

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 18011049
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MARK ZOBEL) Date Issued: May 31, 2018
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OPINION

Representing the Parties:

For Appellant: Mark Zobel
For Respondent: Lyn Gidding-Theobald, Legal Assistant
For Office of Tax Appeals: Neha Garner, Tax Counsel III

J. JOHNSON, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19045, Mark Zobel (appellant) appeals an action by the Franchise Tax Board (respondent) in proposing additional tax in the amount of \$1,009, plus interest, for the 2014 tax year.

Appellant waived his right to an oral hearing, and therefore this matter is decided based on the written record.

ISSUE

Has appellant shown that he is entitled to the Head of Household (HOH) filing status?

FACTUAL FINDINGS

1. Appellant filed a California income tax return for the 2014 tax year, claiming the HOH filing status and one dependent exemption credit for his daughter. With his return, appellant provided a HOH Audit Questionnaire (Questionnaire) listing his daughter as his qualifying individual and reporting, among other things, that he was married or a registered domestic partner (RDP) as of December 31, 2014, and that he lived with his spouse during all of 2014.

2. Based on the information provided by appellant, respondent issued a Notice of Proposed Assessment (NPA) on October 14, 2015, denying appellant's claim of the HOH filing status. The NPA explained that appellant did not qualify for the HOH filing status because appellant was married and lived with his spouse during the last six months of the year. The NPA allowed appellant the dependent exemption credit that he claimed for his daughter, and revised appellant's filing status to married/RDP filing separately. The NPA proposed additional tax in the amount of \$1,009, plus applicable interest.
3. Appellant protested the NPA on December 14, 2015, stating that he believed he paid all of his taxes for the 2014 tax year. Appellant asserted that he worked full-time to fully support his spouse and daughter. Appellant contended the proposed assessment would cause financial difficulty and requested that respondent cancel the assessment.¹
4. Respondent acknowledged appellant's protest and explained that appellant did not qualify for the HOH filing status because he was married or in a RDP as of December 31, 2014, and lived with his spouse during all or part of the last six months of the taxable year. Respondent informed appellant that he may file an amended return if he desired to use the married filing jointly status.
5. On April 24, 2017, respondent issued a Notice of Action affirming the NPA. This timely appeal followed

DISCUSSION

Issue – Has appellant shown that he is entitled to the Head of Household (HOH) filing status?

R&TC section 17042 sets forth the California requirements for the HOH filing status by reference to Internal Revenue Code sections 2(b) and 2(c).² Section 2(b) provides that, for a person to claim HOH filing status he or she must be unmarried (at the close of the taxable year) and maintain as a home a household that constitutes the principal place of abode, as a member of the household, of a qualifying person for more than one-half of the year. Section 2(c), by incorporating section 7703(b), provides the circumstances under which certain married individuals will be treated as not married for purposes of qualifying for the HOH filing status. In

¹ With regard to appellant's assertions regarding his ability to pay the proposed assessment, once this appeal is final, appellant may wish to consider the collection options provided by respondent, such as the installment payment plan identified in its brief.

² All further statutory references are to the Internal Revenue Code unless otherwise stated.

pertinent part, a married individual will not be considered unmarried and will not qualify for the HOH filing status if the taxpayer's spouse was a member of the taxpayer's household during any portion of the last six months of the tax year. (Int. Rev. Code, § 7703(b)(3).)

On appellant’s HOH Questionnaire, he stated that he was married and lived with his spouse throughout the 2014 tax year. Accordingly, appellant did not meet the requirements under section 7703(b)(3) to be considered “unmarried,” and did not meet the requirements to claim the HOH filing status.

Appellant argues that he already paid his taxes when he filed his tax return, and was assured by respondent’s representatives that he did not have an outstanding tax liability for the 2014 tax year. However, appellant’s statements provided on the HOH Questionnaire submitted with his return indicate that he incorrectly claimed the HOH filing status, and respondent’s NPA corrected his filing status and resulted in the proposed assessment at issue. Appellant has not shown that he met the requirements of the HOH filing status, and therefore has not shown error in respondent’s proposed assessment.

HOLDING

Appellant has failed to establish that he is entitled to the HOH filing status for the 2014 tax year.

DISPOSITION

Respondent’s proposed assessment for the 2014 tax year is sustained.

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John O Johnson
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John O. Johnson
Administrative Law Judge

We concur:
DocuSigned by:
Jeff Angeja
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Jeffrey G. Angeja
Administrative Law Judge

DocuSigned by:
Tommy Leung
0C90542BE88D4E7...
Tommy Leung
Administrative Law Judge