*83-SBE-258*

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )
)
LAWRENCE E. EDEN )

Appearances:

For Appellant: Lawrence E. Eden, in pro. per.

For Respondent: Noel J. Robinson 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 Lawrence E. Eden against a proposed assessment of additional personal income tax in the amount of $245 for the year 1979.

The question presented is whether appellant was entitled to head of household filing status for 1979.

Appellant filed a timely personal income tax return for 1979 as a head of household, and named his 13-year-old daughter Amy as the individual qualifying him for that filing status. In response to an inquiry from respondent, appellant indicated 'that Amy had not lived with him during the entire year, because she was away at school from January 6 to May 31, 1979, and from September 1 to December 15, 1979. Subsequent information revealed 'that Amy had been living with her mother in Nebraska, and attending school there, during the periods she was not living with appellant. These living arrangements were in accordance with the child custody provisions of the 1978 decree dissolving the marriage of appellant and 'Helen T. Eden. Pursuant to those provisions, appellant and his former wife were awarded joint legal custody of their children, with Helen Eden having physical custody during the school year and appellant having it during school vacation periods.

Revenue and Taxation Code section 17042 provides, in pertinent part:

> For purposes of this part, an individual shall be considered a head of a household if, and only if, such individual is not married at the close of his taxable year, and ...
>
> (a) Maintains as his home a householdi which constitutes for such taxable year the: principal place of abode, as a member of such household, of--
>
> (1) A ... daughter . .. of the taxpayer, . ..

Respondent contends that appellant does not qualify as a head of household because his home did not constitute Amy's principal place of abode during the year in question.

In the Appeal of John William Branum, decided by this board on August 16, 1979, we held that, for purposes of the head of household provisions, the term "principal place of abode" means the one place of abode most important to the qualifying individual, relegating any other abode to secondary rank. We went on to hold that, where the child lives with each parent a part of the year and all other factors are substantially equal,

the abode where the child spends the greater amount of time is.the principal place of abode.

Based on this analysis, our conclusion in this case must be that 'Amy's principal place of abode was her mother's home in Nebraska, since that is where she spent the greater part of 1979. This conclusion is not affected by the possibility that California must be considered Amy's "home state" for purposes of the Uniform Child Custody Jurisdiction Act (Civ. Code, § 5150, et seq.), as appellant argues. There is no necessary correlation between a child's current principal place of abode for income tax.purposes and the state which most appropriately has jurisdiction to enter an order regarding legal custody of the child. Moreover, contrary to appellant's assertion, there is no evidence in the record that a California court determined that California continued to be the state of Amy's residence and domicile after she moved to Nebraska with her mother. Certainly, no such determination was made for tax purposes, since none of the court decrees in the record even addresses matters of state income taxation.

On the basis of the facts before us, we are compelled to conclude that Amy's principal place of abode was her mother's home in Nebraska. Accordingly, respondent's action denying head of household filing status to appellant must be sustained.

Appeal of Lawrence E. Eden

## ORDER

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 Lawrence E. Eden against a proposed assessment of additional personal income tax in the amount of $245 for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 13th day of December ,1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett, Chairman

Conway H. Collis, Member

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

_____, Member