



Appeal of Gary E. Webb

Appellant, Gary E. Webb, filed a timely California personal income tax return for the year 1977 and claimed head of household status. Respondent examined the return and disallowed the head of household status on the basis that appellant was not separated from his spouse for the entire year, and there was no final judgment of dissolution of marriage or legal separation by the last day of the taxable year. Respondent then proceeded to issue a notice of proposed assessment of additional tax.

Respondent's determination of additional tax are presumptively correct, and the taxpayer has the burden of proving that they are wrong. (See Appeal of K.L. Durham, Cal. St. Bd. of Equal., March 4, 1980.) Here appellant has not argued against the disallowance of his claimed head of household status and we noted that action of respondent is in accord with sections 17042 and 17173 of the Revenue and Taxation Code. Instead, appellant has merely made some "constitutional" objections against the proposed assessment which are frivolous and clearly without merit. (See Appeal of Harry Sievert, Cal. St. Bd. of Equal., April 8, 1980; Appeal of Arthur W. Keech, Cal. St. Bd. of Equal., July 26, 1977.) On basis of the record and for the reasons set out above, respondent's action in this matter must be sustained.

