

Appeal of Lucille Valentine

The sole issue for determination is whether appellant qualified as a head of household for 1976.

In 1976 appellant filed her personal income tax return as a head of household. In that return she named one of her two dependent children as the individual qualifying her for that status. Appellant's husband lived with her in the family home until May 1976 when they were separated. For the remainder of the year appellant was the sole support of the family. However, since appellant did not obtain a final **decree of divorce** or of separate maintenance during 1976, and lived with her husband for part of the year, respondent determined that she was not entitled to head of household filing status for **that year**.

Section 17042 of the Revenue and Taxation Code provides that in order to claim head of household status, a taxpayer must be unmarried and maintain as her home a household that is the principal place of abode of an individual who is within specified classes of relationship, including children. In general, although a taxpayer is separated from her spouse, she is still considered as being married for purposes of claiming head of household status, unless, at the close of the taxable year, she was legally separated from her spouse under a final decree of dissolution or separate maintenance. (Appeal of Robert J. s, Cal. St. Bd. of Equal., Jan. 6, 1977; Appeal of Glen S. Horspool, Cal. St. Bd. of Equal., March-27, 1973; Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (a)(D).)

For years beginning on or after January 1, 1974; Revenue and Taxation Code section 17173 extended the benefits of head of household status to certain married individuals. This was accomplished by considering a married person as unmarried for purposes of classification as a head of household, where she lives separate and apart from her spouse during the entire year and maintains a home for **dependent children** under certain conditions. Although appellant, who was **still** legally married on the last day of 1976, did maintain a home for her two dependent children, she cannot qualify as a head of household because her spouse lived with her **during part** of 1976.

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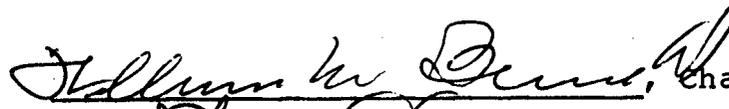
Appellant argues that respondent's filing instructions accompanying the 1976 personal income tax return were incomplete and misleading, and contends that she **should** be treated as if she qualified as a head of household. In prior appeals we have resolved similar contentions adversely to the taxpayer. (See Appeal of Rebecca Smith Randolph, Cal. St. Bd. of Equal., Aug. 16, 1977; Appeal of Amy M. Yamachi, Cal. St. Bd. of Equal., June 28, 1977.) For the reasons set out in those decisions, we conclude that appellant's argument must be rejected.

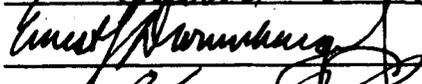
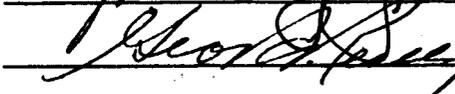
O R D E R

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 Lucille Valentine against a proposed assessment of additional personal income tax in the amount of \$199.00 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 11th day of December , 1979, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member