



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DFNNIS CLYDE HAMILTON)

For Appellant: Dennis Clyde Hamilton, 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 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Dennis Clyde Hamilton against a proposed assessment of additional personal income tax in the amount of \$235.04 for the year 1974.

Appeal of Dennis Clyde Hamilton

The sole issue for our determination is whether appellant qualified as a head of household for the year 1974.

Appellant was divorced prior to the year 1974. One of his three children, Gary, lived with him during part of 1974. However, Gary lived most of the time with his mother. Appellant paid his **ex-wife** child support for the three children.

Appellant filed his California personal income tax return for the year 1974 as head of household, claiming Gary as the person qualifying him for that status. Respondent determined that appellant did not qualify for such status in 1974 **because** his son, Gary, had not **occu-** pied appellant's household for the entire year. He was allowed a 'dependent exemption credit for each child. Consequently, the proposed assessment in (question was issued to reflect this determination.

The term "head of a household" is defined in section 17042 of the Revenue and Taxation Code which provides, in pertinent part:

[A]n individual shall be considered a head of a 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 place of abode, as a member of such household, of--

(1) A ... son ... of the taxpayer

In prior appeals we have held that the statute, which requires that the taxpayer's **home** constitute the principal place of abode of another individual for the "taxable year," means that such person must occupy the household for the taxpayer's entire taxable year. (Appeal of Willard S. Schwabe, Cal. St. Bd. of Equal., Feb. 19, 1974; Appeal of Gwen R. Fondren, Cal. St. Bd. of Equal., May 10, 1977; Appeal of Harlan D. Graham, Cal. St. Bd. of Equal., Oct. 18, 1977; see also Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (b) (1).) In the present appeal Gary did not physically occupy appellant's household for the entire taxable year. Although respondent's regulations **provide** for a "temporary absence due to special **circumstances**," the record in this appeal does

Appeal of Dennis Clyde Hamilton

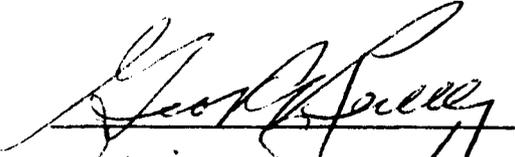
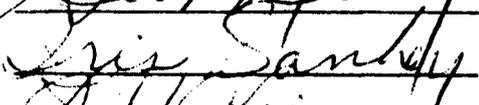
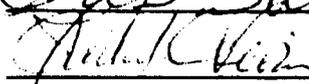
not indicate the existence of any special circumstances. Therefore, appellant cannot qualify for head of household status. For these reasons we conclude that respondent's action in this matter must be sustained.

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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Dennis Clyde Hamilton against a proposed assessment of additional personal income tax in the amount of \$235.04 for the year 1974, be and the same is hereby sustained.

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

George J. Kelley, Chairman
Iris Sanby, Member
Paul K. Vain, Member
William L. Burnett, Member
_____, Member