

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 18011268
HOMER H. HUMMEL, JR., AND)	Date Issued: April 22, 2019
MARGARET A. HUMMEL)	
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)	

OPINION

Representing the Parties:

For Appellants: Homer H. Hummel, Jr.

For Respondent: Bradley J. Coutinho, Tax Counsel
Natasha S. Page, Tax Counsel IV

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Homer H. Hummel, Jr., and Margaret A. Hummel (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$830.37 for the 2016 taxable year.

Office of Tax Appeals (OTA) Administrative Law Judges Teresa A. Stanley, Kenneth Gast, and Nguyen Dang held an oral hearing for this matter in Van Nuys, California, on January 24, 2019. At the conclusion of the hearing, the record was closed, and this matter was submitted for decision.

ISSUE

Have appellants established that they were entitled to the senior head of household credit for taxable year 2016?

FACTUAL FINDINGS

1. Appellants filed a 2016 California Resident Income Tax Return (Form 540), using a filing status of married filing jointly. Appellants reported California adjusted gross income of \$63,066 and claimed a senior head of household credit of \$828, and reported overpaid tax of \$360.

2. Appellants were age 65 or older, by December 31, 2016.
3. Appellants stipulated that they were married in 2014 and 2015.
4. On their 2014 and 2015 joint returns, appellants claimed a dependent exemption for their son.¹ Appellants' son died on December 20, 2015.
5. On May 31, 2017, FTB issued a Notice of Tax Return Change – Revised Balance disallowing the appellants' claimed \$828 senior head of household credit. The revised balance due, including interest, totaled \$470.37, which appellants paid.
6. Appellants protested the denial of the senior head of household credit, on the basis that they had met all requirements for the credit that were listed in FTB's instructions for the 2016 taxable year.²
7. FTB treated appellants' protest letter as a claim for refund, and issued a Notice of Action denying the claim on the basis that appellants did not qualify for the senior head of household credit.
8. This timely appeal followed.

DISCUSSION

R&TC section 17054.7 allows a taxpayer to claim a credit against net tax of 2 percent of taxable income if the taxpayer is a “qualified senior head of household.”³ To qualify for the credit, taxpayers must meet three requirements: (1) they must have attained the age of 65 before the close of the taxable year; (2) they must have qualified as the head of household (HOH) in accordance with R&TC section 17042 for either of the two taxable years immediately preceding the taxable year by providing a household for a qualifying individual who died during either of the two taxable years immediately preceding the taxable year at issue; and (3) their adjusted gross income for the taxable year must not have exceeded \$71,370 for taxable year 2016. (R&TC, § 17054.7(c).) The first and third requirements have been met. Therefore, the only

¹ Although no evidence was presented to show appellants' filing status for 2014 and 2015, appellants do not dispute that they used the status of married filing jointly.

² At the hearing appellants provided a copy of page 13 of the California 540 2016 Personal Income Tax Booklet (instructions booklet). For the three requirements, appellants refer us to the section entitled “Credit for Senior Head of Household – Code 163.”

³ “Net tax” is defined in R&TC section 17039.

issue in this appeal is whether appellants met the second requirement that they were qualified to file with a HOH status in either 2014 or 2015.

R&TC section 17054.7(c)(2) does not require that appellants actually filed their 2014 or 2015 tax returns using a HOH status. Instead, the appropriate question is whether they qualified for—and therefore could have claimed—the HOH status for either of those two years. The definition of HOH is found in Internal Revenue Code (IRC) section 2(b).⁴ (R&TC, § 17042.) As relevant here, under that definition, an individual qualifies as a head of a household “if, and only if, such individual is not married at the close of his taxable year.” (IRC, § 2(b)(1).) In addition, the nonmarried taxpayer must maintain a household which constitutes for more than one-half of such taxable year the principal place of abode of a qualifying child (as defined in IRC section 152) or another dependent (as defined in IRC section 151). (IRC, § 2(b)(1)(A), (B).) Taxpayers have the burden of producing sufficient evidence to substantiate that 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 Sedillo*, 2018-OTA-101P, Aug. 10, 2018; *Appeal of Byrd* (84-SBE-167) 1984 WL 16246.)

Appellants established that they provided a home for their son, who is a qualifying child under IRC sections 152(c)(1)(A) and 152(c)(2)(A), for more than one-half of the taxable years 2014 and 2015. However, because appellants were married during the relevant years, they do not meet the definition of a head of household and therefore could not have qualified for head of household filing status.

Appellants point out that R&TC section 17042 provides that the IRC definition of HOH applies “except as otherwise provided.” They allege that FTB has provided such an exception in the instructions booklet. On page 13, the instructions booklet informs taxpayers: “You may claim this credit if you: [w]ere 65 years of age or older on December 31, 2016[; q]ualified as a head of household in 2014 or 2015 by providing a household for a qualifying individual who died during 2014 or 2015[; and d]id not have AGI over \$71,370 for 2016.” Appellants contend that the language in FTB’s instructions booklet modifies the use of the definition in IRC section 2 by stating only that the taxpayer must have “provid[ed] a household for a qualifying individual,” and thus they are not restricted from claiming the senior head of household credit

⁴ IRC section 2(c) defines when taxpayers are “certain married individuals living apart,” for purposes of qualifying for head of household status. Here, appellants stipulated that they were married and living together during 2014, 2015, and 2016.

based on the fact that they were married during the relevant tax years.

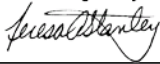
We do not agree with appellants that the language in the instruction booklet conflicts with the statutory requirements, and thereby creates an exception. The instruction booklet does not create a separate definition by only partially stating the definition, just as it does not change the definition of a qualifying individual. The “as otherwise provided” language in R&TC section 17042 refers only to instances where there is an exception in the law. Furthermore, even if FTB’s instructions are unclear, taxpayers still have a duty to follow the law. (*Appeal of Collamore* (72-SBE-031) 1972 WL 2664.) The statute is clear, and appellants must follow it. (*Ibid.*) Moreover, the instructions contain an express disclaimer that “[t]axpayers should not consider the instructions as authoritative law.”⁵ In order to find that appellants qualify for the senior head of household credit, they must meet each of the requirements of IRC section 2. Because appellants were married during 2014 and 2015, they did not qualify to claim head of household status, and may not claim the senior head of household credit for 2016.

HOLDING

Appellants have not established that they were entitled to the senior head of household credit for taxable year 2016.

DISPOSITION

FTB’s action is sustained.

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Teresa A. Stanley
Administrative Law Judge

⁵ 2016 Personal Income Tax Booklet (FTB Form 3532), p. 77.

We concur:

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Kenneth Gast
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Kenneth Gast
Administrative Law Judge

DocuSigned by:
Nguyen Dang
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Nguyen Dang
Administrative Law Judge