



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
SEBASTIAN A. RABASA, JR.)

Appearances:

For Appellant: Sebastian A. Rabasa, Jr.
in pro. per.

For Respondent: Kendall E. Kinyon
Counsel

O P I N I O N

This appeal is made pursuant to section.18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Sebastian A. Rabasa, Jr., against a proposed assessment of additional personal income tax in the amount of \$312.00 for the year 1978.

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The issue in this matter is whether respondent properly denied appellant head of household filing status.

Appellant filed his personal income tax return for 1978, claimed head of household status, and named Nicole Ann, his daughter, as his qualifying dependent. En a head of household questionnaire dated September 22, 1981, which respondent had requested, that appellant file, appellant indicated that he had lived with his wife from January 1'978 to April 197'8. The questionnaire also noted that a final decree of dissolution of marriage was not issued until May 17, 1979.

On the basis of this information, respondent determined that appellant did not qualify for head of household status under section 17042 of the Revenue and Taxation Code. Respondent's determination was correct.

Section 17042 of the Revenue and Taxation Code provides,, in part:

For purposes of this part, an 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 . . .

* * *

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. (Rev. & Tax. Code, § 17043; Appeal of Enis V. Harrison, Cal. St. Bd. of Equal., June 28, 1977.) Since appellant was regally married at the end of '1973, he was not entitled to head of household status for that year unless he qualified as "an individual who, under subdivision (c) of Section 17173 is not to be considered as married." Subdivision (c) of section 17173, in part, provides:

If--

(1) An individual who is married ... and who, files a separate return maintains as

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his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a dependent (A) who . . . is a son, stepson, daughter, or stepdaughter of the individual, and ...

* * *

(3) During the entire taxable year such individual's spouse is not a member of such household, such individual shall not be considered as married.

Since appellant did not live apart from his wife for all of 1978 but instead shared the same household with her for four months of that year, subdivision (c) of section 17173 does not apply. Therefore, for purposes of determining head of household status for 1978, appellant was not unmarried. Consequently, respondent acted properly in denying head of household status to appellant.

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ORDER :

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 Sebastian A. Rabasa, Jr., against a proposed assessment of additional personal income tax in the amount of \$312.00 for the-year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of April, 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

William M. Bennett, Chairman
Conway H. Collis, Member
Ernest J. Dronenburg, Jr., Member
Richard Nevins, Member
Walter Harvey*, Member

*For Kenneth Cory, per Government Code Section 7.9