OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	)	OTA Case No. 18010681
	)	
YI ZHAO	)	Date Issued: August 10, 2018
	)	
	)	
	)	

OPINION

Representing the Parties:

For Appellant: Yi Zhao

For Respondent: Claudia L. Cross, Senior Legal Analyst

A. ROSAS, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19045,[1] Yi Zhao ("Appellant") appeals an action by the Franchise Tax Board ("Respondent") proposing additional tax of $1,790, plus interest, for the 2014 tax year. Appellant waived his right to an oral hearing, and therefore we decide this matter based on the written record.

ISSUE

Did Appellant establish error in Respondent's proposed assessment?

FACTUAL FINDINGS

1. Appellant timely filed a 2014 California Resident Income Tax Return (Form 540). He claimed a dependent exemption credit ($333) for his two-year old daughter, S.Z.,[2] and claimed the Head of Household (HOH) filing status.
2. Appellant completed a questionnaire online, stating the he provided more than half of S.Z.'s support in 2014, that S.Z. lived with him 36 days in 2014, and that S.Z. lived with

[1] Statutory references are to the California Revenue and Taxation Code, unless otherwise noted.

[2] Because Appellant's daughter is a minor, only her initials are used instead of her full name.

her mother for the remainder of the year. Appellant also stated he was married as of December 31, 2014, and lived with his spouse for approximately three weeks in 2014.

3. Based on the questionnaire, Respondent issued a Notice of Proposed Assessment (NPA) dated February 10, 2016. The NPA denied the HOH filing status and disallowed the dependent exemption credit. The NPA also revised the filing status to married filing separately (MFS) and proposed to assess additional tax of $2,123, plus interest.

4. Appellant protested the NPA on or about February 26, 2016, and included a check for $1,843.15.[3] While Appellant agreed with most of the changes, he disagreed with the disallowance of the dependent exemption credit. Appellant pointed out: his daughter is a U.S. citizen, and although she lives in China with her mother, Appellant provided 100% of her financial support in 2014.

5. On February 23, 2017, Respondent wrote to Appellant in response to his protest. Respondent restated its conclusion that Appellant did not qualify for either the HOH filing status or the dependent exemption credit. However, the following month, on March 24, 2017, during a telephone conversation with Appellant and his representative, Respondent agreed to revise the NPA and allow the dependent exemption credit. Thus, Appellant would owe an additional tax of $1,790.

6. On April 3, 2017, Respondent issued a Notice of Action (NOA). The NOA revised the NPA to allow the dependent exemption credit for Appellant's daughter. Whereas the standard deduction for HOH equaled $7,984, the standard deductions for either single or MFS equaled $3,992. Based on the standard deduction for single, the NOA determined the taxable income to be $88,227. Per the 2014 California Tax Table, under either single or MFS, the tax on $88,227 was the same: $5,711. The NOA assessed an additional tax of $1,790.[4]

7. In addition, the NOA stated that Appellant's payment of $1,843.15 would be credited to his account for the 2014 tax year effective on February 26, 2016.

8. Appellants filed this timely appeal.

---

[3] The NPA proposed a total additional tax and interest (through February 10, 2016) of $2,176.15. Appellant deducted the $333 dependent exemption credit from this amount; thus, the payment of $1,843.15.

[4] The tax of $5,711, less the personal exemption credit of $108, less the dependent exemption credit of $333, less the original total tax of $3,480, equals $1,790.

DISCUSSION

Did Appellants establish error in Respondent's assessment?

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). One of these requirements is that the taxpayer's qualifying person live with the taxpayer for more than one-half of the tax year. (IRC, § 2(b)(1)(A).) Appellant's daughter lived with him for just 36 days in 2014. Appellant initially claimed the HOH filing status, but Respondent's assessment revised Appellant's filing status from HOH to MFS. Appellant later agreed that he cannot file as HOH, but he argues that he should be allowed to file as single.

It seems Appellant believes that the single filing status would entitle him to a larger tax benefit than MFS. This is incorrect. There is no tax effect, because the single and MFS filing statuses provide Appellant with the same standard deduction ($3,992), the same total tax ($5,711), and, consequently, the same tax deficiency ($1,790).

In any event, the single filing status generally applies if a taxpayer is not married, is divorced, or is legally separated according to state law. A determination of whether a taxpayer is married is made as of the close of the taxable year. (§ 18532.) Here, the information provided by Appellant shows he was married as of December 31, 2014, and although his wife lived in China, there is no evidence that they were legally separated. Thus, Appellant did not provide any evidence to indicate that he is entitled to the single filing status.[5]

IRC section 152 provides that a dependent can be either a "qualifying child" or a "qualifying relative." California conforms to this provision. (§ 17056.) Respondent reconsidered and agreed with Appellant that S.Z. qualifies as Appellant's dependent.

In summary, the parties agree that Appellant cannot file as HOH. The parties also agree that Appellant's daughter, S.Z., entitles him to the dependent exemption credit. Furthermore, Appellant was married as of December 31, 2014, and was not legally separated. Therefore, Appellant did not show that Respondent's use of the MFS filing status was erroneous.

[5] Appellant argues he should be "considered unmarried." Appellant appears to confuse the issue of the single filing status with the issue of being considered not married for purposes of the HOH filing status. However, there is no "considered unmarried" provision that would allow an individual to file a return under the single filing status.

HOLDING

Appellant did not establish error in Respondent's assessment.

DISPOSITION

We sustain Respondent's action in full.

DocuSigned by:
2281E8D466014D1...
Alberto T. Rosas
Administrative Law Judge

We concur:

DocuSigned by:
484A85964FFD4CE...
John O. Johnson
Administrative Law Judge

DocuSigned by:
0CC6C6ACCC6A44D...
Teresa A. Stanley
Administrative Law Judge