

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
STANLEY T. COZZENS)

Appearances:

For Appellant: Stanley T. Cozzens, in pro. per.
For Respondent: Robert L. Koehler
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 Stanley T. Cozzens against proposed assessments of additional personal income tax in the amounts of \$176.90 and \$342.66 for the taxable years 1973 and 1974, respectively. Appellant paid the amount in issue for 1973, plus interest; therefore, pursuant to Revenue and Taxation Code section 19061.1, that portion of the appeal shall be treated as an appeal from the denial of a claim for refund in the amount of \$218.16.

Appeal of Stanley T. Cozzens

The issue presented is whether appellant **qualified as a** head of household for the years 1973 and 1974.

-Appellant's marriage was dissolved in ~~1972~~, after which appellant moved to a one bedroom **apartment** in **San Francisco**. His former wife was awarded legal **custody** of the couple's son, Bradley, and lived in Sacramento, where Bradley attended a private day school. **Bradley** spent weekends and some vacation periods with his father each year, but spent 287 days a year in Sacramento.

Appellant claimed head of household status in 1973 and 1974, naming Bradley as his qualifying dependent. Respondent **disallowed** the claimed status on the grounds that appellant's home was not Bradley's principal place of abode for the entire taxable year.

Revenue and Taxation Code section 17042 defines a **head of household**, as follows, in relevant 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 the 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 son . . . of the taxpayer

In prior **appeals**, we have held that the requirement that a household be provided for the "taxable year," means for the entire taxable year. (Appeal of Gwen R. Fondren, Cal. St. Bd. of Equal., May 10, 1977; Appeal of Willard S. Schwabe, Cal. St. Bd. of Equal., Feb. 19 1974; see also Cal. Admin. Code, tit. 18, reg. 17042-1704g, subd. (b) (1).) Here, appellant's son did not **physically occupy** 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 special circumstances. Therefore, appellant clearly does not **qualify** for head of household status and respondent's action must be sustained.

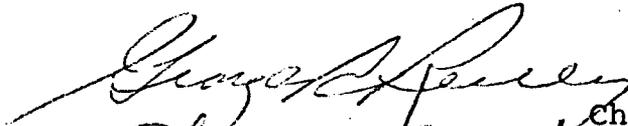
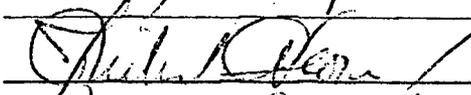
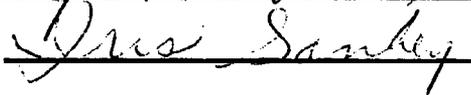
Appeal of Stanley T. Cozzens

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 sections 18595 and 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Stanley T. Cozzens for refund of personal income tax in the amount of \$218.16 for the taxable year 1973, and on a protest against a proposed assessment of additional personal income tax in the amount of \$342.66 for the taxable year 1974, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of December, 1978, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member
_____, Member
_____, Member