

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 18011357  
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**DONALD SCOTT OLSEN** ) Date Issued: July 11, 2018  
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**OPINION**

Representing the Parties:

For Appellant: Donald Scott Olsen

For Respondent: Claudia L. Cross, Senior Legal Analyst

M. GEARY, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19045, Mr. Olsen (appellant) appeals an action by the Franchise Tax Board (FTB) proposing additional tax of \$1,779, plus interest, for the 2014 tax year.

Appellant waived his right to an oral hearing. Therefore, we decide the matter based on the written record.

**ISSUE**

Has appellant shown that he is entitled to claim the Head of Household (HOH) filing status for the 2014 tax year?

**FACTUAL FINDINGS**

1. Appellant filed a timely California personal income tax return and a Head of Household Schedule for the 2014 tax year using the HOH filing status and identifying his 31-year-old fiancée, Ms. Connie Y. Yang, as his dependent.
2. On October 14, 2015, FTB issued appellant a Notice of Proposed Assessment (NPA) proposing additional tax of \$1,779, plus interest, based on the denial of the HOH filing status. The NPA explained that appellant could not claim the HOH filing status because the individual he claimed as a dependent was not a qualifying person for HOH filing status.

3. By letter dated October 21, 2015, appellant protested the NPA, alleging that he was single during 2014 and that the person he claimed as the qualifying person for the HOH filing status was his dependent during that year.
4. FTB acknowledged appellant's protest and on November 3, 2016, sent appellant a position letter, again stating that appellant did not qualify for the HOH filing status because a claimed HOH may not use a non-relative as his or her qualifying dependent.
5. FTB issued a Notice of Action on March 30, 2017, affirming the NPA, and this timely appeal followed.

### DISCUSSION

R&TC section 17042 incorporates the requirements for the HOH filing status contained in Internal Revenue Code section 2(b).<sup>1</sup> 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 a qualifying child or a dependent as discussed in Section 151. Here, appellant has verified that his intended qualifying person was a 31-year-old unrelated adult female, his fiancée.

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 to section 152 for the definition of a dependent. In addition to a qualifying child (discussed above), section 152(d) provides that the definition of dependent can include various relatives, including some who are relatives only by marriage (e.g. son-in-law, and father-in-law); however, unrelated adults are not included. Therefore, the person identified by appellant as his qualifying person is not a qualified dependent for determining HOH filing status.

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

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<sup>1</sup> All further statutory references are to 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.

HOLDING

Appellant is not entitled to claim the HOH filing status for the 2014 tax year when his alleged dependent was an unrelated adult.

DISPOSITION

We sustain FTB's denial of appellant's protest of the proposed assessment for the 2014 tax year.

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Michael F. Geary  
Administrative Law Judge

We concur:

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Linda C. Cheng  
Administrative Law Judge

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Grant S. Thompson  
Administrative Law Judge