

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 18010674
YVONNE BUCIO)
) Date Issued:
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OPINION

Representing the Parties:

For Appellant: Yvonne Bucio

For Respondent: Claudia L. Cross, Senior Legal Analyst

M. Geary, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19045, Ms. Bucio (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) proposing additional tax of \$1,452, plus interest, for the 2014 tax year.

Appellant waived her right to an oral hearing and therefore the matter is being decided based on the written record.

ISSUE

Has appellant shown that she is entitled to claim the Head of Household (HOH) filing status for the 2014 tax year?

FACTUAL FINDINGS

1. Appellant filed a timely California personal income tax return for the 2014 tax year using the HOH filing status and identifying an unrelated adult male, age 45, as her dependent.
 2. Respondent issued appellant a Notice of Proposed Assessment (NPA) proposing additional tax of \$1,452, plus interest, based on the denial of the HOH filing status. The NPA explained that appellant could not claim the HOH filing status because the individual she claimed as a dependent was not a qualifying person for HOH filing status.
 3. Appellant protested the NPA, alleging that no other taxpayer could claim her as a dependent and that the person she claimed as the qualifying person for the HOH filing

status was her dependent from September 2008 through August 2014, when he moved out of appellant's home due to severe medical and mental issues.

4. Respondent acknowledged appellant's protest and later sent appellant a position letter, again stating that appellant did not qualify for the HOH filing status because she had no qualifying person living with her during 2014.
5. Respondent issued a Notice of Action on January 25, 2017, affirming the NPA, and this timely appeal followed.

DISCUSSION

R&TC section 17042 incorporates the requirements for the HOH filing status contained in Internal Revenue Code section 2(b).¹ Section 2(b)(1)(A) provides that, among other requirements, a taxpayer who claims the HOH filing status must have a qualifying person who is either a qualifying child or a dependent as discussed in Section 151. Here, appellant has verified that her intended qualifying person was a 45-year-old unrelated adult male.

Section 2(b)(1)(A)(ii) provides that a dependent can serve as a qualifying person if he or she is a dependent of the taxpayer for which the taxpayer is entitled to a deduction for the taxable year in accordance with section 151. Section 151, in turn, refers back to section 152 for the definition of a dependent. In addition to the qualifying child, discussed above, section 152(d) provides that the definition of dependent can include various relatives, including some who are relatives only by marriage (e.g. son-in-law, and father-in-law); however, unrelated adults are not included. Therefore, the person identified by appellant as her qualifying person is not a qualified dependent for the purpose of determining HOH filing status.

In accordance with the above, we find that appellant did not satisfy the qualifying person requirements of Section 2(b)(1)(A) for the 2014 tax year, and, therefore, she was not entitled to claim the HOH filing status for that year.

¹ All further statutory references are to the Internal Revenue Code unless otherwise stated. R&TC section 17042 also references IRC section 2(c), but that section refers to treating married taxpayers as unmarried for purposes of the HOH filing status, and does not apply here.

HOLDING

Appellant has not shown that she is entitled to claim the HOH filing status for the 2014 tax year.

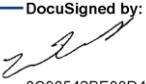
DISPOSITION

Respondent's action in denying appellant's protest of the proposed assessment for the 2014 tax year is sustained.

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Michael F. Geary
Administrative Law Judge

We concur:

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Administrative Law Judge

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Andrew J. Kwee
Administrative Law Judge