

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
SHIRLEY R. BRIGGS)

For Appellant: Shirley R. Briggs, in pro. per.

For Respondent: Jacqueline W. Martins
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 Shirley R. Briggs against a proposed assessment of additional personal income tax in the amount of \$49.22 for the year 1976. At the time this appeal was filed, appellant 'paid the proposed assessment. Accordingly, pursuant to section 19061.1 of the Revenue and Taxation Code, the appeal will be treated as an appeal from the denial of a claim for refund.

Appeal of Shirley R. Briggs

The sole question for decision is whether appellant was entitled to a child care expense deduction for the taxable year 1976.

Appellant is employed as a secretary. She and her husband separated on August 2, 1976, and appellant filed her 1976 California personal income tax return as a married person filing a separate return. In that return she claimed a deduction for child care expenses, and respondent's disallowance of that deduction gave rise to this appeal.

Former section 17262 of **the** Revenue and Taxation Code allowed a limited deduction for certain employment-related child **and** dependent care expenses paid during the taxable year. ^{1/} Subdivision (e) of that section placed the following restriction on the availability of the deduction:

(1) If the taxpayer is married at the close of the **taxable** year, the deduction provided by subdivision (a) shall be allowed only if the taxpayer and his spouse file a joint return for the taxable year.

Since appellant and her former husband were still legally married at the end of 1976, they were required to file a joint return for that taxable year in order to deduct child care expenses. They did not do so. Appellant instead filed as a married person filing a separate return, and she therefore was not entitled to any deduction for child care expenses under former section 17262.

Appellant's primary contention is that the above quoted restriction on **the** availability of the deduction is unfair and discriminatory against the separated taxpayer who, in order to work, must incur the same child care expenses as the divorced taxpayer or the working

^{1/} Section 17262 was repealed by Statutes 1977, chapter 1079. For taxable years beginning after December 31, 1976, a tax credit, rather than a deduction, is allowed for certain employment-related expenses incurred for the care of children and other dependents. (Rev. & Tax. Code, § 17052.6, added by Stats. 1977, ch. 1079.)

Appeal of Shirley R. Briggs

married couple, either of whom might be entitled to the deduction. While we are sympathetic with appellant's position, we are nevertheless bound to enforce the law as written. The statutory language contained in paragraph (1) of subdivision (e) of former section 17262 clearly precludes the child care expense deduction claimed by appellant in the separate return which she filed for 1976.

Appellant also has objected to the accrual of interest on the deficiency assessment during the period she was protesting that assessment. Section 18688 of the Revenue and Taxation Code mandates the imposition of interest upon a deficiency assessment "from the date prescribed for the payment of the tax until the date the tax is paid." The interest is not a penalty imposed on the taxpayer, but is merely compensation for the use of the money during that period. (Appeal of Audrey C. Jaegle, Cal. St. Bd. of Equal., June 22, 1976.) The fact that appellant protested the assessed deficiency had no effect on the continued accrual of interest on that assessment until the date it was paid, pursuant to the provisions of section 18688 of the Revenue and Taxation Code.

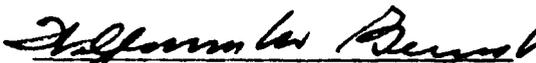
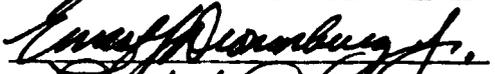
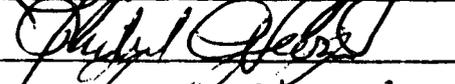
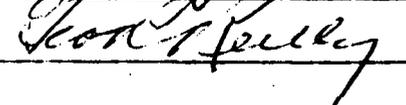
For the reasons stated above, respondent's action in this matter must be sustained.

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Shirley R. Briggs for refund of personal income tax in the amount of \$49.22 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this **16th day** of August, 1979, by the State Board of Equalization.

 Chairman
 Member
 Member
 Member
_____, Member