

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:	)	OTA Case No. 18032490
	)	
<b>RYAN M. ADAMS</b>	)	Date Issued: November 6, 2018
	)	
	)	

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**OPINION**

Representing the Parties:

For Appellant:	Ryan M. Adams
For Respondent:	Lyn Gidding-Theobald, Legal Assistant

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (RTC) section 19045, Ryan M. Adams (appellant) appeals an action by Franchise Tax Board (FTB or respondent) proposing an assessment of \$1,523 in additional tax and applicable interest for the 2014 tax year. Appellant did not request an oral hearing, and therefore we decide the matter based on the written record.

**ISSUE**

Is appellant entitled to use the head of household (HOH) filing status for the 2014 tax year?

**FACTUAL FINDINGS**

1. Appellant filed a 2014 California Resident Income Tax Return (Form 540). On the return, he claimed the HOH filing status. Appellant listed his mother (L.A.) as his qualifying person for the HOH filing status.
2. FTB sent appellant a computer-generated 2014 Head of Household Audit Questionnaire.<sup>1</sup>
3. Appellant answered the questionnaire online. He stated that he was married as of December 31, 2014, and lived with his wife from January 1, 2014 through December 31,

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<sup>1</sup> The form is not a part of the written record; however, there is no dispute that it was sent to appellant, and appellant responded through an FTB online gateway.

2014. He stated that L.A. was his qualifying person for purposes of the HOH status, that he had paid for more than half of L.A.'s support in 2014, that L.A. lived with him the entire tax year, that L.A. was not married, and that L.A. was a United States citizen.
4. On October 28, 2015, FTB issued to appellant a Notice of Proposed Assessment (NPA). The NPA explained that appellant's mother could not be his qualifying person since he was married on December 31, 2014. The NPA recomputed appellant's tax liability and proposed additional tax of \$1,523, plus interest.
  5. Appellant protested the NPA on December 23, 2015, stating that he and his wife had lived separately since October 2013.
  6. In a letter dated June 16, 2017, FTB responded to appellant's protest. FTB stated that, based on the information provided by appellant, he did not qualify for the HOH filing status.
  7. FTB issued a Notice of Action on November 20, 2017, affirming its NPA.
  8. Appellant timely filed this appeal.

#### DISCUSSION

RTC section 17042 incorporates the requirements for the HOH filing status contained in subsections (b) and (c) of Internal Revenue Code section 2.<sup>2</sup> Section 2(b)(1) provides that, among other requirements, a taxpayer who claims the HOH filing status must not be married at the close of the taxable year. A taxpayer may be considered unmarried if the taxpayer is legally separated under a decree of divorce or of separate maintenance or has a spouse who is a nonresident alien at the close of the tax year. (§ 2(b)(2)(A)-(B).) A taxpayer who is married may be treated as unmarried at the close of a taxable year in specified circumstances. (§ 2(c).) In order for a married individual who lives separately from his spouse to be considered not married for purposes of claiming HOH filing status, the individual who is married must 1) maintain a household for more than one-half of the taxable year that is the principal abode of a child, 2) provide over one-half of the cost of maintaining such household for the taxable year, and 3) must not have shared a residence with a spouse during the last six months of the tax year. (§ 7703(b).) A qualifying child for purposes of a married individual claiming HOH filing status

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<sup>2</sup> All further statutory references are to the Internal Revenue Code (IRC) unless otherwise stated.

is a son, daughter, stepson, stepdaughter, an adopted child, or an eligible foster child. (§§ 152(c), (f)(1), 7703(b).)

Appellant’s protest letter states that he was “confused” by the questionnaire, and alleges that he qualifies as HOH because he was living separately from his wife for the 2014 tax year. Regardless of whether or not appellant was living with his spouse in 2014, he does not qualify for HOH filing status. When an individual is married at the end of the tax year, as appellant agrees he was, only a child as defined in section 152 may qualify that individual for HOH filing status. (§ 7703(b).) Appellant’s mother does not meet the definition of a child. (§ 152(c), (f)(1).)

A dependent father or mother may qualify a taxpayer for HOH filing status if the taxpayer maintained the principal place of abode for that parent; however, that provision only applies if the taxpayer claiming HOH filing status is not married at the close of the taxable year. (§ 2(b)(1)(B).) Appellant admits he was married, albeit separated from his wife, at the end of the 2014 tax year. He has not shown that he meets the requirements to be considered unmarried for purposes of claiming HOH status with his mother as his qualifying person.<sup>3</sup> Appellant has not shown that he was legally separated from his wife nor that he was under a decree of divorce or separate maintenance. Moreover, he has not alleged or shown that his wife was a nonresident alien at the close of the tax year. Therefore, appellant has not shown that he is entitled to claim the HOH filing status for 2014.

HOLDING

Appellant was married at the close of the 2014 tax year, and therefore his mother does not meet the requirements to qualify appellant’s use of the HOH filing status.

DISPOSITION

FTB’s action is sustained.

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Teresa A. Stanley  
Administrative Law Judge

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<sup>3</sup> Appellant only claimed a dependent exemption on his tax return for his mother, not for his son.

We concur:

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*Tommy Leung*  
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Tommy Leung  
Administrative Law Judge

DocuSigned by:  
*Daniel K. Cho*  
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Daniel K. Cho  
Administrative Law Judge