

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ANDREW JACKSON)

For Appellant: Andrew Jackson, in pro. per.
For Respondent: Bruce W. Walker
Chief Counsel
James C. Stewart
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 Andrew Jackson against a proposed assessment of additional personal income tax in the amount of \$226.36 for the year 1974.

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The sole issue for our determination is whether appellant qualified as a head of household for the year 1974.

Appellant filed a California personal income tax return for 1974. In that return he claimed head of household status and computed his tax liability accordingly. He indicated therein that the individual qualifying him as a head of household was a person named Evelyn, who was not otherwise identified in the return. He also claimed four "stepchildren" as dependents. In 1974 Evelyn bore no relationship to appellant other than as a friend. Appellant married her in 1976.

Respondent disallowed appellant's claimed head of household status but allowed \$8.00 exemption credits for five dependents, Evelyn and the four children, pursuant to section 17054, subdivision (c), of the Revenue and Taxation Code. Appellant protested the disallowance of head of household status and this timely appeal followed respondent's affirmation of the proposed assessment.

During the course of this appeal, appellant has clarified his position by explaining that Evelyn's four children were his foster children in 1974. He also indicated that Evelyn and the four children did not commence living with him until May of 1974, although they lived with him for the remainder of that year.

The term "head of a household" is defined in section 17042 of the Revenue and Taxation Code which provides, in pertinent part:

[A]n individual shall be considered a head of a household if, and only if, such individual ..

(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, stepson, daughter or stepdaughter of the taxpayer

As already explained, during a part of 1974 appellant maintained as his home a household which constituted the place of abode of his four foster children. Pursuant to section 17057, subdivision (b) thereof, a foster child of a taxpayer is treated as his child by blood **if**, for the taxable year of the taxpayer, the child

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has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household.

In prior appeals we have held that the requirement in section 17042 of the Revenue and Taxation Code that the taxpayer's home constitute the principal place of abode of another individual for the "taxable year," means that such person must occupy the household for the taxpayer's entire taxable year. (Appeal of Harlan D. Graham, Cal. St. Bd. of Equal., Oct. 18, 1977; Appeal of Willard S. Schwabe, Cal. St. Bd. of Equal., Feb. 19, 1974; Appeal of Gwen R. Fondren, Cal. St. Bd. of Equal., May 10, 1977; see also Cal. Admin. Code, tit. 18, reg. 17042-17643, **subd.** (b)(1).)

In the present appeal, none of appellant's foster children physically occupied appellant's household for the entire taxable year. Although respondent's regulations provide for a "temporary absence due to special circumstances," the record in this appeal does not indicate the existence of any such special circumstances.

As we previously noted, in his 1974 return appellant considered Evelyn as the person qualifying him for head of household status. However, section 17044, subdivision (a), of the Revenue and Taxation Code precludes a taxpayer from being considered a head of household when the individual otherwise qualifying him for that status is unrelated by blood or marriage. (Appeal of Stephen M. Padwa, Cal. St. Bd. of Equal., May 10, 1977; Appeal of Judith A. Marshall, Cal. St. Bd. of Equal., May 10, 1977.) Moreover, Evelyn also did not occupy **appellant's** household for his entire taxable year.

For the reasons stated above, we conclude that respondent properly denied appellant's claimed head of household status for the taxable year 1974.

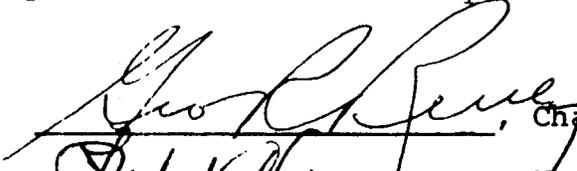
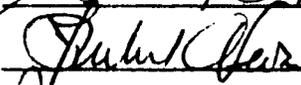
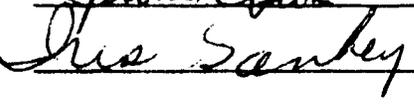
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O R D E R

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 Andrew Jackson against a proposed assessment of additional personal income tax in the amount of \$226.36 for the year 1974, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day of February , 1978, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member
_____, Member
_____, Member