

Appeal of Humberto Gonzalez

The sole issue to be decided is whether appellant qualified as head of household for 1975.

Appellant separated from his wife in April 1975 and assumed custody of two of his children. A final decree of dissolution was entered in April 1976. Appellant filed his 1975 return as a head of household, claiming his son, Hector, as his qualifying dependent. In the course of this appeal, respondent verified that Hector resided with appellant during the **entire year** in question. However, head of household status was denied appellant because he was still legally married at the end of 1975 and resided with his spouse for part of that year. Respondent did allow appellant two dependent exemption credits.

Revenue and Taxation Code section 17042 provides that in order to claim head of household status, an individual must be unmarried and maintain a home which is the principal place of abode of a qualifying dependent. Clearly, appellant did not meet the requirements of this statute in 1975 because he was still married. Nor did appellant qualify for head of household status under Revenue and Taxation Code section 17173, which extends the benefits of that statute to certain married individuals for taxable years **beginning on** or after January 1, 1974. Although appellant maintained a **home for his children and provided all of their support**, he did not live apart from his wife for **the "entire taxable year."** (Rev. & Tax. Code, § 17173, subd. (c) (3).) (Emphasis added.)

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



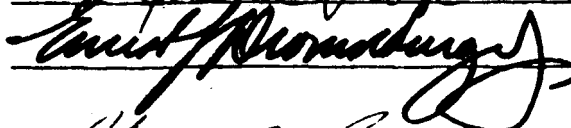
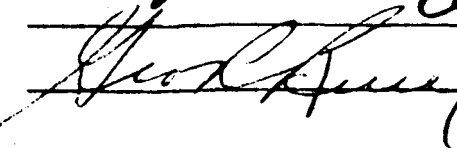
O R D E R

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 Humberto Gonzalez against a proposed assessment of additional personal income tax of \$107.16 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 14th day of November, 1979, by the State Board of Equalization.

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