

Appeal of Nancy L. Ingram

Appellant filed her separate personal income, tax return for 1975 as a head of household, declaring her daughter, Leslie Kay, as the individual qualifying her for that status. In that return she also deducted child care expenses in the amount of \$960.00. In response to an inquiry from respondent, regarding her filing status, appellant indicated that her former husband had "moved out" in March of 1975; thereafter an action for dissolution of their marriage was commenced, and a final decree of dissolution was issued in May of 1976.

On the basis of this information, respondent disallowed both appellant's head of household status and the child care expense deduction. Appellant protested only the determination that she was not entitled to file her 1975 return as a head of household. The correctness of that determination is the sole issue presented for decision.

Section 17042 of the Revenue and Taxation Code provides, in part, that an individual shall be considered a head of household if, and only if, he or she is not married at the close of the taxable year. For purposes of section 17042, in order to be considered "not married" an individual must either be separated from his or her spouse under a final decree of divorce or a decree of separate maintenance (Rev. & Tax. Code, § 17043, subd. (b)), or the individual's spouse must not be a member of such individual's household during the entire taxable year. (Rev. & Tax. Code, §§ 17042, 17173, subd. (c) (3).) Since the dissolution of appellant's marriage was not final until May 1976, and since her former husband was a member of her household for approximately three months of 1975, appellant clearly fails to meet the statutory qualifications for head of household filing status for 1975.

Appellant urges that respondent's determination in this regard is unfair, in view of her limited financial resources and her former husband's alleged failure to make any child support payments in 1975. Although we are sympathetic with appellant's feelings, we nevertheless are obligated to enforce the existing law. Accordingly, we must conclude that respondent properly disallowed appellant's claimed head of household status for 1975.

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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 Nancy L. Ingram against a proposed assessment of additional personal income tax in the amount of \$166.78 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day of February, 1979, by the State Board of Equalization.

William W. Bennett Chairman
Theresa J. Vega, Member
Robert L. Kelley, Member
_____, Member
_____, Member