

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
LINDA M. BOROSKI)

For Appellant: Linda M. Boroski, in pro. per.
For Respondent: Bruce W. Walker
Chief Counsel
James C. Stewart
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 Linda M. Boroski against a proposed assessment of additional personal income tax in the amount of \$199.25 for the year 1976.

Appeal of Linda M. Boroski

The issue presented is whether appellant qualified for head of household status in 1976.

Appellant filed her separate personal income tax return for the year 1976 as a head of household, declaring her son, Gary, as the individual qualifying her for that status. She also claimed a daughter as a dependent. In that return she deducted child care expenses in the amount of \$894.00.

In her response to an inquiry from respondent regarding her filing status, appellant indicated that she separated from her spouse in April or May of 1976, and remained separated from him the balance of that year. Appellant supported herself and her children without any financial assistance from her husband throughout 1976. She paid debts of his during that year. Moreover, for approximately eight years she has worked to support her children and, herself. Appellant filed for an interlocutory decree of dissolution in 1976 and obtained a final decree in 1977.

Respondent allowed appellant an additional dependent exemption for her son, Gary, but disallowed both appellant's head of household status and the child care expense deduction.^{1/} Appellant protested only the determination that she was not entitled to file her 1976 return as a head of household.

Section 17042 of the Revenue and Taxation Code provides, in 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, ...

The phrase "not married", as it is used in that statutory provision, is defined to include "[a]n individual who is legally separated from his spouse under a final decree of divorce or a decree of separate maintenance" (Emphasis added.) (Rev. & Tax. Code, § 17043, subd. (b).) In addition, a person who is legally married may still be considered as not married for purposes of head of household status if during the entire taxable year such individual's spouse is not a member of the taxpayer's household. (Rev. & Tax Code, § 17173, subd. (c)(3).)

L/ Pursuant to the then applicable statutory provision, expenses for child care were not deductible if a married taxpayer filed a separate return for the taxable year. (Rev. & Tax. Code, § 17262, subd. (e)(1).)

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Since appellant's spouse was a 'member of her household during a portion of 1976, and since she was not legally separated from him under a final decree of divorce or separate maintenance at the end of that year, she was not eligible to file as a head of household for the taxable year 1976. (Appeal of Nancy L. Ingram, Cal. St. Bd. of Equal., Feb. 8, 1979; Appeal of Lynn F. Wallace, Cal. St. Bd. of Equal., March 1, 1978.)

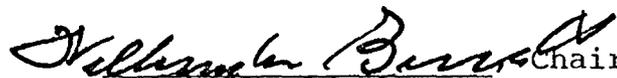
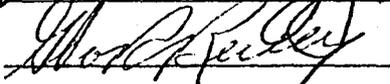
Appellant urges that respondent's determination is unfair, particularly in view of her husband's failure to provide any financial assistance. Although we are sympathetic with appellant's feelings, we nevertheless are obligated to enforce the existing law. Accordingly, we must conclude that respondent properly disallowed appellant's claimed head of household status for 1976.

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 Linda M. Boroski against a proposed assessment of additional personal income tax in the amount of \$199.25 for the year 1976, be and the same is hereby sustained.

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

 Chairman
 Member
 Member
 Member
_____, Member