

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

CORY RAMIREZ

)
) OTA Case No. 18011451

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) Date Issued: November 15, 2018
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OPINION

Representing the Parties:

For Appellant: Cory Ramirez

For Respondent: Lyn Gidding-Theobald, Legal Assistant

For Office of Tax Appeals: Andrew Jacobson, Tax Counsel III

A. VASSIGH, Administrative Law Judge: This appeal is made pursuant to section 19045 of the Revenue and Taxation Code¹ from the action of the Franchise Tax Board (respondent or FTB) on appellant Cory Ramirez’s (appellant) protest against a proposed assessment of \$1,184 in additional tax, plus interest, for the 2014 tax year.

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

ISSUE

The issue presented in this appeal is whether appellant qualifies for the head of household (HOH) filing status.

FACTUAL FINDINGS

1. Appellant filed a timely 2014 California Resident Income Tax Return (FTB Form 540), on which she claimed the HOH filing status; appellant also claimed a dependent exemption credit of \$333 for a Mr. Breidenstein.

¹ Unless otherwise indicated, all statutory (“section” or “§”) references are to sections of the Revenue and Taxation Code.

2. To support the claimed HOH filing status, appellant attached a completed 2014 HOH Schedule (FTB Form 4803e) to her 2014 return. On the HOH schedule, appellant identified Mr. Breidenstein as her qualifying person and classified him as “Other . . . FAMILY FRIEND.” (Capitalization in original). Appellant also indicated the following on the HOH Schedule: (1) Mr. Breidenstein was 29 years old as of December 31, 2014; (2) Mr. Breidenstein had a gross income of less than \$3,950 in 2014; (3) appellant provided more than half of Mr. Breidenstein’s support during 2014; (4) Mr. Breidenstein was not a full-time student for at least five months during 2014; (5) Mr. Breidenstein lived with appellant throughout 2014; (6) Mr. Breidenstein was a citizen of the United States or a resident of the United States, Canada or Mexico; (7) neither appellant nor Mr. Breidenstein was married or a registered domestic partner (RDP) as of December 31, 2014; and (8) appellant did not live with a spouse or an RDP at any time during 2014.
3. Based on this information, FTB issued a Notice of Proposed Assessment (NPA) dated October 14, 2015, which denied appellant’s HOH filing status because appellant did not live with a qualifying person during 2014. The NPA showed that FTB revised appellant’s filing status to single or married/RDP filing separately and reduced her standard deduction to \$3,992. FTB also disallowed a nonrefundable renter’s credit because appellant’s revised AGI exceeded the maximum AGI allowable to claim that credit. However, FTB continued to allow the personal exemption credit and the dependent exemption credit. The NPA showed an increase in appellant’s total tax from \$233 to \$1,417, which resulted in an additional tax of \$1,184 (i.e., \$1,417 - \$233), plus applicable interest.
4. Appellant timely protested the NPA on the grounds that: (1) Mr. Breidenstein was her dependent during 2014; (2) Mr. Breidenstein was living with her as her boyfriend; (3) Mr. Breidenstein was unemployed and appellant spent up to \$17,000 of her own income paying for his expenses; and (4) Mr. Breidenstein had no health insurance and appellant paid for his medical care.
5. FTB issued a Notice of Action that affirmed the NPA. FTB explained that Mr. Breidenstein did not meet the definition of a qualifying relative for the HOH filing status

because he did not satisfy the relationship test. FTB indicated that for purposes of the HOH filing status, a boyfriend is considered to be a nonrelative.

6. Appellant subsequently filed this timely appeal. In her appeal letter, appellant concedes that she made a mistake in claiming Mr. Breidenstein, whom she now identifies as her fiancé, as her qualifying person. However, appellant argues that the tax amount that she owes is unfair because she is not at fault.² Appellant states that she filed her tax return using a tax website and that she used the tools and information of the tax website to the best of her ability.
7. Though she acknowledges her mistake, appellant argues that it is not fair to hold her liable for the additional tax amount that resulted from denying her HOH filing status, since the tax website³ she used to prepare her tax returns “approved [her] tax return” and the Internal Revenue Service (IRS) accepted her return as filed. Appellant argues that she never would have submitted her return if she had known that it contained inaccurate information, and contends that she did not exaggerate her filing status or falsify any documents. Appellant asserts that she has been with her fiancé for 10 years. Appellant contends that her fiancé suffered an illness in 2014, and that she supported him financially, which included paying his medical bills. Appellant explains that she claimed Mr. Breidenstein as a qualifying person because he relied on her to survive. Appellant asserts that she is a school teacher who suffered an extremely difficult year during 2014.
8. In her appeal letter, appellant twice expresses her interest in entering FTB’s settlement program.⁴

² Appellant asserts that she wishes to enter into the FTB’s settlement program. Appellant asserts that she is willing to make a good faith payment and enter into an installment agreement for a reduced amount. In its letter of March 24, 2017, the Board Proceedings Division of the State Board of Equalization provided appellant with contact information for the FTB’s settlement program.

³ In her appeal, appellant alternates between referring to a “tax preparer” and a tax website as approving her tax return. It appears she uses the terms interchangeably and that she used a tax preparation website to prepare her tax return.

⁴ Though FTB does not respond to appellant’s request in its brief, we note that appellant’s request in her appeal letter does not meet the requirements of FTB Notice 2007-2, namely because she does not make a specific offer amount. FTB Notice 2007-2 can be found at <https://www.ftb.ca.gov/law/notices/2007/2007_2.pdf> (as of September 26, 2018).

Burden of Proof

It is well-settled that once respondent shows that its assessment was reasonable and rational, its determination is presumed to be correct, and the taxpayer has the burden of proving error. (*Appeal of Michael E. Myers*, 2001-SBE-001, May 31, 2001;⁵ *Todd v. McColgan* (1949) 89 Cal.App.2d 509.) California Code of Regulations, title 18, section 30705, subsection (c), states that unless there is an exception provided by law, “the burden of proof requires proof by a preponderance of the evidence.”⁶ 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.)

Head of Household

Section 17042 sets forth the requirements for the HOH filing status by reference to Internal Revenue Code (IRC) sections 2(b) and 2(c).⁷ IRC section 2(b) lays out the requirements applicable to a taxpayer who is not married as of the close of the applicable tax year. IRC section 2(b)(1)(A) provides that a taxpayer who is not married may be eligible for the HOH filing status based on maintaining a household for a “qualifying child” (under IRC section 2(b)(1)(A)(i)) or a dependent (under IRC section 2(b)(1)(A)(ii)) if the household constitutes the principal place of abode, as a member of the household, of the “qualifying child” or dependent for more than one-half of the year. IRC section 151(c) provides that a taxpayer may claim an exemption for a dependent as defined in IRC section 152. IRC section 152 defines “dependent” to include a “qualifying child,” as defined above, as well as a “qualifying relative.” As appellant has not asserted that she has a qualifying child, we focus upon whether she has shown she has a qualifying relative.

Under IRC section 152, the “qualifying relative” requires, among other things, that: (1) the claimed individual not be a “qualifying child” of the taxpayer or any other person; and (2) the

⁵ Precedential decisions of the Board of Equalization (BOE), designated by “SBE” in the citation, are available for viewing on the BOE’s website: <<http://www.boe.ca.gov/legal/legalopcont.htm#boeopinion>>.

⁶ A preponderance of evidence means that the taxpayer must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Concrete Pipe and Products of California, Inc., v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.)

⁷ IRC section 2(c) sets forth the requirements applicable to taxpayers who are married but are seeking to be treated as not married for HOH purposes.

claimed individual must have one of several relationships to the taxpayer, which do not include a boyfriend or fiancé. (IRC, §§ 152(d)(1)(D) & (d)(2).)

In addition, IRC section 152(d)(2)(H) provides that a qualifying relative can include an individual, other than a spouse, who had the same principal place of abode as the taxpayer and was a member of the taxpayer's household during the year. However, IRC section 2(b)(3)(B)(i) specifically excludes from the list of potential qualifying individuals those individuals who only qualify as a taxpayer's dependent pursuant to IRC section 152(d)(2)(H).

Appellant has claimed at different times that Mr. Breidenstein is a family friend, a boyfriend, and a fiancé. 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 Stephen M. Padwa*, 77-SBE-078, May 10, 1977; *Appeal of Kenneth J. Aparicio*, 80-SBE-143, Nov. 18, 1980.) Because a family friend, a boyfriend, and a fiancé are not qualifying relatives pursuant to IRC sections 2(b) and 152(d), appellant may not use Mr. Breidenstein as her qualifying person to meet the requirements for the HOH filing status. Furthermore, appellant concedes that she made a mistake in claiming Mr. Breidenstein as her qualifying person for the HOH filing status.

Appellant asserts that the IRS allowed her to claim Mr. Breidenstein as a dependent for 2014. Likewise, the FTB allowed appellant to claim Mr. Breidenstein as a dependent. While appellant may claim a dependent exemption for a non-relative, that does not mean that Mr. Breidenstein may qualify her for the HOH filing status as a result. (See IRC, § 2(b)(3)(B)(i).) Also, although the IRS may have allowed appellant the HOH filing status, respondent is not required to follow an IRS determination when the facts show that the determination was in error. (*Appeal of Der Wienerschnitzel International, Inc.*, 79-SBE-063, Apr. 10, 1979.)

Appellant also implies that she was misled by her tax website and/or tax preparation software. However, tax preparation software is only as good as the information one inputs into it. (*Bunney v. Commissioner* (2000) 114 T.C. 259, 267.) And, even if appellant's tax preparation software arrived at an incorrect tax result, that would not preclude FTB from correcting that error. Therefore, appellant has not satisfied her burden of proving that the FTB erred in denying appellant's claimed HOH filing status.

Appellant states that she had personal difficulties during 2014 and that she financially supported Mr. Breidenstein while he was ill that year. Appellant's statements to this effect are


uncontested and we note again that FTB allowed appellant a dependent exemption credit for Mr. Breidenstein. While we sympathize with appellant's situation, the NPA reflects a valid assessment of tax for the 2014 tax year. The Office of Tax Appeals does not have the legal authority to strike down a valid tax assessment on the grounds that payment will be difficult for the taxpayer. (*Appeal of Estate of Richard Luebbert, Deceased, and Verla Luebbert*, 71-SBE-028, Sept. 13, 1971.) If appellant is currently experiencing a financial hardship, that would be a collection matter for appellant to raise with FTB. At the conclusion of this appeal, appellant may wish to review the information provided by FTB in its brief regarding its installment payment program.

HOLDING

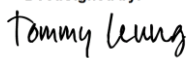
Appellant has not established that she qualified for the HOH filing status for tax year 2014.


DISPOSITION

For the foregoing reasons, respondent's action is sustained.

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Amanda Vassigh
Administrative Law Judge

We concur:

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Tommy Leung
Administrative Law Judge

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Jeffrey G. Angeja
Administrative Law Judge