

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 18011052  
)  
**LUPITA SANCHEZ** ) Date Issued: August 10, 2018  
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)  
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**OPINION**

Representing the Parties:

For Appellant: Lupita Sanchez

For Respondent: Rachel Abston, Senior Legal Analyst

For Office of Tax Appeals: Tom Hudson, Tax Counsel III

N. DANG, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19045,<sup>1</sup> Lupita Sanchez (“appellant”) appeals an action of the Franchise Tax Board (FTB or “respondent”) on appellant’s protest against respondent’s proposed assessment, which substituted her claimed head of household (HOH) filing status with the single or married/registered domestic partnership filing separately status, resulting in additional tax of \$924, plus interest, for the 2013 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 established that she is entitled to the HOH filing status for the 2013 tax year?

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<sup>1</sup> Unless otherwise indicated, all further statutory references are to sections of the California Revenue and Taxation Code.

### FACTUAL FINDINGS

1. Appellant filed a timely California income tax return for the 2013 tax year using the HOH filing status, claiming dependent exemptions for her brother and her daughter.
2. In response to a HOH Audit Questionnaire sent by respondent, on October 20, 2014, appellant stated in relevant part and under penalty of perjury that she was married as of December 31, 2013, and that she lived with her spouse from January 1, 2013, to March 15, 2013, and from October 1, 2013, to October 28, 2013.
3. Based on appellant's response to the HOH Questionnaire indicating that she was married and lived with her spouse during all or part of the last six months of the 2013 tax year (conditions which disqualify a taxpayer from claiming the HOH filing status), on July 10, 2015, respondent issued a Notice of Proposed Assessment (NPA) substituting appellant's HOH filing status for the 2013 tax year with the single or married/registered domestic partnership filing separately status, which resulted in an additional tax of \$924 for that year.
4. By letter dated August 11, 2015, appellant protested the NPA, contending that in her October 20, 2014 response, that she had inadvertently given information for 2012, the year she was married, instead of the 2013 tax year when she was no longer married.
5. On March 30, 2017, FTB issued a Notice of Action affirming the NPA, and this timely appeal followed.
6. On April 29, 2017, appellant submitted an updated response to respondent's HOH Audit Questionnaire, in which she now states, under penalty of perjury, that she was unmarried as of December 31, 2013, and did not live with her spouse at any time during 2013.
7. Appellant has not submitted any corroborating evidence in support of her assertion that she was qualified to claim the HOH filing status for the 2013 tax year.

### DISCUSSION

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) provides that, generally, for a person to claim the HOH filing status, the person must be unmarried and must maintain a household that constitutes the principal place of abode of a qualifying person for more than one-half of the year. However, under certain circumstances, a married taxpayer may be

treated as unmarried for purposes of the HOH filing status, in accordance with IRC sections 2(c) and 7703(b). IRC section 7703(b) also sets forth the requirement that: (1) the taxpayer must file a separate income tax return; (2) the taxpayer must maintain a household that constitutes the principal place of abode of a child for more than one-half of the year; (3) the taxpayer must provide over one-half of the cost of maintaining such household during the year; and (4) during the last six months of the tax year, the taxpayer's spouse must not have been a member of the household at any time.

A taxpayer has the burden of proving entitlement to the HOH filing status. (*Appeal of Richard Byrd*, 84-SBE-167, Dec. 13, 1984.)<sup>2</sup> 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.)

As noted above, appellant asserts on appeal that she was unmarried and did not live with her spouse during the 2013 tax year. However, appellant has not provided any evidence to support this assertion, nor has she provided any other evidence to substantiate her claimed HOH filing status for the 2013 tax year. Further, appellant submitted two different HOH Audit Questionnaires with conflicting answers, both signed under penalty of perjury, which makes appellant's statements as contained in these documents unreliable at best. Therefore, there is no credible evidence in the written record supporting appellant's claimed HOH filing status.

#### HOLDINGS

Appellant has not met her burden of establishing entitlement to the HOH filing status for the 2013 tax year.

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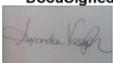
<sup>2</sup> Published precedential decisions of the State Board of Equalization (BOE), designated by "SBE," may be found on the BOE's website: <http://www.boe.ca.gov/legal/legalopcont.htm#boeopinion>. The Office of Tax Appeals (OTA) is the successor-in-interest to the BOE with regard to income tax appeals. Therefore, precedential BOE opinions that were adopted prior to January 1, 2018, are precedential authority before the OTA. (Cal. Code Regs., tit. 18, § 30501(d)(3).)

DISPOSITION

Respondent's action in denying appellant's protest of the proposed assessment for the 2013 tax year is sustained.

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*Nguyen Dang*  
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Nguyen Dang  
Administrative Law Judge

We concur:

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Amanda Vassigh  
Administrative Law Judge

DocuSigned by:  
  
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Teresa Stanley  
Administrative Law Judge