

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 18010822
)
SHUYONG WU) Date Issued: May 14, 2018
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_____)

OPINION

Representing the Parties:

For Appellant: Shuyong Wu
For Respondent: Lyn Gidding-Theobald, Legal Assistant

N. ROBINSON, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19045,¹ Shuyong Wu (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) in denying appellant’s protest against a proposed assessment of personal income tax in the amount of \$1,791.00 plus applicable interest for the 2014 tax year.

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

ISSUE

Is appellant entitled to the head of household filing status for the 2014 tax year?

FACTUAL FINDINGS

1. Appellant was married as of December 31, 2014.
2. With appellant’s tax return for the 2014 tax year, he filed a Head of Household Schedule (Form 4803e) claiming his daughter as a qualifying person for the head of household status.
3. Appellant stated in the Form 4803e that he lived with his spouse during the tax year from January 1 to January 22, 2014, and from December 20 to December 31, 2014.

¹ Unless otherwise indicated, all “Section” references are to sections of the California Revenue and Taxation Code.

4. On December 9, 2015, FTB issued a Notice of Proposed Assessment (NPA) denying appellant's head of household filing status. The NPA explained that married taxpayers who lived with their spouse during all or part of the last six months of the year cannot be considered unmarried and do not qualify for head of household filing status.
5. Appellant submitted a December 21, 2015 protest letter and a July 10, 2017 appeal letter stating that he did not live with his spouse in last six months of 2014. This statement conflicted with the information set forth in appellant's Form 4803e, in which appellant stated that he lived with his spouse from December 20 to December 31, 2014.
6. In correspondence dated March 16, 2017, respondent replied to appellant's December 21, 2015, protest letter requesting that appellant provide a notarized statement, signed under penalty of perjury, from appellant's spouse that identifies the periods of time, if any, that she lived in appellant's household during 2014. Appellant did not respond to this opportunity to reconcile previously made inconsistent statements regarding whether his spouse resided in appellant's household in the last six months of 2014.
7. FTB issued a Notice of Action (NOA) on June 22, 2017, which affirmed the NPA.
8. This timely appeal followed.

DISCUSSION

It is well-settled that once respondent shows that its assessment was reasonable and rational, its determination is presumed to be correct, and a taxpayer has the burden of proving error. (*Appeal of Michael E. Myers*, 2001-SBE-001, May 31, 2001; *Todd v. McColgan* (1949) 89 Cal.App.2d 509.) Taxpayers have the burden of proof to substantiate that they are entitled to head of household filing status. (*Appeal of Richard Byrd*, 84-SBE-167, Dec. 13, 1984.)² California Code of Regulations, title 18, section 30705, subdivision (c), states that unless there is an exception provided by law, "the burden of proof requires proof by a preponderance of the

² Pursuant to the Office of Tax Appeals Rules for Tax Appeals, California Code of Regulations, tit. 18, § 30501(d)(3), precedential opinions of the State Board of Equalization (BOE) that were adopted prior to January 1, 2018, may be cited as precedential authority to the Office of Tax Appeals unless a panel removes, in whole or in part, the precedential status of the opinion. BOE's precedential opinions are available for viewing on the BOE's website: <http://www.boe.ca.gov/legal/legalopcont.htm#boeopinion>.

evidence.”³ Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.)

In determining a taxpayer’s eligibility to file as the head of household, it must first be determined whether the taxpayer is considered married or unmarried on the last day of the tax year for which the head of household status is being claimed. The filing requirements for the head of household status in California (§ 17042) mirror the federal requirements in Internal Revenue Code (IRC) sections 2(b) and (c), and 7703(b)(3). A taxpayer who is legally separated under a divorce decree will be considered unmarried. (IRC § 2(b)(2)(A).) If the taxpayer is married and did not live with their spouse during the last six months of the tax year, the taxpayer also will be considered unmarried for purposes of claiming the head of household status. (IRC § 7703(b)(3).)

Appellant stated in his appeal that he was married on the last day of 2014.⁴ Whether appellant can nonetheless be considered unmarried for tax purposes for the 2014 tax year is the important question that remains. When appellant filed his 2014 return, he included with that return a 2014 Head of Household Schedule (FTB 4803e) in which he specified that he lived with his wife during the periods January 1 through January 22, 2014 and December 20 through December 31, 2014.

Appellant inconsistently stated in his December 21, 2015 protest letter and later in his appeal that he did not live with his spouse, “at any time during the last six months of 2014.”⁵ In his appeal, appellant also disclosed that he did not recall what he had stated in his tax return regarding whether he lived with his spouse during the last six months of 2014. Furthermore, after receiving appellant’s December 21, 2015 protest letter, respondent sent appellant correspondence on March 16, 2017 pointing out this inconsistency and requesting further proof in the form of a declaration under penalty of perjury with the dates, if any, his spouse lived with

³ A preponderance of evidence means that the taxpayer must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.)

⁴ Appellant submitted with his appeal a December 30, 2014 Judgment of Dissolution and Notice of Entry of Judgment. This document is an interlocutory order that specifies that the final dissolution of his marriage would not occur until July 1, 2015. Interlocutory judgments are not dissolutions of marriage for purposes of filing as head of household. (*Appeal of Mohammed M. Siddiqui*, 72-SBE-028, Sept. 14, 1972.)

⁵ Both the statements made in his appeal and tax return were declarations under penalty of perjury, however the statements made in appellant’s December 21, 2015 protest letter were not.

him in the last half of 2014. Appellant has not provided any information to reconcile his inconsistent statements about whether he lived with his spouse in the last six months of the 2014 tax year.⁶


We find that appellant's inconsistent statements as to whether he lived with his spouse in the last six months of 2014 are not credible evidence and do not sustain appellant's burden of proof. Furthermore, respondent asked appellant for additional proof to assist in clarifying an inconsistent record; however, appellant failed to respond. Appellant has failed to prove that he was either unmarried on the last day of the 2014 tax year or that he was considered unmarried pursuant to IRC section 7703(b)(3). Thus, appellant has failed to show that he is entitled to head of household filing status for 2014.

HOLDING

We hold that appellant has failed to prove entitlement to the head of household filing status for the 2014 tax year.

DISPOSITION

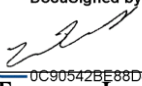
Respondent's proposed assessment of personal income tax and interest is sustained.

DocuSigned by:

BA2E23444DB4A6...
Neil Robinson
Administrative Law Judge

We concur:

DocuSigned by:

484A85964FFD4CE...
John Johnson
Administrative Law Judge

DocuSigned by:

0C90542BE88D4E7...
Tommy Leung
Administrative Law Judge

⁶ Appellant failed to provide this information despite being requested to do so both in respondent's March 16, 2017 correspondence and in respondent's brief.