



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CARL D. HUMEKICKHOUSE)

For Appellant: Carl D. Humerickhouse,
in pro. per.

For Respondent: Mark McEvilly
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 Carl D. Humerickhouse against a proposed assessment of additional personal income tax and a penalty in the total amount of \$327.50 for the year 1979.

Appeal of Carl D. Humerickhouse

The issue for determination is whether appellant Carl D. Humerickhouse qualified as a head of household for the year 1979.

Appellant claimed head of household status on his California personal income tax return for 1979, naming his minor son Martin as the dependent qualifying him for that status. In answer to a questionnaire sent to him by respondent, appellant revealed that he resided with Martin and his former wife from January 1 until October 10, 1979, and lived separately from them during the rest of the year while the "divorce [was] pending." He also stated that he and his former wife filed for divorce in 1979 but that the final judgment of dissolution was not issued until January 1981. Respondent rejected appellant's head of household status and issued a proposed assessment. Respondent's denial of his subsequent protest led to this appeal.

In Revenue and Taxation Code section 17042, the term "head of household" is defined in part as an individual who:

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 son ... of the taxpayer

As indicated, one requirement for qualification as a head of household is that the applicant be unmarried at the end of the taxable year. According to sections 17042 and 17173 and to respondent's regulations in effect during the appeal year, a taxpayer is considered not married, for purposes of head of household status, either if the taxpayer and spouse are legally separated under a final decree of divorce or of separate maintenance, or if they lived apart during the entire taxable year. (Rev. & Tax. Code, §§ 17042 & 17173; former Cal. Admin. Code, tit. 18, reg. 17042-17043, subs. (a)(D) & (d), repealer filed Dec. 23, 1981 (Register 81, No. 52); Appeal of Richard & Savage, Cal. St. Bd. of Equal., July 26, 1982; Appeal of Norma Vaccaro (Alvarez), Cal. St. Bd. of Equal., March 3, 1982.)

Appeal of Carl D. Humerickhouse

Under these criteria, appellant was still married at the close of the taxable year because his final decree of divorce was not yet issued and because he and his former wife did not live apart during the entire year. He is therefore ineligible for head of household status. (Appeal of Sheila R. Johnson, Cal. St. Bd. of Equal., May 19, 1981; Appeal of Lucille Valentine, Cal. St. Bd. of Equal., Dec. 11, 1979.) For this reason, we must sustain respondent's determination.

