

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

In the Matter of the Appeal of:  
**MARVIN A. LASSITER, JR.**

) OTA Case No. 18063372  
)  
) Date Issued: July 16, 2019  
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)

**OPINION**

Representing the Parties:

For Appellant: Marvin A. Lassiter, Jr.

For Respondent: Eric R. Brown, Tax Counsel III

For Office of Tax Appeals: Mai Tran, Tax Counsel IV

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) 19324, Marvin A. Lassiter Jr. (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying his claim for refund of \$1,955 for the 2016 tax year. Appellant waived his right to an oral hearing. Therefore, this matter is being decided based on the written record.

**ISSUE**

Is appellant entitled to claim the Head of Household (HOH) filing status?

**FACTUAL FINDINGS**

1. Appellant filed a 2016 California resident income tax return, claiming the married filing jointly (MFJ) filing status. He reported Esperanza Rios (Rios) as his spouse. On this return, he claimed an overpayment of \$2,051, which was refunded.<sup>1</sup>
2. Subsequently, appellant filed an amended tax return, switching his filing status from MFJ to HOH. He claimed Rios as his sole dependent and indicated Rios’ relationship to him

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<sup>1</sup> FTB did not refund the \$2,051 directly to appellant. Instead, the refund was intercepted and sent to the Kern County Department of Child Support. FTB notified appellant of this action by letter.

as “other.” On this return, he requested a refund of \$1,955, which was lower than the refund he requested of \$2,051 on his original return.<sup>2</sup>

3. FTB denied appellant’s refund claim of \$1,955. It asserted that appellant may not change his filing status from MFJ to any other filing status after the due date of the return. This timely filed appeal followed.
4. On appeal, appellant claims he was not married during the 2016 tax year. FTB has conceded this fact, and that R&TC section 18521(e) does not prohibit him from changing his filing status from MFJ to another status. However, FTB still maintains that appellant does not qualify for the HOH filing status.

### DISCUSSION

Taxpayers have the burden of producing sufficient evidence to substantiate they are entitled to the HOH filing status, and the presumption of correctness that attends FTB’s determination cannot be overcome by unsupported statements. (*Appeal of Byrd* (84-SBE-167) 1984 WL 16246.)

R&TC section 17042 sets forth the California requirements for the HOH filing status by reference to Internal Revenue Code (IRC) section 2(b). In general, IRC section 2(b)(1)(A) provides that unmarried taxpayers who claim the HOH filing status must maintain a household that constitutes the principal place of abode of a qualifying person for more than one-half of the year. A qualifying person can be either: (1) a qualifying child; or (2) a qualifying relative. (IRC, § 2(b)(1)(A)(i), (ii).) Among other requirements, only certain individuals that meet the relationship requirement are a “qualifying child” or “qualifying relative.”

A “qualifying child” means the taxpayer’s child or descendent of such child, or the taxpayer’s brother, sister, stepbrother, or stepsister or a descendant of any such relative. (IRC, § 152(c)(2)(A), (B).) A “qualifying relative” includes, for example, a child or descendant of a child, a brother, sister, stepbrother, or stepsister, a father or mother or ancestor of either, a stepfather or stepmother, and other specified relatives. (IRC, § 152(d)(2).) An individual who is not related to the taxpayer by blood or marriage cannot qualify the taxpayer for the HOH filing status, even if that individual qualifies the taxpayer for a dependent exemption credit. (See IRC, § 2(b)(3)(B)(i); *Appeal of Padwa* (77-SBE-078) 1977 WL 3888.)

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<sup>2</sup>This is largely because the HOH filing status places appellant in a higher tax bracket than the MFJ filing status.

Unmarried taxpayers can also claim the HOH filing status if, among other things, they maintain a household that constitutes the principal place of abode of their father or mother. (IRC, § 2(b)(1)(B).)

Here, on his amended return, appellant indicates that Rios’ relationship to him is “other.” However, the record does not reveal what this means, other than Rios was not appellant’s spouse. Therefore, as a threshold matter, appellant has not provided any evidence establishing that Rios is the type of individual meeting the relationship requirement of either a qualifying child, qualifying relative, or parent. While appellant was not married for 2016, as FTB concedes, he must also satisfy other requirements, including the relationship requirement, to claim the HOH filing status.

HOLDING

Appellant has failed to carry his burden of proving he is entitled to the HOH filing status.

DISPOSITION

FTB’s denial of appellant’s refund claim is sustained.<sup>3</sup>

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*Kenneth Gast*  
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Kenneth Gast  
Administrative Law Judge

We concur:

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*Tommy Leung*  
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Tommy Leung  
Administrative Law Judge

DocuSigned by:  
*Patrick J. Kusiak*  
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Patrick J. Kusiak  
Administrative Law Judge

<sup>3</sup> Even if appellant were entitled to claim HOH, he would not be due a refund. On his original return, appellant was refunded \$2,051 using the MFJ filing status. In contrast, on his amended return, appellant not only seeks a lower refund of \$1,955 using the HOH filing status, but he never accounted for the \$2,051 refund he already received from FTB. Consequently, appellant would owe additional tax of \$96 (i.e., \$2,051 - \$1,955). Similarly, appellant would owe even more additional tax if FTB required him to use the single filing status—which, by default, is the correct filing status for 2016—because that would place him in a higher tax bracket relative to the others.