



Appeal of Jay D. Roberts

The sole issue for determination is whether appellant qualified as head of household for 1975.

For 1975 appellant filed a California personal income tax return claiming head of household status, and indicating that his daughter, Tracy, was the person qualifying him as head of household. In subsequent correspondence with the Franchise Tax Board appellant made contradictory statements regarding whether he lived separate from his wife for the entire 1975 tax year, and unclear statements regarding whether his daughter lived with him for that entire year. Appellant obtained a final decree of dissolution of marriage in 1976.

Respondent denied the claimed head of household status, but concedes that appellant is entitled to an additional dependency credit of \$8.00 for his daughter for 1975.

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 ...

(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 ... daughter ... of the taxpayer ...

\* \* \*

For purposes of this section, an individual who, under subdivision (c) of Section 17173 is not to be considered as married, shall not be considered as married.

An individual is considered as legally married unless separated from his spouse under a final decree of divorce or of separate maintenance at the close of the taxable year. (See Appeal of Judith Ann Russell, Cal. St. Bd. of Equal., April 10, 1979; Appeal of Enis V. Harrison, Cal. St. Bd. of Equal., June 28, 1977; Appeal of Mohammed M. Siddiqui, Cal. St. Bd. of Equal., Sept. 14, 1972; Rev. & Tax. Code, §17043, subd.(b). )

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Since appellant was legally married throughout the year in issue, he is not entitled to head of household status for that year unless he can qualify as "an individual who, under subdivision (c) of section 17173 is not to be considered as married." Subdivision (c) of section 17173 provides that, under certain circumstances, an individual who is otherwise married shall not be considered married, if, during the entire taxable year, that individual's spouse is not a member of the household.

Appellant gains no relief from section 17173 as he has not established that his spouse was not a member of his household for the entire year of 1975. On the contrary, appellant has made inconsistent statements regarding the period that he and his wife lived separate from each other in that year, and has failed to explain or resolve the inconsistencies. For example, he has in one instance maintained that he separated from his wife on March 14, 1974. Yet, in another instance, he has stated that he lived with his family (his wife and his two children) until mid-March of 1975. Under these circumstances, we find appellant has failed to sustain his burden of proving that his wife was not a member of his household for the entire year of 1975. For that reason, we find subdivision (c) of section 17173 to be inapplicable in this matter.

Appellant has therefore failed to establish, for purposes of section 17042, that he was not married on the last day of the 1975 taxable year. Further, even if it were assumed that appellant was to be considered not married at the close of the 1975 taxable year, he still would fail to qualify as a head of household for that year. Appellant made the additional statement that his daughter lived part of 1975 with her mother. That statement is inconsistent with the requirement of subsection (a) of section 17042 that his household have been the principal place of abode for his daughter for the entire 1975 taxable year. Since no information or explanation has been provided that would resolve such inconsistency, that further requirement remains unsatisfied.

For the foregoing reasons appellant was not eligible to file as a head of household for the year at issue. Accordingly, respondent's action in this matter is sustained.

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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 IS595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Jay D. Roberts against a proposed assessment of additional personal income tax in the amount of \$257.00 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 16th day of August, 1979, by the State Board of Equalization.

Stallman Chairman

James Member

Robert Member

Mark Member

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