

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
HARRY J. SITAM)

For Appellant: Harry J. Sitam, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

John A. Stilwell, Jr.
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 Harry J. Sitam against proposed assessments of additional personal income tax in the amounts of \$86.30 and \$170.48 for the years 1973 and 1974, respectively.

Appeal of Harry J. Sitam

The question presented is whether appellant was entitled to claim head of household filing status for the 1973 and 1974 taxable years.

In his California personal income tax returns for the years in question, appellant claimed head of household status and computed his tax liability accordingly. He identified the individual qualifying him as a head of household as Denice Hill, a friend who lived with him and received over one-half of her support from him during each year.

Respondent disallowed appellant's claimed head of household status on the ground that Ms. Hill, who was unrelated to appellant by blood or marriage, was not a qualifying dependent. (See Rev. & Tax. Code, §§ 17044, subd. (a), and 17056, subd. (i).) Respondent did, however, allow appellant an \$8.00 dependent exemption credit for Ms. Hill pursuant to section 17054, subdivision (c), of the Revenue and Taxation Code. Appellant's protest against the disallowance of head of household status was denied by respondent, giving rise to this appeal.

The facts of this case are substantially similar to those presented in a number of recent appeals to this board. (See, e.g., Appeal of Stephen M. Padwa, Cal. St. Bd. of Equal., May 10, 1977; Appeal of Amy M. Yamachi, Cal. St. Bd. of Equal., June 28, 1977.)

In the Padwa appeal, we held that the appellant therein was not entitled to head of household status based upon his living arrangement with a dependent female friend. The decision in that case was based upon section 17044 of the Revenue and Taxation Code, which precludes a taxpayer from being considered a head of household when the individual otherwise qualifying as a dependent of the taxpayer is unrelated by blood or marriage.

We also upheld respondent's position in the Yamachi appeal, notwithstanding the taxpayer's argument in the nature of estoppel. There, as here, the taxpayer argued that respondent's return form instructions were incomplete. After reviewing the nature of estoppel, however, we determined that the taxpayer did not rely to her detriment in selecting her living arrangement during 1974, since respondent's instructions were not issued until 1975: The inability of the taxpayer to establish detrimental reliance precluded an application of the estoppel doctrine.

Appeal of Harry J. Sitam

We believe that our decision in the present appeal must be governed by the same principles set forth in Padwa and Yamachi. For the reasons stated in those opinions, we must sustain respondent's denial of appellant's claimed head of household status for 1973 and 1974.

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 Harry J. Sitam against proposed assessments of additional personal income tax in the amounts of \$86.30 and \$170.48 for the years 1973 and 1974, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 26th day of July, 1978, by the State Board of Equalization.

George J. Kelly, Chairman
Richard K. ..., Member
Delbert B. ..., Member
Jessie ..., Member
..., Member