

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
KATHLEEN FLYER)

Appearances:

For Appellant: Kathleen Flyer, in pro. per.
Harry Flyer, M.D.

For Respondent: Lawrence C. Counts, Tax 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 Kathleen Flyer against proposed assessments of additional personal income tax in the amounts of \$39.14 and \$48.00 for the years 1961 and 1962, respectively.

The sole question for decision is whether appellant was entitled to claim her four children as dependents in the years 1961 and 1962.

Appellant was formerly married to William C. Fay. They were the parents of four children: Brian, born October 5, 1943; Barry and Alan; twins, born July 1, 1945; and Eileen, born March 25, 1948. During the years in question both Mr. Fay and appellant were employed, he as a teacher and she as an escrow clerk.

In late August of 1961 appellant and William C. Fay separated. and appellant filed an action for divorce. At an order to show cause hearing on September 12, 1961, appellant was awarded temporary custody of the children and Mr. Fay was ordered to pay \$160 per month (\$40 per child) as child support., with payments to commence October 15, 1961.

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On January 26, 1962, an interlocutory decree was entered granting appellant a divorce from William C. Fay. Under the terms of that decree, custody of the four children was awarded to appellant, subject to Mr. Fay's right of reasonable visitation and his right to have the children with him on alternate Sundays and on Wednesday evenings. William C. Fay was ordered to pay \$200 per month (\$50 per child) in child support, commencing January 15, 1962. In addition, the interlocutory decree ordered that Mr. Fay maintain a \$10,000 insurance policy on his life with the children named as irrevocable beneficiaries, and that he carry all four children as beneficiaries under his medical and hospital insurance plan.

The four Fay children resided with appellant during the latter part of 1961 and throughout 1962, although they did visit their father on the days specified in the divorce decree. Mr. Fay paid appellant a total of \$600 as child support during the last three months of 1961. In 1962 he regularly paid her \$200 per month (\$50 per child) as ordered by the decree. In addition, during 1961 William C. Fay paid premiums totaling \$341.60 on the required life and medical insurance policies, \$300 for dental services rendered to Eileen Fay, \$108.03 for tuition and school uniforms, and various other smaller amounts. In 1962 Mr. Fay paid \$348.88 for the insurance premiums, \$350 for Eileen's dental bills \$62.24 for jackets for the boys, and \$11.50 for uncompensated medical expenses incurred by Alan Fay.

In January 1963 the final decree of divorce was issued. On November 23, 1963, appellant remarried.

Appellant and William C. Fay filed separate California personal income tax returns for 1961 and 1962. In her return appellant reported gross income of \$6,133.30 and \$8,400.00 for the years 1961 and 1962, respectively. Mr. Fay's adjusted gross income was \$8,576.00 and \$8,730.34 in 1961 and 1962, respectively. In each year both appellant and William C. Fay claimed all four children as dependents.

In response to an inquiry by respondent, appellant estimated the total cost of supporting each child to have been \$1,425 in 1961 and \$1,675 in 1962. Of those amounts she states that Mr. Fay provided \$150 for each child, or a total of \$600, in 1961, and \$600 for each child, or a total of \$2,400, in 1962. Appellant contends that she provided the remaining \$1,270 required to support each child in 1961, and the remaining \$1,075 required to support each child in 1962.

Respondent ultimately denied the dependent deductions to either parent on the ground that neither had proven that he or she provided more than half of the children's support in 1961 and 1962. That determination gave rise to this appeal and to the Anneal of William C. Fay, decided this same day.

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During the years in question section 17181 of the Revenue and Taxation Code allowed a deduction for each dependent. Section 17182 defined "dependent" to include the taxpayer's son or daughter who receives over half of his support in the taxable year from the taxpayer. The burden of proving this fact is on the taxpayer. In order to sustain that burden the taxpayer must show the total cost of support and that he provided over one-half of that total cost.

To this end appellant introduced into evidence a packet of cancelled checks drawn by her on her separate checking account during the period from September 25, 1961 through December 31, 1962. With the exception of a few expenditures clearly made for the benefit of the children, the majority of the checks do not substantiate appellant's claim that they were amounts spent in support of the children. A number of checks represented payments made on the purchase of a car allegedly used by one of the boys. The Internal Revenue Service has ruled that the purchase price of an automobile is not the type of expense which may be used in determining who furnished over one-half of the support of a dependent. (Rev. Rul. 56-399, 1956-2, Cum. Bull. 114; see also Albert L. Binley, T.C. Memo., May 17, 1961.)

In our opinion appellant has failed to sustain her burden of proving that she provided more than one-half of the support of the children in 1961 and 1962. Since the children were residing with her during these years, she undoubtedly did expend amounts on their behalf. She has failed to prove, however, what amounts she did spend, or whether her expenditures exceeded the amounts admittedly received from Mr. Fay. We therefore find as a fact that appellant did not provide more than one-half of the support of the four children during the years 1961 and 1962. Accordingly, she is not entitled to dependency deductions for the children in those years.

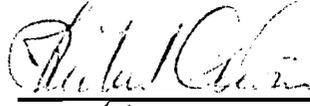
O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

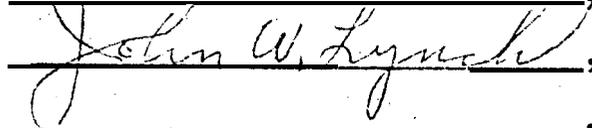
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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Kathleen Flyer against proposed assessments of additional personal income tax in the amounts of \$39.14 and \$48.00 for the years 1961 and 1962, respectively,, be and the same is hereby sustained.

Done at Sacramento, California, this 25th day of March, 1968, by the State Board of Equalization.

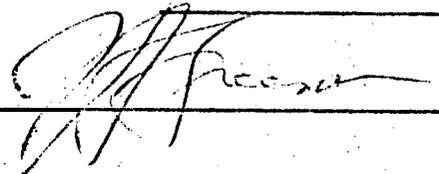

_____, Chairman


_____, Member


_____, Member

_____, Member

ATTEST:


_____, Secretary