

FACTUAL FINDINGS

1. Appellant filed a 2013 California Resident Income Tax Return (Form 540) in which she claimed the HOH filing status, claiming her fiancé as her dependent. Appellant also claimed the standard HOH deduction of \$7,812 and a refund of \$821.
2. Appellant filed a federal Form 1040 claiming HOH status and a standard deduction of \$8,950, instead of itemized deductions.
3. Respondent processed appellant's return and corrected her errors in the computation of exemption credits as well as the incorrect amount of tax based on the HOH filing status, resulting in an increase in the refund amount to \$1,587.
4. On March 18, 2015, respondent sent appellant a Head of Household Audit Questionnaire, on which appellant claimed Joshua Lindenmuth, her fiancé, as her qualifying person. According to appellant's responses, Joshua Lindenmuth was 25 years old and unmarried as of December 31, 2013, had gross income less than \$3,900 for 2013, and lived with appellant, who provided for more than half of his support, for the entire year.
5. Based on the information provided, respondent issued a Notice of Proposed Assessment (NPA) on July 10, 2015, that denied appellant the HOH filing status. The NPA stated that because appellant did not have a qualifying person living with her for 2013, respondent recomputed appellant's tax liability based on a revised single filing status, resulting in additional tax of \$1,092, plus applicable interest.
6. By letter, appellant protested the NPA, stating that while she agreed with respondent's recalculations, she did not agree with the explanation.
7. Respondent acknowledged receipt of the protest and explained that appellant did not qualify for the HOH filing status because fiancés and non-relatives cannot be claimed as qualifying persons for the HOH filing status.
8. On March 30, 2017, respondent issued a Notice of Action affirming the NPA.
9. This timely appeal followed.

DISCUSSION

Issue 1: Has appellant established that respondent erred in denying her HOH filing status?

A taxpayer has the burden of proving that he or she qualifies for the HOH filing status.

(*Appeal of Byrd*, 84-SBE-167, Dec. 13, 1984.²) 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). An individual will be considered a qualifying person for HOH status if he or she is a statutorily listed relative. (IRC § 2(b)(1); § 152(d)(2).) Fiancés are not among the qualifying persons.

Here, appellant, on her appeal letter dated April 18, 2017, concedes that she erroneously claimed the HOH filing status by incorrectly marking the box based on what the Internal Revenue Service (IRS) allowed. Attached to appellant's appeal letter is the original Form 540 that appellant appears to amend, and the single filing status box is checked. Therefore, appellant is not entitled to claim the HOH filing status for the 2013 tax year because she did not have a qualifying person living with her.

Issue 2: Has appellant established that respondent erred in failing to allow her to use itemized deductions?

Income tax deductions are a matter of legislative grace, and a taxpayer who claims a deduction has the burden of proving by competent evidence that he or she is entitled to that deduction. (*New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435.) Respondent's determinations are presumed correct and a taxpayer has the burden of proving that the assessment is erroneous. (*Appeal of Manriquez*, 79-SBE-077, Apr. 10, 1979.) A taxpayer's unsupported assertions are insufficient to satisfy his or her burden of proof. (*Appeal of Magidow*, 82-SBE-274, Nov. 17, 1982.) California law, like federal law, allows individual taxpayers to either take a standard deduction or itemized deductions to compute their taxable income. (§§ 17073.5, 17201; IRC §§ 63, 161.) Itemized deductions are reported on IRS Schedule A and filed with corresponding income tax returns. For California purposes, itemized deductions are reported on Form Schedule CA.

Here, on appellant's original California Form 540, the box for standard HOH deduction of \$7,612 is checked, and no Form Schedule CA (540) itemizing her deductions was attached. Enclosed with appellant's appeal letter, the same return was manually revised to reflect the standard single (or married filing separately) deduction of \$3,906, again, without any attempt to

² Pursuant to California Code of Regulations, title 18, section 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 viewable on BOE's website: <http://www.boe.ca.gov/legal/legalopcont.htm>.

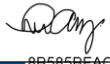
itemize deductions. In other words, contrary to appellant’s contention that she submitted a Schedule A claiming itemized deductions, both the original and revised returns indicate that the standard deduction, either HOH status or single status, was claimed. Without documentation showing that she itemized deductions against her gross income, respondent correctly processed appellant’s return using the standard deduction as claimed on her return.

HOLDING

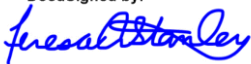
1. Appellant has failed to establish that she is entitled to the HOH filing status for 2013.
2. Appellant has failed to establish that respondent erred by failing to allow her to itemize deductions.


DISPOSITION

The action of FTB is assessing additional tax is sustained.

DocuSigned by:

 8B585BFAC08946D...
 Linda C. Cheng
 Administrative Law Judge

We concur:

DocuSigned by:

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

DocuSigned by:

 0D390BC3CGB14A9...
 Jeffrey G. Angeja
 Administrative Law Judge