

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 18011749
)
) Date Issued:
BINH BUI)
)
_____)

OPINION

Representing the Parties:

For Appellant: Binh Bui
For Respondent: Rachel Abston, Senior Legal Analyst

M. Geary, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19045, Mr. Bui (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) proposing additional tax in the amount of \$1,437, plus interest, for the 2014 tax year.

Appellant waived his right to an oral hearing and, 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 income tax return for the 2014 tax year using the HOH filing status and identifying Thao Khuc as his dependent.¹ Appellant claimed and received a refund of \$564.

¹ Although appellant’s 2014 tax return identifies Mr. Khuc as his “brother,” appellant has since verified that his qualifying person, Mr. Khuc, is his Registered Domestic Partner.

2. On February 22, 2016,² appellant completed an HOH Audit Questionnaire, on which he indicated that Mr. Khuc was also his qualifying person for the HOH filing status. In the Audit Questionnaire, appellant identified Mr. Khuc as his Registered Domestic Partner (RDP), and he provided a copy of an August 25, 2014 Certificate of Registered Partnership as proof of that relationship.
3. Respondent issued appellant a Notice of Proposed Assessment (NPA) proposing additional tax of \$1,437, plus interest, based on the denial of the HOH filing status. The NPA explained that appellant could not claim the HOH filing status because Mr. Khuc did not qualify as appellant's dependent.
4. Appellant protested the NPA, stating Mr. Khuc is his RDP and that they have been living together since 2011.
5. Respondent acknowledged appellant's protest and later sent appellant a position letter, again stating that appellant did not qualify for the HOH filing status because he was in a registered domestic partnership during all of 2014, and appellant's RDP was not a qualifying person.
6. Respondent issued a Notice of Action on April 24, 2017, affirming the NPA, and this timely appeal followed.

DISCUSSION

R&TC section 17042 incorporates the requirements for the HOH filing status as contained in Internal Revenue Code section 2(b).³ 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 his RDP.

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

² While appellant dated his responses "2/22/2014," respondent mailed the Questionnaire to appellant on February 1, 2016.

³ 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.

definition of a dependent. In addition to the 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), but it does not identify a spouse or RDP. Appellant’s RDP does not satisfy the requirements of a qualifying relative under Section 152(d).⁴

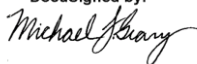
In accordance with the above, appellant’s RDP does not satisfy the qualifying person requirements of Section 2(b)(1)(A), and therefore appellant is not entitled to claim the HOH filing status for the 2014 tax year.

HOLDINGS

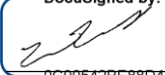
Appellant has not shown that he is entitled to claim the HOH filing status for the 2014 tax year.

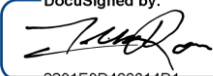
DISPOSITION

Respondent’s proposed assessment for the 2014 tax year is sustained.

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Michael F. Geary
Administrative Law Judge

We concur:

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Tommy Leung
Administrative Law Judge

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Alberto T. Rosas
Administrative Law Judge

⁴ We note that the FTB has suggested, at page 3 of its Opening Brief, that Appellant *may* be able to reduce his 2014 tax liability from the amount determined in the NPA by filing an amended return for 2014 using the “married/RDP filing jointly” status. Appellant and his registered domestic partner, Mr. Khuc, would have to file an amended return jointly, including their combined income for 2014, and filing their joint return before the 2014 California statute of limitations expires on or about April 15, 2019.