

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18011051
)
MARK BAILEY) Date Issued: March 20, 2019
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_____)

OPINION

Representing the Parties:

For Appellant: Mark Bailey

For Respondent: Mira Patel, Tax Counsel

L. CHENG, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19045,¹ Mark Bailey (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) in proposing additional tax in the amount of \$828, plus interest, for the 2013 tax year.

Appellant failed to respond to several notices of oral hearing,² and therefore this matter is decided based on the written record.

ISSUE

Is appellant entitled to claim the Head of Household (HOH) filing status for the 2013 tax year?

FACTUAL FINDINGS

1. Appellant filed a 2013 California resident income tax return (Form 540), claiming the HOH filing status. Appellant did not claim any dependents on the return.

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

² The Office of Tax Appeals (OTA) sent a total of three hearing notices: 1) April 20, 2018, to which appellant did not respond; 2) October 1, 2018, to which appellant responded late, after the hearing had been canceled; and 3) November 3, 2018, to which appellant did not respond.

2. Subsequently, FTB sent appellant a HOH Audit Questionnaire for purposes of verifying whether he met the requirements to claim the HOH filing status for the 2013 tax year. Appellant did not respond.
3. FTB sent appellant a second HOH Audit Questionnaire, to which appellant responded by writing across the top of the Questionnaire, "Do Not Qualify." Appellant did not fill out the Questionnaire nor did he sign it.
4. FTB issued appellant a Notice of Proposed Assessment (NPA), dated April 24, 2015, which proposed additional tax of \$828, plus interest. The NPA explained that appellant could not claim the HOH filing status based on his handwritten note on the HOH Questionnaire. The NPA allowed appellant a personal exemption for himself and revised the filing status to single.
5. In a letter dated June 18, 2015, appellant timely protested the NPA, asserting that his tax preparer "erred in computation." The protest letter also claimed "qualifying dependent" without identifying the dependent.
6. FTB acknowledged receipt of appellant's protest and explained that additional information was required in order to determine whether appellant was entitled to the HOH status. FTB sent appellant a letter requesting responses to several questions relating to the qualifying dependent. Appellant did not respond.
7. FTB affirmed its NPA with a Notice of Action (NOA), dated March 24, 2017.
8. This timely appeal followed.
9. During the appeal process, FTB requested yet again that appellant complete a HOH Questionnaire. Appellant submitted a partially filled out Questionnaire indicating as his qualifying person, a "son, daughter, stepson, or stepdaughter." However, appellant did not provide the qualifying person's name, social security number, or age. Additionally, the Questionnaire was unsigned and undated.

DISCUSSION

A taxpayer has the burden of proving that he or she qualifies for the HOH filing status. (*Appeal of Verma*, 2018-OTA-080P,³ citing *Appeal of Byrd*, 84-SBE-167, Dec. 13, 1984.)⁴ An unsupported declaration that a taxpayer qualifies for HOH filing status is insufficient, in the absence of other evidence, to satisfy a taxpayer’s burden of proof. (*Appeal of Manriquez*, 79-SBE-077, Apr. 10, 1979.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of 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 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).)

In the present case, none of appellant’s responses to respondent’s HOH Audit Questionnaires provide adequate identifying information about the claimed qualifying person for verification purposes. Appellant admits in his first response that he “do[es] not qualify.” He then claims a “qualifying dependent” without identifying the dependent in his second response. On his last attempt, appellant claims a “qualifying child” without providing the necessary identifying information, i.e., name, social security number, age. The same HOH Questionnaire was also submitted without a signature or date. At best, these assertions about a qualifying person are unsubstantiated and thus insufficient to satisfy appellant’s burden of proof.

Regarding appellant’s claim that his tax preparer “erred in computation,” we note that this assertion is similarly unsubstantiated; that is, appellant has provided no evidence or

³ Precedential opinions of the Office of Tax Appeals (OTA) are available for viewing on OTA’s website: <<http://www.ota.ca.gov/opinions>>.

⁴ 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>>.

argument that any erroneous tax computation by his tax preparer had any bearing on his filing status.


Accordingly, appellant has not shown that he is entitled to claim the HOH filing status for the 2013 tax year.

HOLDING


Appellant has not shown that he is entitled to claim the HOH filing status for the 2013 tax year.


DISPOSITION

FTB's action in denying appellant the HOH status and proposing to assess additional tax for the 2013 tax year is sustained.

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Linda C. Cheng
Administrative Law Judge

We concur:

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Douglas Bramhall
Administrative Law Judge

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Michael F. Geary
Administrative Law Judge