



Appeal of Charles J. Hough

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

Prior to the year in issue, appellant and his wife were separated. Legal custody of the couple's two children was awarded to their mother. In November 1975 appellant established a residence in order to accommodate the children since a change in custody appeared imminent due to the mother's mental instability. However, the actual change in legal and physical custody did not occur until October 1976. Prior to October the children lived with their mother. The children resided with appellant only for the last three months of 1976.

Appellant filed his 1976 California personal income tax return as a head of household, designating one of his two children as the qualifying dependent. Respondent denied appellant head of household status on the ground that neither of appellant's two children had occupied his household throughout the entire taxable year in question. In this regard, section 17042 of the Revenue and Taxation Code provides in pertinent 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 his taxable year., and ...

(a) 'Maintains as his home' a household which constitutes for such taxable year the principal abode, as a member of such household, of--

(1) A ... daughter ... of the taxpayer ....

Further clarification of section 17042 is found in respondent's regulation 17042-17043, which states in part:

(b) (1) In order for the taxpayer to be **considered** a head of household by reason of any **individual** described in **subparagraph** (a) of Section **17042**, the household must actually constitute the home of **the taxpayer for his** taxable year. ... Such home must also

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constitute the principal place of abode of at least one of the persons specified in such subsection (a). It is not sufficient that the taxpayer maintain the household without being its occupant. The taxpayer and such other person must occupy the household for the entire taxable year of the taxpayer. (Emphasis added.) (Cal. Admin. Code, tit. 18, reg. 17042-17043.)

Application of the cited regulation to the facts of this case **compels** us to conclude that neither of appellant's children occupied his household "for the entire taxable year of the taxpayer." Our conclusion is based on the fact that the children did not become members of appellant's household until October 1976. Although respondent's regulation provides for a "temporary absence due to **special circumstances,**" it also implies that the individual so absent must have been a member of the household **prior** to such absence. (Appeal of Henry C. H. Hsiung, Cal. St. Bd. of Equal., Dec. 17, 1974.)

For the reasons set out above appellant cannot qualify for head of household status in 1976. Therefore, 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,

