

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)	OTA Case No. 18042785
)	
JANET L. RASAK)	Date Issued: November 6, 2018
)	
)	
)	

OPINION

Representing the Parties:

For Appellant: Allen M. Ullman, CPA

For Respondent: Lyn Gidding-Theobald, Legal Assistant

K. GAST, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19045, Janet L. Rasak (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) in proposing additional tax in the amount of \$973, plus interest, for the 2014 tax year.

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

ISSUE

Is appellant entitled to claim the Head of Household (HOH) filing status?

FACTUAL FINDINGS

1. Appellant timely filed a 2014 California resident income tax return, claiming the HOH filing status. As support, appellant attached to her tax return a HOH Schedule (FTB 4803e). On that schedule, appellant identified her daughter as her qualifying person. Appellant further indicated, in relevant part, that during 2014, (1) her daughter was 25 years old, (2) her daughter’s gross income was not less than \$3,950; and (3) her daughter was not a full-time student.

2. Based on appellant's responses, respondent issued a Notice of Proposed Assessment (NPA). The NPA denied appellant's claimed HOH filing status, changed her filing status to single, and proposed additional tax of \$973, plus interest. The NPA explained that her daughter's gross income exceeded the allowable amount for the 2014 tax year.
3. Appellant submitted a letter to respondent before the issuance of the NPA, but this letter addressed a different issue for the 2014 tax year. Nonetheless, in subsequent correspondence dated June 19, 2017, respondent treated appellant's letter as a timely filed protest of its NPA, explained that her daughter did not meet the requirements of a qualifying child or relative for purposes of the HOH filing status, and requested that appellant provide any new information that supports her position if she still disagrees with the NPA. Appellant did not respond.
4. Respondent affirmed its NPA with a Notice of Action. This timely appeal followed.

DISCUSSION

R&TC section 17042 sets forth the California requirements for the HOH filing status by reference to Internal Revenue Code section 2(b).¹ 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: 1) a qualifying child; or 2) a dependent under Section 151. Taxpayers have the burden of producing sufficient evidence to substantiate they are entitled to the HOH filing status, and the presumption of correctness that attends respondent's determination cannot be overcome by unsupported statements. (*Appeal of Richard Byrd*, 84-SBE-167, Dec. 13, 1984.)²

1) Qualifying Child

Section 2(b)(1)(A)(i) provides the requirements for a qualifying child by reference to Section 152(c). In pertinent part, Section 152(c)(1)(C) and (c)(3)(A) provide that the qualifying child, as of December 31, 2014, must (1) be under 19 years old, *or* (2) have been a full-time student who is under 24 years old. Here, appellant's responses to her HOH Schedule indicate

¹ All further statutory references are to sections of the Internal Revenue Code (IRC), unless otherwise stated. For the 2014 tax year, R&TC section 17024.5(a)(1)(O), provides that for Personal Income Tax Law purposes, California conforms to the January 1, 2009, version of the IRC. Thus, references herein to the IRC are to that version.

² Board of Equalization opinions are generally available for viewing on its website: <http://www.boe.ca.gov/legal/legalopcont.htm#boeopinion>.

that, as of December 31, 2014, her daughter did not meet either of these age requirements. First, her daughter was 25 years old, and therefore exceeded the general age threshold of 19 years. Second, even assuming her daughter was a full-time student, which she was not, she was still not under 24 years old. Therefore, appellant's daughter was not a "qualifying child."

2) Dependent

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 under Section 151. Section 151, in turn, refers back to Section 152 for the definition of a dependent. Section 152(a) provides that "dependent" means a qualifying child (discussed above) or a qualifying relative. In pertinent part, Section 152(d)(1)(B) provides that a qualifying relative must have gross income for the calendar year that is less than the exemption amount for that tax year, as defined in Section 151(d). The exemption amount for the 2014 tax year was \$3,950. Here, appellant indicated in the HOH Schedule that her daughter's gross income was \$3,950 or greater in 2014.³ Therefore, appellant's daughter was not her "dependent."

Finally, on appeal, appellant produced the first few pages of her 2014 federal Form 1040.⁴ Appellant appears to contend that because the Internal Revenue Service (IRS) accepted the HOH filing status claimed on her federal return, respondent should follow that acceptance. Appellant's assertion is incorrect. If respondent determines that appellant used an incorrect filing status on her federal return, respondent is not bound to accept appellant's position. Instead, respondent may revise the status to reflect a correct filing status. (R&TC § 18521(a)(2).) The record also contains no evidence the IRS allowed the claimed HOH filing status based on an audit of the return or otherwise determined the status was allowable. In any event, respondent is not bound to follow an IRS determination when the facts show it was in error. (*Appeal of Der Wienerschnitzel International, Inc.*, 79-SBE-063, Apr. 10, 1979; *Appeal of David G. Bertrand*, 85-SBE-071, July 30, 1985.)

³ Further, we note that, while not technically a requirement to claim the HOH filing status, appellant did not claim her daughter as a dependent on either her federal or California tax return for the 2014 tax year.

⁴ On appeal, appellant's representative claims appellant never received respondent's June 19, 2017 letter (discussed above), which requested that appellant provide any new information that supports she is entitled to claim the HOH filing status, if she still disagrees with the NPA. However, we note that when given the chance to present more evidence in her appeal, appellant did not provide any supporting documentation other than the first few pages of her federal Form 1040.

HOLDING

Appellant has not shown that she is entitled to claim the HOH filing status.

DISPOSITION

Respondent's action is sustained.

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

We concur:

DocuSigned by:
Tommy Leung
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Tommy Leung
Administrative Law Judge

DocuSigned by:
Grant S. Thompson
FC572D5881AE41B...
Grant S. Thompson
Administrative Law Judge