



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JOHN C. CORTEZ)

For Appellant: John C. Cortez, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

John R. Akin
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 John C. Cortez against a proposed assessment of additional personal income tax in the amount of \$281.40 for the year 1975.

Appeal of John C. Cortez

The question presented is whether appellant qualified for head of household filing status for the taxable year 1975.

Appellant was divorced in April 1974, and his former wife apparently received custody of their two daughters. During 1975 appellant's daughters resided with him for approximately six months. They lived with him during school vacations, and also stayed with him when his ex-wife worked odd hours. When appellant filed his personal income tax return for 1975, he used the tax rate and standard deduction appropriate for a head of household. After corresponding with him, respondent determined that he did not qualify as a head of household and proposed the additional assessment in question.

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

For purposes of this part, an individual shall be considered a head of a 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

. . . .

In a number of prior appeals, we have held that this statute requires the child, or other qualifying individual, to occupy the taxpayer's household for the entire taxable year. (Appeal of Douglas R. Railey, Cal. St. Bd. of Equal., Aug. 15, 1978; Appeal of Judith O. Lynch, Cal. St. Bd. of Equal., May 4, 1978; Appeal of Willard S. Schwabe, Cal. St. Bd. of Equal., Feb. 19, 1974.) Here, by appellant's own admissions, his daughters did not occupy his household for the entire year. Although respondent's regulations provide for an exception where the lack of occupancy is because of a "temporary absence due to special circumstances," no special circumstances appear to be present in this case. (See Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (b)(1).) For these reasons, we must conclude that appellant does not satisfy the statutory requirements for a "head of household." Respondent's assessment will, therefore, be sustained.

Appeal of John C. Cortez

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 John C. Cortez against a proposed assessment of additional personal income tax in the amount of \$281.40 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 9th day of January, 1979, by the State Board of Equalization.

William L. Burnett, Chairman
Richard J. ..., Member
George ..., Member
_____, Member
_____, Member