

Appeal of Brian J. Griffin

The question presented by this appeal is whether respondent properly disallowed appellant's claimed head of household status for 1978.

Appellant, who is unmarried, filed his 1978 California personal income tax return as a head of household. He claimed his sister as the individual qualifying him for that status. On a questionnaire, appellant indicated that his sister did not qualify as his dependent in 1978 because of the amount of her income during that year. Respondent disallowed appellant's use of head of household filing status, recomputed appellant's tax, and issued the deficiency assessment which is now being appealed.

Revenue and Taxation Code section 17042 allows head of household status if an unmarried individual maintains a household which is the principal place of abode of a "person who is a dependent of the taxpayer, if the taxpayer is entitled to a credit for the taxable year for such person under Section 17054 . . ." (Rev. & Tax. Code, § 17042, subd. (a)(2) .). For the year 1978, credit was allowed under Revenue and Taxation Code section 17054 for "each dependent (as defined in Section 17056) . . . [w]hose gross income for the calendar year in which the taxable year of the taxpayer begins is less than seven hundred fifty dollars (\$750) . . ." (Rev. & Tax. Code, § 17054, subd. (c)(1).) **Dependent" is defined as any of certain individuals listed in Revenue and Taxation Code section 17056 (one of which is a sister of the taxpayer) over half of whose support was received from the taxpayer. (Rev. & Tax. Code, § 17056, subd. (c).)

It is well settled that respondent's determination is presumed correct, and that the taxpayer bears the burden of showing that it is erroneous. Appellant argues only that he did not understand the head of household questionnaire, and that he assumed that if he incurred more than half the cost of keeping up a dwelling in which his sister lived, he should be entitled to head of household status. Even if appellant had provided more than half of his sister's support, which is not proven by his foregoing statement, appellant would still need to show that his sister's income was less than \$750 in 1978. This he, has not even attempted to do.

We find that appellant has failed to show that he was entitled to head of household status. Disallowance of that status, therefore, was proper, and respondent's action must be sustained.

