

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 024

June 23, 1958

DEPENDENT: ADOPTION

Syllabus:

Dependency credit cannot be allowed for an unrelated child until a decree of adoption is entered.

Advice is requested as to whether a taxpayer is entitled to a credit for a dependent against his 1951 net income where an unrelated child, born on December 9, 1951, is taken into his home immediately on birth and a petition for adoption is filed in a California court on December 26, 1951.

Sections 17182 and 17183 of the Personal Income Tax Law, defining those dependents for whom a credit is allowable, states that "a legally adopted child of a person shall be considered a child of such person by blood." To determine whether one is a "legally adopted child" we must look to the provisions of the Civil Code. Sections 221-229 manifest that a child is not legally adopted until the court decree is entered. The filing of the petition is insufficient to affect any change in the legal rights or status of the parties. It is merely the first step in a procedure which requires also the formal consent of the natural parents, the approval of the State Department of Welfare or licensed county adoption agency, a report from the county probation officer, and finally the approval of the court.

Adoption being entirely a creation of statute, strict compliance therewith is necessary to accomplish "legal adoption". "He who claims that an act of adoption has been accomplished must show that every essential requirement has been complied with." Estate of Taggart, 190 C. 493, 498; see also Adoption of McDonnell, 77 CA2d 805.

Short of establishing legal adoption there is no way for the taxpayer in the instant case to justify a dependency credit, even though he has provided the child's entire support during the taxable year and however laudable his humanitarian motives may be. It is concluded that a decree of adoption must have been entered before a dependency credit can be allowed for a "legally adopted child."