

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of: KEITH W. ROWLANDS)))))))	OTA Case No. 18011063 Date Issued: December 13, 2018
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OPINION

Representing the Parties:

For Appellant:	Tax Appeals Assistance Program (TAAP) ¹
For Respondent:	Claudia Cross, Senior Legal Analyst

J. ANGEJA, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19045,² Keith W. Rowlands (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) proposing \$1,784.00 in additional tax, plus applicable interest, for the 2012 tax year.

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

ISSUE

Whether appellant has established that he is entitled to the Head of Household (HOH) filing status and a dependent exemption for the 2012 tax year.

FACTUAL FINDINGS

1. Appellant timely filed a California Nonresident or Part-Year Resident Income Tax Return (Form 540NR) for the 2012 tax year, in which he claimed the HOH filing status and one of his three children, a minor who will be referred to as “TR”, as his dependent and qualifying child for purposes of the HOH filing status.

¹ Appellant filed his own appeal letter. Deborshi Ghosh of TAAP filed appellant’s reply brief.

² Unless otherwise indicated, all statutory references are to sections of the California Revenue and Taxation code.

2. In February 2014, respondent sent appellant a HOH Audit Questionnaire. In his response, dated March 3, 2014, appellant stated that TR did not live with him for the entire year, that TR only lived with the appellant for 144 days in 2012 and spent the remaining days living with the other parent.
3. Respondent issued a Notice of Proposed Assessment (NPA) on June 27, 2014, which disallowed appellant's HOH filing status and the dependent exemption credit taken for TR because TR did not live with appellant for more than half the year. As such, respondent concluded that TR could not be a dependent for dependent exemption purposes or a qualifying person for the HOH filing status. The NPA proposed additional tax of \$2,193, plus applicable interest, for the 2012 tax year.
4. Appellant protested the NPA by letter, stating that he has joint custody of his children, that they live with him 50% of the time, and that he provides child support of \$1,700 per month.
5. At protest, appellant also contended that he met the conditions for the joint custody head of household credit provided for in section 17054.5³ because: (1) he was not married or in a registered domestic partnership for the entire tax year; (2) he furnished over one-half of the household expenses for his home, which served as the main home of his children for at least 146 days of the tax year; and (3) he had joint custody of the children per a custody agreement.
6. On February 23, 2017, respondent issued a Notice of Action (NOA) which revised the NPA. While respondent continued to deny appellant's use of the HOH filing status and the dependent exemption credit, the revision allowed appellant the joint custody HOH credit of section 17054.5 in the amount of \$409, which reduced the amount of proposed additional tax to \$1,784, plus interest, for the 2012 tax year.
7. Appellant timely appealed.

³ Section 17054.5 allows a parent that does not qualify for head of household filing status to still receive a tax benefit if certain requirements are met.

DISCUSSION

A taxpayer has the burden of proving that he or she qualifies for the HOH filing status. (*Appeal of Richard Byrd*, 84-SBE-167, Dec. 13, 1984.)⁴ Respondent's determinations are presumed correct and a taxpayer has the burden of proving that the assessment is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Ismael R. Manriquez*, 79-SBE-077, Apr. 10, 1979.) A taxpayer's unsupported assertions are insufficient to satisfy his or her burden of proof. (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.)

Section 17042 sets forth the California requirements for the HOH filing status by reference to Internal Revenue Code (IRC) sections 2(b) and 2(c). As herein relevant, IRC section 2(b)(1)(A) provides that a taxpayer who is not married may be eligible for the HOH filing status if the taxpayer "maintains as his home a household which constitutes for more than one-half of such taxable year the principal place of abode" for a qualifying child. Because 2012 was a leap year, one-half of the year is equal to 184 days or more.⁵ In addition, to qualify for a dependent exemption for one's child, a taxpayer must establish that his or her child lived with the taxpayer for more than one-half of the taxable year. (IRC, § 152(c)(1)(B).)

Here, appellant has only offered inconsistent statements regarding the number of days his child lived with him during the 2012 tax year. Appellant's completed HOH Audit Questionnaire, which he signed under penalty of perjury, stated that his child lived with him for 144 days. In response to respondent's inquiry regarding the joint custody HOH credit, appellant stated that he met the requirements of the credit, which includes requirement (2): "that his children lived with him for more than 146 days, but less than 182." In his protest letter, appellant stated that he has joint custody of his three children, which he explained as meaning that they live with him "50%" of the time. In his appeal letter, as well as in his reply brief, appellant claims that the children lived with him for more than one-half the year, without offering any evidence, documentation or

⁴ Board of Equalization opinions (designated "SBE") may generally be found at: <<http://www.boe.ca.gov/legal/legalopcont.htm>>.

⁵ In a typical year with 365 days, more than half the year is 183 days. A leap year has 366 days, and more than half a leap year is 184 days.

substantiation to support that claim.⁶ Therefore, appellant has not satisfied his burden of establishing that his child lived with him for more than one-half the year during 2012. Accordingly, appellant does not qualify for HOH filing status for the 2012 tax year, and is not entitled to claim a dependent exemption.

HOLDING

Appellant did not establish that he is entitled to the HOH filing status or a dependent exemption for the 2012 tax year.

DISPOSITION

Respondent’s action is sustained.

DocuSigned by:
Jeff Angeja
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Jeffrey G. Angeja
Administrative Law Judge

We concur:

DocuSigned by:
Tommy Leung
0C90542BE88D4E7...
Tommy Leung
Administrative Law Judge

DocuSigned by:
Kenneth Gast
FD75A3136CB94C2...
Kenneth Gast
Administrative Law Judge

⁶ In his reply brief, appellant states that he mistakenly claimed the wrong child as his qualifying child on his tax return and HOH questionnaire, and that he should have claimed his other son who lived with him for more than half the year. As explained above, appellant has provided no evidence to substantiate that any of his children lived with him for more than half the year, and therefore our analysis remains unchanged.