

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
TONNIA P. TILLEY

) OTA Case No. 18053201
)
) Date Issued: January 2, 2019
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)
)

OPINION

Representing the Parties:

For Appellant: Tonnia P. Tilley

For Respondent: Lyn Gidding-Theobald, Legal Assistant

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19045,¹ Tonnia P. Tilley (appellant) appeals an action by the Franchise Tax Board (respondent) proposing \$1,264 of additional tax, and applicable interest, for the 2015 taxable year.

Appellant waived her right to an oral hearing; therefore, we decide this matter based on the written record.

ISSUE

Did appellant qualify for the head of household (HOH) tax filing status for the 2015 taxable year?

FACTUAL FINDINGS

1. Appellant filed a 2015 California personal income tax return (Form 540) claiming the HOH filing status. On the return, appellant claimed a dependent exemption credit for her son.
2. Appellant claimed her son as the qualifying individual for her HOH filing status.

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

3. Appellant claimed that she was not married or in a registered domestic partnership as of December 31, 2015, that her son was age 26 as of December 31, 2015, and that her son lived with her until the third week of September 2015.² Appellant reported her son's 2015 gross income was \$10,000.
4. Respondent issued a Notice of Proposed Assessment (NPA), disallowing appellant's HOH filing status. The NPA explained that appellant failed to qualify for HOH filing status because her qualifying person's gross income exceeded the allowable amount for 2015, and the individual did not live with appellant for more than one-half of the taxable year (appellant originally reported that her son lived with her for only seven days in 2015).
5. Appellant protested the NPA. Appellant included a document extending a residential lease in the names of both appellant and her son. Appellant claimed she overstated her son's 2015 gross income, but did not provide substantiating documents.
6. According to respondent's records, appellant's son reported a federal adjusted gross income of \$5,642 for the 2015 tax year.
7. Appellant issued a Notice of Action (NOA) on April 16, 2018. The NOA reaffirmed the proposed additional tax and interest determined in the NPA, and explained the requirements for appellant to qualify for HOH filing status.
8. Appellant filed this appeal. In it, she stated that her son had joined the armed forces, but she "incurred his total cost of living prior to him entered [*sic*] the Armed Forces." Appellant did not contend that her son earned less than \$4,000 for 2015, but instead claimed that it is unrealistic to disqualify someone as a dependent because they earned more than \$4,000 in a year.

DISCUSSION

Taxpayers have the burden to prove entitlement to the HOH filing status. (*Appeal of Verma*, 2018-OTA-080P, citing *Appeal of Richard Byrd*, 84-SBE-167, Dec. 13, 1984.)³ An

² On appellant's tax return, she indicated that her son lived with her for seven days in 2015. We believe this to be a mistake and accept the representation in her protest and appeal letters that appellant's son lived with her for more than 8 months during that year.

³ Precedential opinions of the Office of Tax Appeals (OTA) are available for viewing on OTA's website: <<http://www.ota.ca.gov/opinions>>. Precedential opinions of the State Board of Equalization (BOE) are available for viewing on the BOE's website: <<http://www.boe.ca.gov/legal/legalopcont.htm#boeopinion>>.

unsupported declaration that a taxpayer qualifies for HOH filing status is insufficient, in the absence of other evidence, to satisfy appellant's burden of proof. (*Appeal of Ismael R. Manriquez*, 79-SBE-077, Apr. 10, 1979.) 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.)

Section 17042 sets forth the California requirements for the HOH filing status by reference to Internal Revenue Code (IRC) section 2(b) and (c). IRC section 2(b) provides that, for a person to claim the HOH filing status, he or she generally must be unmarried and maintain a household that constitutes the principal place of abode of a "qualifying person" for more than one-half of the taxable year.

Pursuant to IRC section 2(b)(1)(A), a taxpayer who is not married may be eligible for the HOH filing status by maintaining a household for a "qualifying child." To be considered a taxpayer's qualifying child, the individual must be: (1) under 19 years of age; or (2) a full-time student under 24 years of age; or (3) disabled. (IRC, § 152(c)(3)(A), 152(f)(2).)

Appellant's child does not qualify her for HOH filing status because he was neither under the age of 19, nor was he a full-time student under the age of 24 at the close of the calendar year, December 31, 2015. Moreover, appellant has not alleged that her son was disabled at any time during the taxable year at issue.

Although appellant's son is not a qualifying child, she may still claim HOH filing status if additional requirements are met. For appellant to claim HOH filing status, she must have a qualifying child *or* a qualifying relative. (IRC, § 152(a).) IRC section 152(d) lists the requirements for a qualifying relative, and includes a requirement that a qualifying relative's gross income for the calendar year be less than the dependent exemption amount for the tax year for which the filing status was claimed. For the taxable year at issue, appellant's son could be a qualifying relative only if his gross income was less than \$3,950. However, according to respondent's records, appellant's son reported a federal adjusted gross income of \$5,642 for the 2015 tax year.⁴ Because that income exceeds the dependent exemption amount for 2015, appellant's son may not be her qualifying relative for HOH filing status purposes.

⁴ Appellant originally reported that her son's gross income for the 2015 tax year was \$10,000. However, in appellant's protest letter dated July 25, 2017, appellant subsequently stated that this was an estimate. Therefore, we rely on respondent's records for appellant's son's gross income for the 2015 tax year.

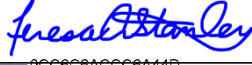
We conclude that appellant has not met her burden to prove that she is entitled to claim the HOH filing status.⁵

HOLDING

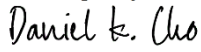
Appellant failed to establish that she was entitled to the HOH filing status.


DISPOSITION

Respondent's action is sustained.

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Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:

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Daniel K. Cho
Administrative Law Judge

DocuSigned by:

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Neil Robinson
Administrative Law Judge

⁵ Appellant claimed a dependent exemption for her son, which she was allowed.