

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ROSE HERRON)

For Appellant: Rose Herron,
in pro. per.

For Respondent: Charlotte A. Meisel
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 Rose Herron against a proposed assessment of additional personal income tax in the amount of \$212.00 for the year 1979.

Appeal of Rose Herron

The sole issue for decision is whether appellant qualified for head of household status in 1979.

Appellant, a California resident, was legally married throughout the **entire year of 1979**. She and her then husband were members of the same household from January to July and from September to November of 1979. On December 19, 1979, appellant filed a petition to dissolve her marriage. A final judgment of dissolution was rendered on July **17**, 1981.

On her 1979 California personal income tax return, appellant claimed head of household status. On audit, respondent determined that she was not eligible to file as a head of household since she was legally married at the end of the year. Appellant protested the resulting assessment, and respondent's denial of that protest led to this appeal.

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 the taxable year . . .

The phrase "not married," as it is used in that statutory provision, is defined to include "[a]n individual who is legally separated from his spouse under a final decree of divorce or a decree of separate maintenance" (Emphasis added.) (Rev. & Tax. Code, § 17043, **subd. (b)**.) In addition, a person who **is legally** married may still be considered as not married for purposes of head of household status if during the entire taxable year such individual's spouse is not a member of the taxpayer's household. (Rev. & Tax. Code, § **17173**, **subd. (c)(3)**.)

Since appellant's spouse was a member of her household during a portion of 1979, and since she was not legally separated from him under a final decree of divorce or separate maintenance at the end of that year, she was not eligible to file as a head of **household** for the taxable year **1979**. (See Appeal of Robert J Evans, Cal. St. Bd. of Equal., Jan. **6** 1977'; Appeal of Mancel L. Smith, Cal. St. Bd. of Equal., May 10, 1977; Appeal of Dennis M. Vore, Cal. St. Bd. of Equal., July **31**, 1973.) Consequently, we must sustain respondent's action.

