

Appeal of Mary C. Agerton

Appellant's daughter, Noreen, resided in appellant's home until April of 1974, at which time she moved away. Unable to support herself, Noreen returned to appellant's home six months later. Appellant claimed head of household status on her 1974 return, but did not furnish supporting information as requested by respondent, so her claim was denied. In addition, a penalty in the amount of \$37.18 was imposed for failure to supply the requested information. Appellant subsequently furnished the information and respondent has stipulated to withdrawal of the penalty.

The sole issue to be decided is whether appellant qualified as head of household for the taxable year 1974. A head of household is defined as follows:

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, and ...

(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 ... daughter ... of the taxpayer, . . . (Rev. & Tax. Code, § 17042.)

The taxpayer and the person specified in subsection (a) must occupy the household for the entire taxable year. (Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (b) (1).) Here appellant's daughter was absent for six months during 1974. Although respondent's regulations provide for a "temporary absence due to special circumstances," it appears from the record here that appellant's daughter would not have returned home had she been able to meet her living expenses on her own. Thus, her absence was not temporary within the meaning of the above regulation, and appellant may not claim a head of household exemption. (See Appeal of Willard S. Schwabe, Cal. St. Bd. of Equal., Feb. 19, 1974.)

Accordingly, the deficiency assessed in this matter must be upheld. However, as stipulated by respondent, the penalty imposed shall be withdrawn.

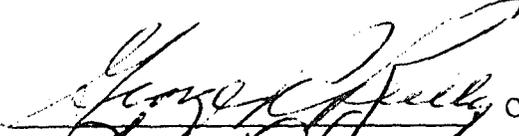
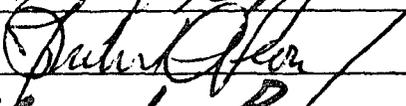
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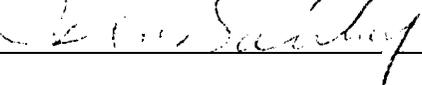
O R D E R

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Mary C. Agerton for refund of personal income tax in the amount of \$148.73, be and the same is hereby sustained. It is further ordered that the Franchise Tax Board's action in disallowing the claim for refund of penalty in the amount of \$37.18, be and the same is hereby reversed in accordance with respondent's stipulation.

Done at Sacramento, California, this 29th day of June , 1978, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member