

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 18053130  
**MORAYO K. YAMOA** )  
 ) Date Issued: April 8, 2019  
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**OPINION**

Representing the Parties:

For Appellant: Seyed Majit Tavabi, Enrolled Agent

For Respondent: Lyn Gidding-Theobald, Legal Assistant

KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Morayo Yamoah (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing \$1,113 in additional tax, plus applicable interest, for the 2015 tax year. This matter is being decided based on the written record because appellant waived the right to an oral hearing.

**ISSUE**

Whether appellant qualifies for the head of household filing status for the 2015 tax year.

**FACTUAL FINDINGS**

1. Appellant timely filed a 2015 California Resident Income Tax Return. Appellant was legally married at the close of the 2015 tax year. Appellant filed her return as head of household and claimed her mother as a dependent. On California Form 3532, appellant reported that she did not live with her husband, and her mother was her qualifying person for purposes of her filing status.
2. Appellant’s husband filed a timely 2015 California Resident Income Tax Return, also claiming head of household status. Appellant’s husband claimed their daughter as his qualifying person and as a dependent.

3. On June 14, 2017, FTB issued a Notice of Proposed Assessment (NPA), proposing to assess \$1,113 in additional tax, based on changing appellant's filing status to married filing separately. The NPA disallowed appellant's filing status on the basis that appellant did not qualify to file as head of household with a parent as her qualifying person because appellant was married at the close of the tax year.
4. Appellant protested the NPA on July 12, 2017, on the basis that she should be considered unmarried during 2015.
5. On April 16, 2018, FTB issued a Notice of Action (NOA) denying the protest.
6. On May 3, 2018, appellant timely appealed the NOA, contending that while she is legally married, her husband did not live with her during 2015, she cares for her mother and daughter, and was entitled to claim her daughter as a dependent.

### DISCUSSION

California conforms to Internal Revenue Code (IRC) section 2(b) and (c), which defines head of household (HOH) and sets forth when a married individual may be considered unmarried for purposes of claiming HOH filing status. (R&TC, § 17042.) Appellant contends she is entitled to HOH filing status with her mother or daughter as a qualifying person. We discuss each basis of qualification, in turn.

#### 1. Claiming a parent as a qualifying person

In order to claim HOH filing status with a parent as the qualifying person, a taxpayer must be unmarried at the close of the taxable year, maintain a household that constitutes the principal place of abode of the qualifying parent, and be entitled to claim the parent as a dependent. (IRC, § 2(b)(1)(B) [incorporating IRC, § 151].) As relevant here, a taxpayer is considered unmarried if the taxpayer is legally separated from their spouse pursuant to a decree of divorce or separate maintenance. (IRC, § 2(b)(2)(A).) In the instant case, appellant concedes that she was legally married at the close of the taxable year, and there is no evidence that she obtained a final decree of legal separation from her spouse prior to the close of the 2015 tax year. Therefore, appellant failed to establish a basis for claiming HOH filing status with her mother as the qualifying person.

2. Claiming a child as a qualifying person

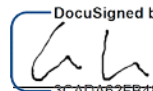
In order to claim HOH filing status with a child as the qualifying person, a taxpayer must be unmarried at the close of the taxable year, maintain a household that constitutes the principal place of abode of the qualifying child for more than one-half of the year, and be entitled to claim the qualifying child as a dependent. (IRC, § 2(b)(1)(A) [incorporating IRC, § 152(c)].) A married individual living separate from his or her spouse during the last 6 months of the taxable year, and who furnishes over one-half of the cost of maintaining the household for the qualifying child, may be considered unmarried only for purposes of claiming a son (birth or adopted), daughter (birth or adopted), stepson, stepdaughter, or eligible foster child of the taxpayer as a qualifying person. (IRC, § 2(c) [incorporating IRC, §§ 7703(b) and 152(f)(1)].) Appellant has the burden of establishing that she qualifies for HOH filing status. (*Appeal of Bharat Verma*, 2018-OTA-080P, July 17, 2018, *Appeal of Richard Byrd*, 84-SBE-167, Dec. 13, 1984.)<sup>1</sup> In the instant case, appellant’s spouse filed a 2015 return claiming their daughter as a dependent, and appellant did not claim their daughter as a dependent on her 2015 return. Although appellant now contends she can claim her daughter as a dependent, appellant provided no supporting documentation. Furthermore, it is not possible under the tax code for both appellant, and her husband, to each provide a principal residence for their daughter for “*more than*” one-half of the taxable year. (IRC, § 2(b)(1)(A) [Emphasis added]; *Appeal of Barbara Godek*, 98-SBE-006, Nov. 19, 1998.) Therefore, we find that appellant failed to establish that she qualifies for HOH filing status.

HOLDING

Appellant failed to establish that she qualifies for the head of household filing status.

DISPOSITION


FTB’s action is sustained.


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Andrew J. Kwee  
Administrative Law Judge

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<sup>1</sup> Precedential opinions of the State Board of Equalization, designated with “SBE,” are posted at: <[www.boe.ca.gov/legal/legalopcont.htm](http://www.boe.ca.gov/legal/legalopcont.htm)>. Precedential OTA decisions are posted at: <[www.ota.ca.gov/opinions](http://www.ota.ca.gov/opinions)>.

We concur:

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Tommy Leung  
Administrative Law Judge

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Alberto T. Rosas  
Administrative Law Judge