BEFORE THE STATE BOARD OF EQUALIZATION

.OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)

CHARLES J. HOUGH   )

Appearances:

    For Appellant: Charles J. Hough, in pro. per.

    For Respondent: James C. Stewart
                          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 Charles J. Hough against a proposed assessment of.additional personal income tax in the amount of $236.81 for the **year 1976.**

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

Prior to the year in issue, appellant and his wife were separated. Legal custody of the couple's two children was awarded to their mother. In November 1975 appellant established a residence in order to'accommodate the children since a change in custody appeared imminent due to the mother's mental instability. However, the actual change in legal and physical custody did not occur until October 1976. Prior to October the children lived with their mother. The children resided with appellant only for the last three months of 1976.

Appellant filed his 1976 California personal income tax return as a head of household, designating one of his two children as the qualifying dependent. Respondent denied appellant head of household status on the ground that neither of appellant's two children had occupied his household throughout the entire taxable year in question. In this regard, section 17042 of the Revenue and Taxation Code provides in pertinent 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 his taxable year., and ...

> (a) 'Maintains as his home'a household which constitutes for such taxable year the principal abode, as a member of such household, of--

> (1) **A** ... daughter ... of the taxpayer ....

Further cfarification'of'section 17042 is found in respondent's regulation 17042-17043, which states in part:

> **(b)** (1) In order for the taxpayer to be **considered a** head of household by reason of any **individual** described in **subparagraph** (a) of Section **17042,** the- .-household must actually constitute the home of **the taxpayer for his** taxable year. ... Such home must also

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constitute the principal place **of abode**
of at least one of the persons specified
in such subsection (a). It is not suf-
ficient that the taxpayer maintain the
household without being its occupant.
The taxpayer **and** such other person must
occupy the household for the entire
taxable year of the taxpayer. (Emphasis
added.) (Cal. Admin. Code, tit. 18.
reg. 17042-17043.)

Application of the cited regulation to the
facts of this case **compels** us to conclude that neither
of appellant's children occupied his household "for
the entire taxable year of the taxpayer." Our con-
clusion is based on the fact that the children did not
become members of appellant's household until October
1976. Although respondent's regulation provides for a
"temporary absence due to **special circumstances,**" it
also implies that the individual so absent must have
been a member of the household **prior** to such absence.
(Appeal of Henry **C. H. Hsiung,** Cal. **St.** Bd. of Equal.,
Dec. 17, 1974.)

For the reasons set out above appellant cannot
qualify for head of household status in 1976. There-
fore, respondent's action in this matter must be
sustained.

ORDER

Pursuant to the views expressed in the opinion
of the board on file in this proceeding, and good cause
appearing therefor,

Appeal of Charles **J.** Hough

        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** Charles J. Bough against a proposed assessment of additional **personal income** tax in the **amount of $236.81 for** the,-year 1976, be and the'sanie is hereby sustained.

        Done **at Sacramento,** California, this 11thday of December   , **1979, by** the **State** Board of Equalization.

_____ **/** Chairman

_____ , Member

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_____ , Member

_____ , **Member**

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