



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
BARBARA RUFFIN)

For Appellant: Barbara Ruffin,
in pro. per.

For Respondent: Bruce R. Langston,
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Barbara Ruffin against a proposed assessment of additional personal income tax in the amount of \$288 for the year 1979.

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The question presented by this **apeal** is whether appellant qualified for head of household filing status in 1979.

Appellant filed her 1979 personal income tax return as a head of household, claiming her son as the person qualifying her for that status. On the head of household questionnaire sent to appellant, she indicated that she was still legally married at the close of 1979, that she had lived apart from her husband for the entire **year**, that her son had lived with her the entire year, and that she could not claim a dependent exemption credit for her son that year **because** her husband had claimed him as **such**. Respondent's denial of the claimed head of household status led to this appeal.

Revenue and Taxation Code section 17042 allows an unmarried individual whose household is the principal place of abode of a qualifying dependent for the entire taxable year to file as head of household. An exception to the general rule that an individual must be unmarried at the close of the taxable year is contained in Revenue and Taxation Code section 17173. Subdivision (c) of that section states that a married individual will not be considered as married if, among other requirements, that individual is entitled to a dependent credit exemption, as provided in Revenue and Taxation Code section 17054, for a child or stepchild who has his principal place of abode with that individual.

It is clear that both parents may not claim an exemption credit for the same child when they file separate returns. (See Appeal of Marjorie Lehrer, Cal. St. Bd. of Equal., Dec. 11, 1973; Appeal of William C. Fay, Cal. St. Bd. of Equal., March-, 968.) For 1979, appellant's husband claimed an exemption credit for their son. Appellant, therefore, was not entitled to claim her son as a dependent for 1979, and, under the clear language of section 17173, could not be considered as unmarried. Consequently, she did not qualify for head of household status.

Appellant also contends that she relied on the instructions provided with her California form 540, and, therefore, respondent should be estopped from disallowing her claimed filing status. Appellant's argument must fail for two reasons. First, the federal tax instructions, to which the California instructions refer, do instruct married persons that they must meet all of the same tests as those set out in section 17173, including

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the requirement that the taxpayer must be able to claim his or her child or stepchild as a dependent. (Resp. Reply Br., Ex. C.) Secondly, we have refused to estop respondent in similar cases where **appellants** have relied on allegedly ambiguous or incorrect instructions. (See Appeal of Amy M. Yamachi, Cal. St. Bd. of Equal., June 28, 1977, and cases cited therein.)

For the reasons stated above, we must sustain respondent's action.

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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 Barbara Ruffin against a proposed assessment of additional personal income tax in the amount of \$288 for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 15th day of September, 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. **Collis**, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

<u>William M. Bennett</u>	, Chairman
<u>Conway H. Collis</u>	, Member
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Richard Nevins</u>	, Member
<u>Walter Harvey*</u>	, Member

*For Kenneth **Cory**, per Government Code section 7.9