

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
INDRANI RAY

) OTA Case No. 18083685
)
) Date Issued: May 16, 2019
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)
)

OPINION

Representing the Parties:

For Appellant: Indrani Ray

For Respondent: Samantha Q. Nguyen, Tax Counsel

For Office of Tax Appeals: Josh Lambert, Tax Counsel

J. ANGEJA, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19045, Indrani Ray (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing to assess additional tax of \$1,467, plus applicable interest, for the 2016 tax year.

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

ISSUE

Whether appellant qualifies for the head of household (HOH) filing status.

FACTUAL FINDINGS

1. Appellant filed his 2016 California Resident Income Tax Return (Form 540) electing the HOH filing status and claiming his mother as a dependent.
2. FTB requested information from appellant regarding his elected head of household filing status. Appellant returned the Head of Household Information Request form, indicating that: (1) he was legally married and did not live with his spouse during the 2016 tax year; (2) that his qualifying person for the filing status was his mother; (3) that his qualifying

- person earned zero income; and (4) that his qualifying person lived with him the entire year in 2016.
3. After reviewing the information, FTB issued a Notice of Proposed Assessment (NPA), denying appellant the HOH filing status and recalculating his tax based on the married/RDP filing separately filing status. The NPA allowed a dependent exemption credit for appellant's mother.
 4. Appellant protested the NPA, claiming that he qualified for the filing status with the Internal Revenue Service.
 5. FTB acknowledged appellant's protest in a letter and again explained to appellant that because he was still married by the last day of the 2016 tax year, the only qualifying person that he could claim would be his child for whom he is entitled to claim a dependent exemption credit. FTB further explained that appellant was entitled to claim a dependent exemption credit for his mother, but she could not qualify him for the HOH filing status.
 6. Appellant replied that as he met the requirements to be considered unmarried during the 2016 tax year, and provided all of the financial support for his disabled mother, he should be able to claim his mother as a dependent.
 7. FTB subsequently issued a Notice of Action, affirming the NPA. This timely appeal followed.

DISCUSSION

A taxpayer has the burden of proving that he is entitled to the HOH filing status. (*Appeal of Verma*, 2018-OTA-080P.) The FTB's eligibility determination is presumed correct and a taxpayer bears the burden of proof to show that the determination is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) A taxpayer's failure to produce evidence that is within his control gives rise to a presumption that such evidence is unfavorable to his case. (*Appeal of Cookston* (83-SBE-048) 1983 WL 15434.)

R&TC section 17042 sets forth the requirements for the HOH filing status by reference to Internal Revenue Code (IRC) sections 2(b) and 2(c). IRC section 2(b) provides that, for a person to claim the HOH filing status, he or she must be unmarried at the close of the taxable year and

maintain a household that constitutes the principal place of abode of a qualifying person for more than one-half of the taxable year. (IRC, §§ 2(b) & 152(d)(2).)

IRC section 7703(a)(1) provides that the determination of whether a taxpayer is married shall be determined as of the close of his taxable year. IRC section 7703(a)(2) provides that a taxpayer who is legally separated from his spouse under a decree of divorce or a decree of separate maintenance shall be considered not married. A final decree of legal separation does not include an informal separation agreement, a petition for divorce or separation, or an interlocutory judgment for dissolution of marriage. (*Appeal of Savage* (82-SBE-168) 1982 WL 11845.) Additionally, a petition for dissolution of marriage is not the same as a final divorce decree. It is well settled that for HOH purposes, a married taxpayer remains married before a final decree of divorce is rendered. (*Appeal of Savage, supra.*)

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” or any other person for whom the taxpayer is entitled to a dependent exemption under IRC section 151 if the taxpayer’s household constitutes the principal place of abode of the qualifying individual, as a member of the household, for more than one-half of the year.¹ As defined in IRC section 152(c), a “qualifying child” means, for purposes of this discussion, the taxpayer’s child or a descendant of such child or the taxpayer’s brother, sister, stepbrother, or stepsister or a descendant of any such relative.

IRC section 2(c) provides that certain *married* persons living apart will be *treated as not married* (for purposes of the HOH filing status) at the close of the taxable year, if they satisfy the requirements of IRC section 7703(b). Under IRC section 7703(b), a married individual who files a separate return must generally meet four separate requirements to qualify for the HOH filing status: (1) the taxpayer must maintain as his home a household that constitutes the principal place of abode for a child (within the meaning of IRC section 152(f)(1)) for more than one-half of the taxable year; (2) the taxpayer must be entitled to a dependency deduction for the child; (3) the taxpayer must furnish over one-half of the cost of maintaining his household during the taxable year; and (4) the taxpayer’s spouse may not be a member of his household during the last

¹ In addition, IRC section (2)(b)(1)(A)(i) requires that the qualifying child may not be: (1) married at the close of the taxpayer’s taxable year; (2) a married dependent who filed a joint return with his or her spouse (IRC, § 152(b)(2)); or (3) an individual who is not a citizen or national of the United States unless that individual is a resident of the United States, Canada, or Mexico. (IRC, § 152(b)(3)).

six months of the taxable year. IRC section 152(f)(1) defines a “child” in this context (where a married person is seeking to be treated as not married) as an individual who is the taxpayer’s son, daughter, stepson, stepdaughter, or eligible foster child.

Here, appellant reported that his mother qualifies him for the HOH filing status. However, appellant has presented contradictory information, specifically with regard to his marital status. On appellant’s original HOH Information Request, he stated that he was married during 2016. Appellant now claims that he was never married. Appellant presents no evidence to support his assertion that he was not married in 2016 or explain why he originally stated that he was married. Accordingly, appellant has failed to show error in FTB’s finding that appellant was married during 2016, as he originally indicated.

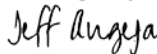
As such, for appellant to qualify for the HOH filing status, appellant must establish that he meets the statutory requirements to be considered unmarried. As explained above, a married taxpayer may be considered unmarried, for purposes of the HOH filing status, if the taxpayer maintains a household which is the principal place of abode for a qualifying child, and the taxpayer is entitled to a dependency exemption credit for that child. Here, appellant has claimed that his mother is his qualifying person. A mother is not one of the relationships that falls under the definition of a “qualifying child.” As such, appellant may not claim his mother as a qualifying person. Therefore, appellant has not shown that he is entitled to claim the HOH filing status. Although appellant has not shown that he is entitled to the HOH filing status, FTB has agreed to allow appellant a dependent exemption credit for his mother.

HOLDING

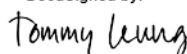
Appellant does not qualify for the HOH filing status.


DISPOSITION

FTB's action is sustained.

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Jeffrey G. Angeja
Administrative Law Judge

We concur:

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Tommy Leung
Administrative Law Judge

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Sara A. Hosey
Administrative Law Judge