

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)	
)	No. 96A-0728
Michael E. Curtis)	
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Representing the Parties:

For Appellant:	Michael E. Curtis
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For Respondent:	Karen D. Smith Counsel
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Counsel for Board of Equalization:	Paul O. Smith Tax Counsel III
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OPINION

This appeal is made pursuant to section 19045¹ of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Michael E. Curtis against a proposed assessment of additional personal income tax in the amount of \$859 for the year 1993.

The single issue for determination is whether appellant qualifies as “head of household.” Appellant Michael E. Curtis filed his 1993 California income tax return, claiming dependent exemptions for Steven G. White and Marie White, and using head of household filing status. Both of these individuals lived in appellant’s household for all of 1993. Attached to appellant’s return was a questionnaire wherein appellant stated he was single during 1993, and that Steven G. White, age 19, was his “foster child,” and as such qualified him for head of household status.

Appellant also stated in the questionnaire that he paid 100 percent of the maintenance for the household, and that Marie White was Steven’s mother. In response to an audit letter from

¹Unless otherwise specified, any further section references in the text of this opinion are to sections of the Revenue and Taxation Code as in effect for the year in issue.

respondent Franchise Tax Board, appellant repeated, under penalty of perjury, the statements made in the questionnaire.

On April 22, 1996, respondent issued a Notice of Action (NOA) to appellant, affirming a previously issued notice of proposed assessment, which denied him head of household filing status. The basis of respondent's NOA was that an individual, which would qualify appellant to use head of household filing status, did not live with him during 1993.

Revenue and Taxation Code section 17042 defines "head of household" by reference to sections 2(b) and 2(c) of the Internal Revenue Code (IRC). IRC section 2(b) provides in relevant part that an individual shall be considered a head of a household if, and only if, such individual is not married at the close of his tax year, and maintains as his home a household that constitutes for more than one-half of such tax year the principal place of abode, as a member of such household, any person that is a dependent of the taxpayer, if the taxpayer is entitled to a deduction for the taxable year for such person under IRC section 151.

The term "dependent" includes individuals such as a son or daughter, stepson or stepdaughter, or a brother or sister of the taxpayer. (I.R.C. § 152 (a)(1)-(8).) Also included in the term dependent is an individual over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer. (I.R.C. § 152 (a) (9).) A taxpayer, however, cannot be considered to be a head of household by reason of an individual who would not be a dependent for the taxable year but for paragraph (9) of section 152 (a). (I.R.C. § 2(b)(3)(B)(i).)

Simply put, to qualify as a head of household, appellant's dependent (Steven G. White) must be one of the individuals enumerated in IRC section 152 (a)(1)-(8), i.e., a son or stepson of the taxpayer. A foster child is treated as a child of the taxpayer if the child, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household. (I.R.C. § 152(b)(2).)

Respondent does not dispute that Steven qualifies as appellant's dependent pursuant to IRC section 152 (a)(9), but it does dispute appellant's claim that Steven qualifies as appellant's foster child. Thus, the threshold question here is whether Steven G. White qualifies as appellant's foster child. This is a case of first impression, so we must resort to other sources, in addition to the Internal Revenue Code and the Revenue and Taxation Code, to help us define the term "foster child."

Health and Safety Code section 1527, subdivision (a), defines a "foster child" as a person under the age of 19 who has been placed under the care and supervision of licensed foster parents. (See also Treas. Reg. § 1.152-2(c)(4), which states in part that a "foster child" is one who is removed from his parents.) The term "foster parent" means the person, including his or her spouse if the spouse is a resident of the same household, providing care, custody and control of a foster child in a licensed foster family home. (Health & Saf. Code, § 1527, subd. (d).)

The term "foster family home" means any residential facility providing 24-hour care for 6 or fewer foster children that is owned, leased, or rented and is the residence of the foster parents or parent, in whose care the foster child has been placed. Therefore, the normal meaning of the term

“foster child” is a “Child whose care, comfort, education and upbringing has been left to persons other than his natural parents.” (Black’s Law Dict. (5th ed. 1979) p. 590, col. 2.)

Here, there has been no showing by appellant that in 1993 his home was a licensed foster family home, and that Steven G. White came within the definition of a foster child, as that term is defined in Health and Safety Code section 1527. In fact, in 1993 Steven’s mother also lived in appellant’s home, and we believe it was she who “cared” for 19 year old Steven during 1993. Thus, since Steven G. White lived with his mother and is therefore not a qualifying (foster child) dependent, we must conclude that respondent properly denied appellant head of household status for the year in issue.

In view of the above, we must sustain respondent’s action in this matter.

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 19047 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Michael E. Curtis against a proposed assessment of additional personal income tax in the amount of \$859 for the year 1993 be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of August, 1997, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Klehs, Mr. Andal, Mr. Halverson and Mr. Chiang present.

Ernest J. Dronenburg, Jr., Chairman

Johan Klehs _____, Member

Dean F. Andal _____, Member

Rex Halverson* _____, Member

John Chiang** _____, Member

*For Kathleen Connell, per Government Code section 7.9.

**Acting Member, 4th District.