

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18042664
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NYMUL LIM) Date Issued: April 22, 2019
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OPINION

Representing the Parties:

For Appellant: Nymul Lim

For Respondent: Bradley J. Coutinho, Tax Counsel

For Office of Tax Appeals: Andrea Long, Tax Counsel

A. ROSAS, Administrative Law Judge: Under Revenue and Taxation Code section 19045, appellant Nymul Lim (Lim) appeals respondent Franchise Tax Board’s (FTB) action proposing \$817 in additional tax, plus applicable interest, for the 2014 tax year. Lim waived her¹ right to an oral hearing, and therefore we decide this matter based on the written record.

ISSUE

Did Lim qualify for the head of household (HOH) filing status and the dependent credit?

FACTUAL FINDINGS

1. Lim filed a 2014 California personal income tax return using the HOH filing status and claiming her mother, Phally Lim (Phally) as a dependent and qualifying relative.
2. Phally and her spouse filed joint federal and California income tax returns for tax year 2014, claiming the married filing jointly filing status. They reported federal gross income (and California wages) of \$12,627. Their tax returns show Lim’s home address.

¹We are uncertain as to Lim’s gender (or preferred gender pronoun). Nothing in the written record answers this question. OTA staff tried to contact the parties to ask about Lim’s gender (or preferred gender pronoun) but did not receive a response. Accordingly, to avoid the use of gender-neutral pronouns, and because gender is not relevant to our decision, we will assume a female pronoun. If our assumption is incorrect, we apologize.

3. The California Employment Development Department (EDD) intercepted Lim's 2014 \$1,396 refund. In an April 2015 Notice of Intercepted Funds, FTB informed Lim that EDD intercepted her refund because Lim owed a debt to EDD. The notice indicated that, because FTB applied the entire refund amount to her EDD debt, FTB did not send any refund amount to Lim.
4. Seven months later, in November 2015, FTB sent Lim a Head of Household Audit Questionnaire (Questionnaire) for 2014. Lim completed the Questionnaire, signed it, and sent it to FTB. In the Questionnaire, signed under penalty of perjury, Lim provided the following relevant information regarding 2014:
 - Lim was unmarried as of the end of the year.
 - Lim identified Phally as her qualifying person for HOH filing status purposes.
 - Lim asserted that Phally's gross income was less than \$3,950; Lim provided more than half of Phally's support; and Phally lived with her during the entire year.
 - Phally was married as of the end of the year.
 - For 2014, Phally and her husband filed a joint federal or state return.
5. On February 10, 2016, FTB issued Lim a Notice of Proposed Assessment (NPA), denying the HOH filing status and disallowing the dependent credit. FTB recalculated Lim's tax liability based on a single filing status. After applying a personal exemption credit (\$108) and a renter's credit (\$60), FTB proposed additional tax of \$817, plus interest. That same month, Lim protested the NPA.
6. Over a year later, in a May 2017 letter, FTB explained that Lim's mother did not meet the requirements of a qualifying relative for HOH filing status purposes, because Phally's 2014 gross income (\$6,313), which FTB based on her community property interest in her spouse's income, exceeded the allowable amount.
7. Lim did not offer any new information to support her position in response to FTB's letter.
8. On December 4, 2017, FTB issued a Notice of Action, affirming the NPA.
9. Lim timely appealed.²

² In Lim's reply brief, she seems to suggest that she should not have to pay the proposed tax assessment because she never received her 2014 refund. However, the law allows other California agencies to intercept a taxpayer's state income tax refund up to the amount the taxpayer owes to the agency. (Gov. Code, § 12419.) As FTB stated in the interception notice, if Lim has any questions about the interception or the EDD debt, she should direct those question to EDD. But for purposes of this appeal, the interception does not affect the amount FTB proposes to assess.

DISCUSSION

A taxpayer has the burden of proving entitlement to the HOH filing status. (*Appeal of Verma*, 2018-OTA-080P, July 17, 2018, at p. 3, citing *Appeal of Byrd*, 84-SBE-167, Dec. 13, 1984.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Verma, supra*, at p. 3, citing *Appeal of Magidow*, 82-SBE-274, Nov. 17, 1982.)

An unmarried taxpayer may be eligible for the HOH filing status for a given taxable year if the taxpayer maintains a household as his or her home, “which constitutes for more than one-half of such taxable year the principal place of abode” for a taxpayer’s qualifying child or “any other person who is a dependent of the taxpayer, if the taxpayer is entitled to a deduction for the taxable year for such person under [Internal Revenue Code (IRC)] section 151.” (IRC, § 2(b)(1)(A) [incorporating IRC, § 152(c)].) California conforms under Revenue and Taxation Code section 17042.

When it comes to parents as dependents, an unmarried taxpayer may be eligible for the HOH filing status if, for the taxable year, the taxpayer maintained a household constituting the principal place of abode for the taxpayer’s father or mother, and “if the taxpayer is entitled to a deduction for the taxable year for such father or mother under [IRC] section 151.” (IRC, § 2(b)(1)(B).) A “dependent” means a *qualifying child* or a *qualifying relative*. (IRC, § 152(a)(1).) Phally is not Lim’s child, so we will focus on *qualifying relative*.

A qualifying relative is an individual: (1) who bears a relationship to the taxpayer, such as the taxpayer’s parent; (2) whose gross income³ for the tax year at issue is less than the IRC section 151(d) exemption amount (\$3,950 for 2014); (3) who received more than one-half of her support during the tax year at issue from the taxpayer; and (4) who is not a qualifying child of the taxpayer or any other taxpayer for the tax year at issue. (IRC, § 152(d)(1)(A)-(D).)

There are two fundamental flaws with Lim’s appeal.

First, a taxpayer cannot treat an individual as a dependent if that individual files a joint return with his or her spouse (under IRC section 6013) for the same tax year. (IRC, § 152(b)(2).) In 2014, Phally filed joint federal and California returns with her spouse. Thus, Lim cannot treat

³ Gross income is all income from whatever source derived, including compensation for services. (IRC, § 61.)

her as either a dependent or a qualifying relative for HOH filing status purposes. (IRC, §§ 2(b)(1)(B), 152(b)(2).)⁴

Second, Phally does not meet the criteria for being either Lim’s dependent or qualifying relative for purposes of the HOH filing status because, in 2014, Phally’s income exceeded \$3,950. (IRC, §§ 151(d), 152(d)(1)(B).) On their 2014 joint returns, Phally and her spouse reported \$12,627 in federal gross income, which consisted entirely of California wages. Under California law, a spouse generally owns a one-half community property interest in the other spouse’s income, when such income is earned while the other spouse is domiciled in the state. (Fam. Code, § 760.) Thus, when FTB calculated Phally’s income, FTB attributed one-half of this \$12,627 community property (i.e., \$6,313) to Phally.

Therefore, because Phally filed joint federal and California returns with her spouse in 2014, and because her California gross income exceeded \$3,950, she is neither Lim’s dependent nor her qualifying relative.

HOLDING

For tax year 2014, Lim may not claim her mother to qualify for either the HOH filing status or the dependent credit.

DISPOSITION

We sustain FTB’s action in full.

DocuSigned by:
Alberto Rosas
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Alberto T. Rosas
Administrative Law Judge

We concur:

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

DocuSigned by:
Sara A. Hosey
6D3FE4A0CA514E7...
Sara A. Hosey
Administrative Law Judge

⁴ Regarding Lim’s argument that her mother filed joint federal and state returns solely to claim a refund, this fact is only relevant when considering the qualifying child requirements. (IRC, § 152(c)(1)(E).) This fact, however, is not relevant when considering the qualifying requirements at issue here.