

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
HENRY A. CHARLES)

For Appellant: Henry A. Charles, in pro. per.
For Respondent: Bruce W. Walker
Chief Counsel
Kathleen M. Morris
Counsel

O P I 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 Henry A. Charles against a proposed assessment of additional personal income tax in the amount of \$72.35 for the year 1973.

Appeal of Henry A. Charles

The sole issue for determination is whether appellant qualified as head of household in 1973.

Appellant has been married since 1948. During all of 1973 appellant was separated from his wife although no legal proceedings were ever instituted to dissolve the marriage or to obtain a decree of separate maintenance. Appellant maintained a household for all his children during the appeal year and filed a timely California personal income tax return claiming head of household status.

Respondent denied appellant head of household status since he did not have a final decree of divorce or decree of separate maintenance as of the last day of 1973.

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 his taxable year, and either--

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

11) A son, stepson, daughter, or step-daughter of the taxpayer ...

During 1973, although a taxpayer was **separated from** his spouse, he was still considered 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 decree of divorce or of separate maintenance. (Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (a) **(D).**) **Since** appellant was legally married on the last day of 1973, he was not eligible to file **as** a head of household for that year. This conclusion is not changed by the fact that **appellant** was separated from his wife at the end of 1973. ^{1/}

^{1/} For **years** beginning on or after January 1, 1974, Rev. & Tax. Code section 17173, subd. **(c)**, provides that if a taxpayer's spouse is not a member of his household during
(cont. on next page)

Appeal of Henry A. Charles

Without a final decree of divorce or separate maintenance, a married individual could not qualify as a head of household in 1973, even though separated from his spouse.

(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.) Accordingly, respondent's action in this matter must be sustained.

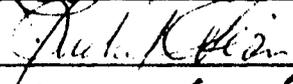
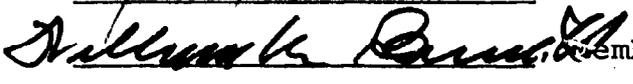
O R D E R

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 Henry A. Charles against a proposed assessment of additional personal income tax in the amount of \$72.35 for the year 1973, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of April, 1978, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member

1/ (cont. from page 2)
the entire taxable year, such taxpayer shall not be **considered** as married. Under such circumstances, and assuming all other requirements are fulfilled, the taxpayer would qualify as head of household. The federal law had contained a similar provision which was effective for years beginning after December 31, 1969. (See Int. Rev. Code of 1954, § 143(b).)