

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  <b>LETICIA PEREZ RIVAS</b>  <hr style="width: 40%; margin-left: 0;"/>	) ) ) ) ) )	OTA Case No. 18011076  Date Issued: April 11, 2018
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**OPINION**

Representing the Parties:

For Appellant:	Leticia Perez Rivas
For Franchise Tax Board:	Lyn Gidding-Theobald, Legal Assistant
For Office of Tax Appeals:	Josh Lambert, Tax Counsel

D. BRAMHALL, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19045,<sup>1</sup> Leticia Perez Rivas (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) determining \$1,308 of additional tax, and applicable interest, for the 2014 tax year.

**ISSUE**

Has appellant established that respondent erred in denying her qualification for the head of household (HOH) filing status?

**FACTUAL FINDINGS**

1. Appellant filed a timely 2014 California Resident Income Tax Return (Form 540) in which she claimed the HOH filing status. Appellant claimed her sons as her dependents.
  2. Appellant’s return included a 2014 Head of Household Schedule (Form 4803e) wherein she claimed one of her sons as her qualifying person for the HOH filing status.
- Appellant stated that: (1) her son was 17 years old in 2014; (2) his gross income was less

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<sup>1</sup> Unless otherwise indicated, all statutory references are to sections of the Revenue and Taxation Code.

than \$3,950 in 2014; (3) she provided more than one-half of the support for her son; (4) he was a full-time student at a recognized education institution for at least five months during 2014; (5) he lived with her the entire year of 2014; (6) he was not married as of December 31, 2014; (7) appellant was married or a registered domestic partner (RDP) as of December 31, 2014; and (8) appellant lived with her spouse from November 1, 2014, to December 31, 2014.

3. Based on the information provided, respondent issued a Notice of Proposed Assessment (NPA) on October 7, 2015, that denied the HOH filing status. The NPA explained that appellant must be either unmarried and not an RDP, or meet the requirements to be considered unmarried and not an RDP, in order to claim the HOH filing status. The NPA stated that because appellant was married and lived with her spouse during all or part of the last six months of the 2014 tax year, she was not “considered unmarried.”
4. The NPA further explained that married individuals may file a tax return using the married/RDP filing jointly filing status. The NPA allowed appellant two dependent exemption credits for her sons and changed her filing status to married/RDP filing separately. The NPA recomputed appellant’s tax liability and proposed to assess additional tax of \$1,308, plus applicable interest, for the 2014 tax year.
5. By letter, appellant protested the NPA, stating that she qualified for HOH filing status due to the fact that she had two children for whom she provided more than one-half of their financial support. Appellant further stated that they did not live with their father, that they lived with her full time, and that she paid for their medical and dental insurance, schooling, clothing, etc.
6. Respondent acknowledged receipt of the protest and reiterated that, based on the information she provided, appellant did not qualify for the HOH filing status because she was married and lived with her spouse from November 1, 2014, through December 31, 2014, which was during the last six months of the 2014 tax year.
7. On January 30, 2017, respondent issued a Notice of Action affirming the NPA.
8. This timely appeal followed.

## DISCUSSION

Section 17042 sets forth the California requirements for the HOH filing status by reference to Internal Revenue Code (IRC) sections 2(b) and 2(c). An individual will be considered an HOH if, among other conditions, the individual is unmarried by the close of the taxable year. (IRC § 2(b)(1).) Here, appellant indicated on her original tax return that she was married as of the end of the 2014 tax year. Therefore, appellant is not entitled to the HOH filing status unless she meets the legal requirements to be considered unmarried for the 2014 tax year.

A married individual is considered unmarried and may avail herself of the HOH filing status if she lived apart from her spouse during the last six months of the taxable year.<sup>2</sup> (IRC § 7703(b)(3).) In her original HOH Schedule, appellant stated that she lived with her spouse from November 1, 2014, through December 31, 2014. In her second HOH Schedule (submitted on appeal), appellant asserted that she and her spouse did not live together during the last six months of the 2014 tax year. Appellant thus has provided information that she was married in 2014 and contradictory information relative to her living arrangements with her husband.

Respondent has not contested the assertion that appellant provided financial support for her children in 2014. However, even though appellant provided support for her children in 2014, and is entitled to dependency exemptions, the requirements for entitlement to dependent exemption credits are different from the requirements for entitlement to the HOH filing status.<sup>3</sup> In this case, appellant originally stated that she lived with her spouse from November 1 – December 31, 2014, a fact which supports respondent's determination that appellant does not qualify for the HOH filing status.

A taxpayer has the burden of proving that he or she qualifies for the HOH filing status. (*Appeal of Richard Byrd*, 84-SBE-167, Dec. 13, 1984.) Respondent's determinations are presumed correct and a taxpayer has the burden of proving that the assessment is erroneous. (*Appeal of Ismael R. Manriquez*, 79-SBE-077, Apr. 10, 1979.) A taxpayer's unsupported assertions are insufficient to satisfy his or her burden of proof. (*Appeal of Aaron and Eloise Magidow*, 82 SBE-274, Nov. 17, 1982; *Appeal of James C. and Monablance A. Walshe*, 75-

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<sup>2</sup> We note that a taxpayer must, in addition, satisfy other conditions to qualify for the HOH filing status.

<sup>3</sup> Appellant provided portions of judicial orders from her 2004 dissolution proceedings to support her claim to the HOH filing status. While this documentation might be considered as support for dependency exemptions for her children, the documents are unrelated to a determination of whether appellant is entitled to the HOH filing status.

SBE-073, Oct. 20, 1975.)

In this case, appellant has provided only conflicting information relative to her marital living arrangements. Such conflicting information is not adequate to meet appellant’s burden of proof to show FTB’s determination to be in error.<sup>4</sup> (*Appeal of Oscar D. And Agatha E. Seltzer*, 80-SBE-705, Nov. 18, 1980.)

HOLDING

Appellant has failed to meet her burden of proof to establish her entitlement to the HOH filing status.

DISPOSITION

The action of FTB in assessing additional tax is sustained.

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Douglas Bramhall  
Administrative Law Judge

We concur:

DocuSigned by:  
  
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Linda C. Cheng  
Administrative Law Judge

DocuSigned by:  
  
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John O. Johnson  
Administrative Law Judge

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<sup>4</sup> In its brief, the FTB has asserted that public information obtained through a LexisNexis search provided evidence that appellant and her husband resided at the same address in 2014. However no documentation was provided to support that assertion and accordingly no weight is given to it in this appeal.