



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MARGARET PAFHEY)

For Appellant: M. S. Maters
Manager, H&R Block Office

For Respondent: John A. Stilwell, Jr.
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 Margaret Haffey against a proposed assessment of additional personal income tax in the amount of \$53.76 for the year 1975.

Appeal of Margaret Haffey

The sole question for decision' is whether' appellant was entitled to a child care expense deduction' for the taxable year 1975.

Appellant filed her 1975 California personal income tax return as a head of household, declaring her son, Timothy, as the individual qualifying her for that status. In that return she also claimed a \$930.00 deduction for child care expenses. In response to an inquiry from respondent regarding her **eligibility to file** as a head of household, appellant stated that she and her former husband had separated in 1974 and had lived apart thereafter until their marriage was dissolved by a final decree of dissolution issued in April of 1977. Upon the basis of this information, **respondent allowed** appellant's claimed head of household status but disallowed the child care expense deduction. That action gave rise to this appeal.

During the year on appeal section 17262 of the Revenue and Taxation Code **allowed a limited** deduction for **certain employment-related child and dependent care expenses.**^{1/} Subdivision (e)(1) of that section placed the **following** restriction on the availability of the deduction:

If the taxpayer is married at the close of the taxable year, the deduction provided by subdivision (a) shall be allowed **only if** the taxpayer and his spouse file a joint return for the taxable year.

Appellant **concedes** that she was **still** legally married at the end of 1975. She contends, however, that since she was considered to be not married for purposes of determining her eligibility to file as a head of household, she likewise should be considered as not married for purposes of the child care expense deduction. Unfortunately, this contention finds no support in the applicable law.

^{1/} Section 17262 was repealed by Stats. 1977, ch. 1079. For taxable years beginning after December 31, 1976, a -tax credit, rather than a deduction, is allowed for certain employment-related expenses incurred: for the care of children and other dependents. (Rev. & Tax. Code, § 17052.6, added by Stats. 1977, ch. 1079.)

Appeal of Margaret Haffey

Respondent's allowance of appellant's claimed head of household status in the appeal year was based upon a special legislative modification of the usual requirement that a taxpayer eligible to file as a head of household be "not married". (Rev. & Tax. Code, § 17042.) For taxable years beginning on or after January 1, 1974, a married individual who maintains a home for a dependent child or stepchild and who lives apart from his or her spouse for the entire taxable year is considered not married for purposes of the head of household provisions. (Rev. & Tax. Code, §§ 17042, 17173, subd. (c).) No comparable provision is to be found in the law which allowed the deduction of employment-related child care expenses in 1975.

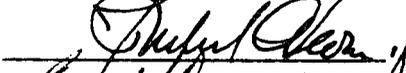
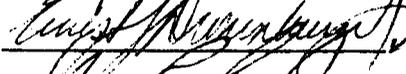
Accordingly, since appellant and her former husband were still legally married at the end of 1975, they were required to file a joint return for that year in order to deduct child care expenses. (Rev. & Tax. Code, § 17262, subd. (e)(1).) They did not do so. Instead, appellant filed an individual return as a head of household for 1975. Under the circumstances, although she qualified for head of household filing status in that year, she was not entitled to any child care expense deduction. Respondent's disallowance of that deduction must therefore 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 Margaret Haffey against a proposed assessment of additional personal income tax in the amount of \$53.76 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 10th day of April, 1979, by the State Board of Equalization.

 Chairman
 Member
 Member
 Member
 Member