

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 18010853
)
) Date Issued:
CALVIN ITO)
)
_____)

OPINION

Representing the Parties:

For Appellant: Robert Yadao, Tax Manager
Murphy, Murphy & Murphy, Inc.

For Respondent: Donna L. Webb, Staff Operation Specialist

J. JOHNSON, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19045, Calvin Ito (appellant) appeals an action by the Franchise Tax Board (respondent) in proposing additional tax in the amount of \$1,749, 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 claim the Head of Household (HOH) filing status?

FACTUAL FINDINGS

1. Appellant filed a timely 2014 California income tax return using the HOH filing status. Appellant identified his son as his qualifying person for the HOH filing status, and reported that, during 2014, his son was over 18 years of age, not a full-time student, and had gross income of at least \$3,950.
2. Subsequently, respondent issued appellant a Notice of Proposed Assessment (NPA) proposing additional tax of \$1,749, plus interest, based on the denial of the HOH filing

status. The NPA explained that appellant could not claim the HOH filing status because his qualifying person's gross income exceeded the allowable amount for the year in question, his qualifying person did not meet the age requirement, and his qualifying person did not qualify as his dependent.¹

3. Appellant protested the NPA, and asserted that his son was under the age of 23 and suffered from a medical condition that resulted in over \$10,000 of medical expenses. Appellant provided several pages of documents evidencing medical expenses for his son during the year at issue.
4. Respondent affirmed its position in a response to appellant's protest and asked appellant to provide any additional information to support his position. Respondent subsequently affirmed its NPA with a Notice of Action on March 30, 2017. This timely appeal followed.
5. In addition to the request for any additional information sent to appellant prior to issuance of the Notice of Action, respondent requested in its brief on appeal that appellant provide specific types of evidence to support his claims that his son was a full-time student or was permanently and totally disabled in 2014. Appellant did not respond to either request.

DISCUSSION

R&TC section 17042 incorporates the requirements for the HOH filing status as contained in Internal Revenue Code section 2(b).² 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: 1) a qualifying child; or 2) a dependent as discussed in Section 151. Taxpayers have the burden of producing sufficient evidence to substantiate that they are entitled to the head of household filing status, and the presumption of correctness that attends respondent's determination cannot be overcome by unsupported statements. (*Appeal of Richard Byrd*, 84-SBE-167, Dec. 13, 1984.)

1) Qualifying Child

Section 2(b)(1)(A)(i) provides the requirements for a qualifying child by reference to

¹ As part of its proposed assessment, respondent denied a claimed dependent exemption.

² All further statutory references are to "Sections" of 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.

Section 152(c). In pertinent part, Section 152, subsections (c)(1)(C) and (c)(3)(A), provide that a qualifying child must be under the age of 19 or, if a full-time student, under the age of 24 as of the end of the tax year. With his return, appellant indicated that his intended qualifying person, his son, was not under the age of 19 as of the end of the tax year, and was not a full-time student in 2014. On appeal, appellant instead contends that his son was a full-time student. However, appellant has not provided any evidence to support this changed position. Appellant's contradictory and unsupported statement fails to sufficiently show error in respondent's determination as to this issue. Accordingly, appellant has not shown that his son satisfies the age requirements of a qualifying child under Section 152(c)(3)(A).

Section 152(c)(3)(B) provides a special rule dictating that the age requirements of Section 152(c)(3)(A) shall be treated as met for any individual who is "permanently and totally disabled." "Permanently and totally disabled" means that an individual is "unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." (Section 22(e)(3).)

While appellant asserts that he spent over \$10,000 in medical expenses on his son, and provides documents showing some of those expenses, the status of permanently and totally disabled is not determined by medical expenses, but rather by the inability to engage in gainful activity. Information was not provided as to appellant's son's employment history, though appellant did assert with his return that his son had gross income in 2014 of at least \$3,950. Appellant's son cannot "be considered to be permanently and totally disabled [for purposes of this appeal] unless [appellant] furnishes proof" of such condition, and appellant has not satisfied that burden. (Section 22(e)(3).) Accordingly, the special rule in Section 152(c)(3)(B) does not apply, and appellant's son does not meet the age requirements to be considered a qualifying child.

2) Dependent

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. Section 152(a) provides that "dependent" means a qualifying child (discussed above) or a qualifying relative. In pertinent part, Section 152(d)(1)(B) provides

that a qualifying relative must have gross income for the calendar year that is less than the exemption amount for that tax year (as defined in Section 151(d)). The exemption amount for the 2014 tax year was equal to \$3,950. Appellant has verified that his son had gross income of \$3,950 or greater in 2014, and therefore does not satisfy the requirements of a qualifying relative under Section 152(d).

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

HOLDING

Appellant has not shown that he is entitled to claim 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:

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Neil Robinson
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Neil Robinson
Administrative Law Judge

DocuSigned by:
Michael F Geary
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Michael F. Geary
Administrative Law Judge