

BEFORF THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
ALBERT FERGUSON )

For Appellant: Albert Ferguson, 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 Albert Ferguson against a proposed assessment of additional personal income tax in the amount of \$201.77 for the year 1975.

Appeal of Albert Ferguson

The sole question for decision is whether appellant qualified as a head of household for the taxable year 1975.

Appellant and his wife separated on February 10, 1975, and lived apart thereafter. Apparently their two sons resided with appellant after the separation and he provided their full support. The record does not reveal whether appellant's marriage was ever dissolved. When appellant filed his separate personal income tax return for 1975, he claimed head of household filing status. Respondent's disallowance of that status gave 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 Nancy L. Ingram, decided this day; Appeal of Jean E. Davidson, Cal. St. Bd. of Equal., Dec. 5, 1978; Appeal of Richard E. Shoemaker, Cal. St. Bd. of Equal., Sept. 27, 1978.) In those cases we have held that for taxable years beginning on or after January 1, 1974, in order for a separated but still legally married taxpayer to qualify for head of household status, the taxpayer's spouse must not have been a member of the taxpayer's household for any part of the taxable year. (Rev. & Tax. Code, §§ 17042, 17173, subd. (c) (3).) Even though appellant herein may have fulfilled all other requirements of the law, since his wife lived with him until February 10, 1975, he was not eligible to file as a head of household for that year. Accordingly, respondent's action in this matter must be sustained.

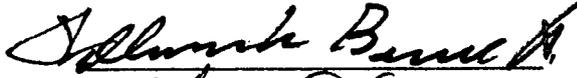
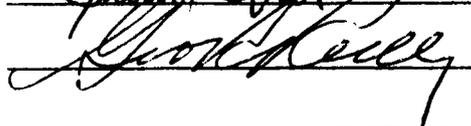
Appeal of Albert Ferguson

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 Albert Ferguson against a proposed assessment of additional personal income tax in the amount of \$201.77 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day of February, 1979, by the State Board of Equalization.

  
\_\_\_\_\_, Chairman  
  
\_\_\_\_\_, Member  
  
\_\_\_\_\_, Member  
\_\_\_\_\_, Member  
\_\_\_\_\_, Member