

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  <b>JERRY NEUKAM, JR.</b>  <hr style="width: 40%; margin-left: 0;"/>	) ) ) ) ) )	OTA Case No. 18011206  Date Issued: September 20, 2018
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**OPINION**

Representing the Parties:

For Appellant:	Jerry Neukam, Jr.
For Respondent:	Lyn Gidding-Theobald, Legal Assistant
For Office of Tax Appeals:	Neha Garner Counsel III

J. ANGEJA, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19045,<sup>1</sup> appellant appeals an action by the Franchise Tax Board (FTB) against a proposed assessment in the amount of \$1,016 for 2014.

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

**ISSUE**

Whether appellant is entitled to the head of household (HOH) filing status for 2014.

**FACTUAL FINDINGS**

1. Appellant filed a timely 2014 California tax return (Form 540) on which he claimed the HOH filing status. Appellant also claimed a dependent exemption credit for his fiancé’s daughter, Erika Bazan, and identified her relationship to him as “other.” Appellant’s return included a 2014 HOH Audit Questionnaire (Questionnaire), in which he provided

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<sup>1</sup> Unless otherwise indicated, all statutory references are to sections of the Revenue and Taxation Code. Section 19045 states that taxpayers have 30 days to appeal FTB’s action upon taxpayer’s protest to the board (Board of Equalization). Effective July 1, 2017, Section 20(b) was amended to read, “Unless the context requires otherwise, as used in this code or any other code, ‘board’ with respect to an appeal, means the Office of Tax Appeals.”

- the following information: (1) appellant claimed his fiancé's 16-year-old daughter as his qualifying person for the HOH filing status; (2) Ms. Bazan's gross income was not less than \$3,950 in 2014; (3) appellant provided more than one-half the support for Ms. Bazan in 2014; (4) Ms. Bazan lived with appellant for the entire year; (5) Ms. Bazan was a full-time student at a recognized educational institution for at least five months in 2014; and (6) Ms. Bazan was not married as of December 31, 2014.
2. Based upon this information, FTB issued a Notice of Proposed Assessment (NPA) on October 14, 2015, which denied appellant the HOH filing status and revised his filing status to single, because FTB asserted that non-relatives may not be claimed as qualifying individuals. The NPA also disallowed appellant's dependent exemption credit and, after recalculating appellant's tax liability based on the revised filing status, the NPA proposed an additional tax of \$1,349, plus applicable interest.
  3. Appellant protested the NPA, arguing that he was entitled to a dependent exemption credit for Ms. Bazan and that Ms. Bazan was his qualifying individual for HOH purposes because she was his domestic partner's daughter whom he primarily supported, and that she was 16 years old and lived in his home during the 2014 tax year.
  4. Upon consideration of Appellant's protest, FTB agreed that appellant was entitled to a dependent exemption credit for Ms. Bazan, and issued a Notice of Action on March 21, 2017, that reduced the proposed assessment to tax of \$1,016. The parties continued to dispute whether appellant was entitled to HOH filing status.
  5. This timely appeal followed.

### DISCUSSION

A taxpayer has the burden of proving that he or she is entitled to the HOH filing status. (*Appeal of Byrd*, 84-SBE-167, Dec. 13, 1984.)<sup>2</sup> Section 17042 sets forth the requirements for HOH filing status by reference to Internal Revenue Code (IRC) section 2. IRC section (2) subdivision (b)(1) states that an unmarried taxpayer seeking to file as HOH must, among other requirements, maintain a household that is the principal residence of an individual for whom the taxpayer is entitled to a dependent exemption. IRC section 152, subdivisions (a)(1) and (a)(2),

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<sup>2</sup> Pursuant to California Code of Regulations, title 18, section 30501(d)(3), precedential BOE opinions 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: [www.boe.ca.gov/legal/legalopcont.htm](http://www.boe.ca.gov/legal/legalopcont.htm).

define who is a “dependent” for purposes of the dependent exemption, limiting the definition to a qualifying child or a qualifying relative. A qualifying child is either a taxpayer’s child or step-child, or brother or sister of a child or step-child. (IRC, § 152(c)(2).) A qualifying relative includes various other relatives of the taxpayer (e.g., taxpayer’s siblings, parents, step-siblings, or step-parents), which are not at issue here. (IRC, §152(d)(2)(A)-(G).) IRC section 152(d)(2)(H) describes non-relatives who make their principal place of abode in the taxpayer's home. However, a taxpayer may not use head of household filing status if the qualifying individual is the taxpayer’s dependent only by virtue of IRC section 152(d)(2)(H). (IRC, § 2(b)(3)(B)(i).) It is well settled that a person who is not related to the taxpayer by blood or marriage cannot qualify the taxpayer for the HOH filing status. (See IRC, § 2(b)(3)(B)(i); *Appeal of Padwa*, 77-SBE-078, May 10, 1977; *Appeal of Aparicio*, 80-SBE-143, Nov. 18, 1980.)

The taxpayer’s “child” includes a natural child, adopted child, and foster child. (IRC, § 152(f)(1).) Here, Ms. Bazan was not appellant's natural or adopted child. Ms. Bazan also cannot be considered appellant’s foster child because her parent lived in the same home. (Treas. Reg. § 1.152-2(c)(4); *Appeal of Curtis*, 97-SBE-012, Aug. 1, 1997.) Finally, Ms. Bazan was not appellant’s stepchild because appellant was not yet married to Ms. Bazan’s parent by the end of 2014. Therefore, appellant is not entitled to a dependent exemption for Ms. Bazan under IRC section 152, subdivisions (c)(2) or (d)(2). Appellant is entitled to a dependent exemption for Ms. Bazan under IRC section 152(d)(2)(H), pertaining to non-relatives (which FTB has already allowed); however, because appellant is entitled to a dependent exemption for Ms. Bazan only by virtue of IRC section 152(d)(2)(H), Ms. Bazan cannot be the qualifying individual for head of household filing status. (See IRC, § 2(b)(3)(B)(i).)

In other words, a fiancé’s daughter is not one of those types of persons who is identified as a qualifying relative under subparagraphs (2)(A) through (G) of IRC section 152 subdivision (d). Next, appellant’s references to Ms. Bazan’s parent as his domestic partner suggest that appellant may have been in a Registered Domestic Partnership (RDP) in 2014, but if true, appellant still would not qualify for HOH filing status because by his own admission, Ms. Bazan’s parent lived with appellant during the last six months of 2014. (See § 17021.7(b)(1), and IRC, § 7703(b)(3).) Therefore, appellant improperly claimed head of household filing status on his 2014 return.

HOLDING

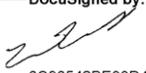
Appellant has failed to prove that he is entitled to the HOH filing status for the 2014 tax year.

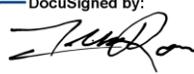
DISPOSITION

Respondent's action is sustained.

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Jeffrey G. Angeja  
Administrative Law Judge

We concur:

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Tommy Leung  
Administrative Law Judge

DocuSigned by:  
  
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Alberto T. Rosas  
Administrative Law Judge