

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 18010885
)
RICHARD OSMOND) Date Issued: August 8, 2018
)
)
)
_____)

OPINION

Representing the Parties:

For Appellant: Richard Osmond

For Respondent: Joel Smith, Tax Counsel

For Office of Tax Appeals: Josh Lambert, Tax Counsel

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19045,¹ Richard Osmond (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) proposing an assessment of additional tax of \$2,039, plus interest, for the 2014 tax year.

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

ISSUE

1. Has appellant shown that he is entitled to claim head of household (HOH) filing status for tax year 2014?

FACTUAL FINDINGS

1. Appellant filed a California Resident Income Tax Return (Form 540) for the 2014 tax year in which he claimed the HOH filing status.

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

2. In his return, appellant claimed a dependent exemption credit for his daughter. With his return, appellant filed a 2014 HOH Schedule (FTB 4803e) claiming his daughter was his qualifying child for the HOH filing status for the 2014 tax year. Appellant checked boxes indicating that: (1) his daughter was 21 years old as of December 31, 2014; (2) that her gross income was not less than \$3,950 in 2014; (3) that he provided more than one-half of the support for his daughter in 2014; (4) that his daughter was not a full-time student at a recognized educational institution for at least 5 months during 2014; (5) that his daughter lived with him for the entire year in 2014; (6) that his daughter was not married as of December 31, 2014; and (7) that he was not married as of December 31, 2014.
3. Respondent issued a Notice of Proposed Assessment (NPA) on October 7, 2015, denying appellant the HOH filing status for tax year 2014. The NPA disallowed the HOH filing status on two bases: a) that the qualifying relative claimed by appellant had gross income that exceeded the allowable amount of \$3,950 for tax year 2014; and b) that the qualifying child claimed by appellant was not a full-time student under the age of 24 for at least five months of 2014. The NPA additionally disallowed appellant's exemption credit and the non-refundable renter's credit.² The NPA recomputed appellant's tax liability based on the single filing status, and proposed to assess an additional tax of \$2,039, plus interest.
4. Appellant protested the NPA, and submitted a revised 2014 HOH Schedule (FTB 4803e), claiming that his daughter was a full-time student at a recognized educational institution for at least five months during 2014. The revised schedule stated that his daughter had gross income exceeding \$3,950 for that year. Appellant submitted an "expense worksheet" indicating he had paid his daughter's expenses totaling \$15,600 for that year.
5. A Tuition Statement (Form 1098-T) shows that appellant's daughter was enrolled at Ohlone College as at least a half-time student for a period beginning early in 2014.³
6. FTB issued a Notice of Action (NOA) on February 3, 2017, affirming the proposed additional tax of \$2,039, plus interest. The NOA reiterated respondent's position that

² Respondent disallowed the credits based on changing appellant's filing status to single. His adjusted gross income exceeded the \$25,000 maximum income allowable for an individual with a single filing status to claim the renter's credit for 2014. (§17053.5.)

³ In a telephone conference, appellant was given the opportunity to provide documents supporting his daughter's full-time student status. He declined to do so.

appellant's daughter did not qualify him for HOH status because her income exceeded the maximum allowable to file as HOH, and that appellant did not substantiate that his daughter was a full-time student for at least five months in 2014.

7. Appellant filed this timely appeal.

DISCUSSION

1. Issue - Has appellant shown that he was entitled to claim HOH filing status for tax year 2014?

Respondent's determination of appellant's HOH status is presumed correct, and a taxpayer bears the burden of proof to show that it is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509.) An unsupported declaration that a taxpayer qualifies for HOH filing status is insufficient, in the absence of other evidence, to satisfy appellant's burden of proof. (*Appeal of Ismael R. Manriquez*, 79-SBE-077, Apr. 10, 1979.)⁴ 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.)

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). IRC section 2(b) generally provides that, for a person to claim the HOH filing status, he or she must be unmarried and maintain a household that constitutes the principal place of abode of a qualifying person for more than one-half of the taxable year. A qualifying person can be either a qualifying child or a qualifying relative. (IRC, § 152(a).) To be considered a taxpayer's qualifying child, the individual must be: (1) under 19 years of age; or (2) a full-time student under 24 years of age; or (3) disabled. (IRC, §§ 152(c)(3)(A), 152(f)(2).)

On his original HOH Schedule, appellant reported that his daughter was 21 years old as of December 31, 2014, and not a full-time student in 2014. When he protested the NPA, appellant modified his response and claimed that his daughter had been a full-time student for at least five months in 2014. In his appeal, appellant further claimed that his daughter had been a student for the spring semester that year. In support of his contention, appellant provided a 2013 Tuition Statement (Form 1098-T). The form shows that appellant's daughter was enrolled in

⁴ Board of Equalization's (BOE) precedential opinions are available for viewing on the BOE's website: <http://www.boe.ca.gov/legal/legalopcont.htm#boeopinion>.

Ohlone College for an academic period that began sometime between January and March, 2014. The form additionally shows that appellant’s daughter was at least a half-time student during that time. Respondent’s argument that the Form 1098-T only applies to tax year 2013 is incorrect. Box 7 on that form is checked and indicates that the tuition statement “includes amounts for an academic period beginning January – March 2014.” However, the Form 1098-T does not show that appellant’s daughter was enrolled as a full-time student, or that she continued full-time enrollment for at least five months of 2014. Without further substantiation, appellant has not met his burden to show that respondent erred in determining that his daughter was not a “qualifying child” under the statute.


Although appellant’s daughter is not a qualifying child, appellant may still claim HOH filing status if additional requirements are met. In order for appellant to claim HOH filing status, he must have a qualifying child *or* a qualifying relative. (IRC, § 152(a), emphasis added.) IRC section 152(d) lists the requirements for a qualifying relative, with a provision that a qualifying relative’s gross income for the calendar year is less than the dependent exemption amount for the tax year for which the filing status was claimed. Appellant reported on his HOH questionnaire, and amended questionnaire, that his daughter had gross income exceeding \$3,950 in 2014. According to respondent’s records, appellant’s daughter filed a 2014 California return on which she reported gross income of \$7,503. Because appellant’s daughter had gross income greater than the exemption amount of \$3,950 in 2014, she did not meet the gross income test to be a qualifying relative.

HOLDING

Appellant failed to establish that his daughter was either a qualifying child or a qualifying relative for tax year 2014. Therefore, appellant is not entitled to the HOH filing status for that year.

DISPOSITION

Respondent’s action in denying appellant’s HOH filing status for 2014 is affirmed.

DocuSigned by:

0CC6C6ACCC6A44D...
Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:

Jeff Angeja

6D390BC3CCB14A9...

Jeffrey G. Angeja

Administrative Law Judge

DocuSigned by:

John O Johnson

484A85964FFD4CE...

John O. Johnson

Administrative Law Judge