

Appeal of Robert J. Evans

The sole issue for determination is whether appellant qualified for head of household status in 1972.

During 1972, appellant and his wife were separated: **however, they** were not divorced until 1974. Appellant **was the sole** support of his stepdaughter during 1972. In his 1972 return appellant claimed head of household status. Since appellant was married on the last day of the year, respondent **determined** that he was not **eligible to** file as a **head of** household and issued the assessment in issue.

Section 17042 of the Revenue and Taxation Code provides, in part:

For purposes of this part, an individual shall be considered a head of household if, and only if, such individual is not married at the close of his taxable year....

Since appellant was married on the last day of 1972 he was not eligible to file as a head of household. This conclusion is not changed by the fact that **appellant** was separated from his former wife at the end of 1972. Without a final decree of divorce or a decree of separate maintenance, a married taxpayer cannot qualify as a head of household, even though separated from his spouse. (Appeal of Glen A. Horspool, Cal. St. Bd. of Equal., March 27, 1973; Appeal of Mohammed M. Siddiqui, Cal. St. Bd. of Equal., Sept. 14, 1972.) Accordingly, respondent's action in this **matter must** be sustained.

1/ **For** years beginning on or after January 1, 1974, Rev. & Tax. Code section 17173, subd. (c), provides that if, under circumstances such as those present in this appeal, a taxpayer's spouse is not a member of his household during the entire taxable year such taxpayer shall not be considered as married.

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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 Robert J. Evans against a proposed assessment of additional personal income tax and penalty in the amount of \$66.53 for the year 1972, be and the same is hereby modified in accordance with respondent's concession. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 6th day of **January, 1977**, by the State Board of Equalization.

William B. Smith, Chairman
George S. Sewell, Member
John C. Olson, Member
Mrs. Sandra, Member
_____, Member

ATTEST: *W. W. Conlop*, Executive Secretary