

Appeals of Peter Maliaros

The issues presented for decision are: (1) whether **appellant qualified** for head of household status for the years 1979 and 1980; and (2) whether appellant can claim a deduction for all of his expenses incurred for his move to California from outside the state,,

Appellant filed a timely personal income tax return for 1979 in which he claimed head of household status. In May 1980, appellant filed an amended return listing additional income of \$588.26 and claiming \$1,320 in moving expenses.

On July 27, 1981, respondent sent a question-naire to appellant regarding his status as head of household in 1979. Appellant's response named his daughter, Jennifer, as his qualifying dependent and stated that she lived with her mother for half of the year.

Appellant's moving expense adjustment form for taxable year 1979 claimed \$1,320 in expenses for a December 27, 1978, move from New York to Panorama City, California. **Appellant** listed \$588.26 as the amount he received as reimbursement for moving expenses which was included in his gross income.

Respondent issued a Notice of Additional Tax Proposed to be Assessed on December 31, 1981, disallowing appellant's head of household status and the portion of his moving expense deduction which exceeded the reimbursement included in his gross income. Appellant protested the assessment., After due consideration, respondent issued its notice of action denying **appellant's** protest.

For the year 1980, appellant claimed head of household status, again naming his daughter, Jennifer, as his qualifying dependent. Respondent sent questionnaires in June and August of 1981 regarding appellant's status as head of household for 1980. Appellant did not reply to respondent's inquiries. Thereafter, respondent disallowed **appellant's** head of household status and assessed a penalty for failure to provide information. Appellant protested this assessment also. Appellant's appeals for 1979 and 1980 have been consolidated for decision.

We will first address the issue of whether appellant qualified as a head of household for 1979 and 1980. Appellant contends that he should be granted head of household status because he provided Jennifer's support in 1979. It is well settled that for a taxpayer to qualify as a head of household, the qualifying individual

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must occupy the household for the taxpayer's entire taxable year. (Appeal of Douglas R. Railey, Cal. St. Bd. of Equal., Aug. 15, 1978; Appeal of Harlan D. Graham, Cal. St. Bd. of Equal., Oct. 18, 1977; Appeal of Willard S. Schwabe, Cal. St. Bd. of Equal., Feb. 19, 1974.) Providing support for an individual is not a determinative factor for head of household status. (Appeal of Edward J. Rozcicha, Cal. St. Bd. of Equal., March 4, 1980.)

After respondent filed its brief in this case, appellant named his mother as the dependent qualifying him for head of household status for both 1979 and 1980. To claim his mother as a qualifying dependent for head of household status, appellant must (1) furnish over half the cost of maintaining his mother's household and (2) provide over half of his mother's support for the taxable year. (Rev. & Tax. Code, §§ 17042, 17054, 17056.) Although appellant suggests that he furnished over half the cost of maintaining a household for his mother, his mother's statement indicates that appellant helped to pay hospital bills accumulated over 23 days in March 1979. This alone does not satisfy the statutory requirements, Therefore, neither appellant's mother nor his daughter qualify him for head of household status for 1979.

Appellant has furnished no information with respect to 1980. Since the burden of showing that he is entitled to head of household status falls upon appellant, respondent correctly disallowed his claimed filing status. Further, respondent may add the penalty provided by Revenue and Taxation Code section 18683 for appellant's failure to provide such information after respondent's request.

We now turn to the issue of appellant's moving expense for 1979. Revenue and Taxation Code section 17266 allows a deduction for expenses incurred by a taxpayer in moving to a new place of employment. For nonresidents entering California, subdivision (d) of section 17266 imposes a limitation on this deduction by providing:

(d) In the case of an individual whose former residence was outside this state and his new place of residence is located within this state or whose former residence was located in this state and his new place of residence is located outside this state, the deduction allowed by this section shall, be allowed only if any amount received as payment for or reimbursement of expenses of moving

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from one residence to another residence is includable in gross income as provided by Section 17122.5 and the amount of deduction shall be limited only to the **amount of** such payment or reimbursement or the amounts specified in subdivision (b), whichever amount is the lesser.

Therefore, **for persons** moving to California, a deduction for moving expenses is allowable only to the extent that the reimbursement is included in gross income.

Appellant's claimed moving expense for relocation from New York to California is clearly within the purview of subdivision (d) of **section 17266**. Therefore, appellant may deduct only the amount of reimbursement included in his gross income. Because appellant included \$588.26 which he received as reimbursement in his gross income for 1979, he may deduct up to that amount for his moving expenses paid in 1979. No deduction beyond that is allowable.

In conclusion, we find that appellant has not established that he is entitled to head of household status for 1979 or 1980. We also find that appellant is not entitled to a moving expense deduction for 1979 in excess of the amount allowed by respondent.

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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 protests of Peter Maliaros against a proposed assessment of additional personal income tax in the amount of \$577 for the year 1979, and against a proposed assessment of additional personal income tax and penalty in the total amount of \$496.87 for the year 1980, 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