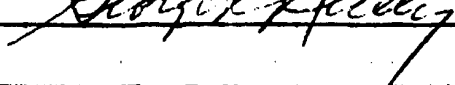
Appellant contends that he was **legally** separated by virtue of the order pendente lite issued August 23, 1976, and, therefore, qualified as an unmarried person to file as head of household for 1976. We cannot agree. An order pendente lite is merely an interim order issued during the **pendency** of litigation; it is not a final judgment. For purposes of claiming head of household status, appellant remained married at the close of 1976. The statutes and regulations are specific in this regard; in order to qualify as a head of household, the taxpayer must be legally separated pursuant to a final judgment of dissolution or legal separation at the end of the taxable year, or, if still legally married at the end of the taxable year, he must have lived separate and apart from his spouse for the entire year. Appellant simply did not satisfy the statutory requirements to claim head of household status for 1976. 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,

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 Dale L. Wilson against a proposed assessment of additional personal income tax in the amount of \$201.47 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 25 day of September, 1979, by the State Board of Equalization.

 _____, Chairman
 _____, Member
 _____, Member
 _____, Member
_____, Member