



BEFGRE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
JOHN V. DURAND )

For Appellant: John V. Durand, in pro. per.

For Respondent: Burl D. Lack, Chief Counsel  
Israel Rogers, Assistant Counsel

O P I N I O N

This appeal is made pursuant to Section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of John V. Durand against proposed assessments of additional personal income tax in the amounts of \$11.24 and \$15.47 plus delinquency penalties of \$1.12 and \$3.87 for the years 1957 and 1958, respectively.

In 1957, Maurice Durand, Appellant's uncle, moved from Appellant's household where he had lived for a number of years. By mutual agreement Maurice Durand moved to an apartment a few blocks away, and Appellant continued to support him. The reason for the move was that Maurice Durand had accumulated so many personal belongings that the living quarters were not big enough to accommodate them.

The Franchise Tax Board disallowed Appellant's claimed status of "head of a household," but allowed Appellant to claim his uncle as a dependent. Appellant brought this appeal after denial of his protest,

Under Section 17042 of the Revenue and Taxation Code an individual shall be considered a "head of a household" if:

... such individual is not married at the close of his taxable year, and ... maintains as his home a household which constitutes for such taxable year the principal place of abode, as a member of such household, of . . . any ... person who is a dependent of the taxpayer, if the taxpayer is entitled to a deduction for the taxable year for such person under Section 17181(d).

It is evident in the present case that this section of the code was not complied with. Although Appellant was unmarried and maintained a home for himself, it was not the principal place of abode of his uncle during the years in question. And although

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Appellant also maintained a home for his uncle, "It is not sufficient that the taxpayer maintain the household without being its occupant. The taxpayer and such other person must occupy the household for the entire taxable year of the taxpayer." (Cal. Admin. Code, Tit, 18 Reg. 17042-17043.) The cited regulation makes an exception where the failure to occupy a common abode is temporary due to a special circumstance such as illness, but there is no indication that the move made by Appellant's uncle was on a temporary basis.

Upon the facts presented, we must conclude that Appellant did not qualify as a "head of a household."

O R D E R

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 John V. Durand against proposed assessments of additional personal income tax in the amounts of \$11.24 and \$15.47 plus delinquency penalties of \$1.12 and \$3.87 for the years 1957 and 1958, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of November, 1963, by the State Board of Equalization

John W. Lynch, Chairman  
Paul R. Leake, Member  
Geo. R. Reilly, Member  
Richard Nevins, Member  
\_\_\_\_\_, Member

ATTEST: H. F. Freeman, Executive Secretary