

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 18042558
)
WARAM BROOKS) Date Issued: August 14, 2019
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OPINION

Representing the Parties:

For Appellant: Waram Brooks
For Respondent: Joel M. Smith, Tax Counsel
Marguerite Mosnier, Tax Counsel IV
For the Office of Tax Appeals: Andrew Jacobson, Tax Counsel III

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Waram Brooks (appellant) appeals the actions by respondent Franchise Tax Board (FTB) proposing an assessment of \$993 in additional tax, plus interest, for the 2013 taxable year and an assessment of \$972 in additional tax, plus interest, for the 2014 taxable year.

Office of Tax Appeals (OTA) Administrative Law Judges Daniel Cho, Alberto Rosas, and Nguyen Dang held an oral hearing for this matter in Los Angeles, California, on May 21, 2019. At the conclusion of the hearing, the record was closed and this matter was submitted for decision.

ISSUE

Whether appellant qualifies for the head of household (HOH) filing status for the 2013 and/or 2014 taxable years.

FACTUAL FINDINGS

2013 Taxable Year

1. On October 16, 2014, appellant filed a 2013 California return (FTB Form 540 2EZ), on which he claimed the HOH filing status.
2. FTB sent appellant an HOH Audit Questionnaire requesting information to determine whether he qualified to file as HOH for the 2013 taxable year. On the completed HOH Audit Questionnaire, appellant identified Tanya Sanders (Ms. Sanders) as his qualifying person. Appellant provided the following relevant information:
(1) Ms. Sanders was his “domestic partner”; (2) Ms. Sanders lived with him for all of 2013; (3) appellant and Ms. Sanders were not married or registered domestic partners (RDP) as of December 31, 2013; (4) Ms. Sanders’s income was less than \$3,900 in 2013; and (5) appellant provided more than one-half of Ms. Sanders’s support during 2013.
3. Based on this information, FTB issued a Notice of Proposed Assessment (NPA) dated July 10, 2015, which denied appellant's HOH filing status for 2013 because appellant lacked a qualifying person in his household. The NPA revised appellant’s filing status from HOH to single, reduced his standard deduction to \$3,906, and disallowed the claimed renter’s credit because appellant’s revised California adjusted gross income (AGI) exceeded the maximum allowable income to claim this credit for a person using the single filing status. The NPA allowed appellant a personal exemption credit and a dependent exemption credit. The NPA proposed an assessment of additional tax of \$993, plus applicable interest.

2014 Taxable Year

4. On April 6, 2015, appellant filed a 2014 California return (FTB Form 540 2EZ), on which appellant claimed the HOH filing status.
5. Appellant filed a 2014 HOH Schedule with his return, on which he identified Ms. Sanders as his qualifying person. Appellant provided the following relevant information:
(1) Ms. Sanders was his “domestic partner”; (2) Ms. Sanders lived with appellant for all of 2014; (3) appellant and Ms. Sanders were not married or registered domestic partners as of December 31, 2014; (4) appellant did not live with a spouse or an RDP at any time during 2014; (5) Ms. Sanders’s income was less than \$3,900 in 2014; (6) appellant

provided more than one half of Ms. Sanders's support during 2013; and (7) Ms. Sanders was a full-time student at a recognized educational institution for at least five months during 2014.

6. FTB issued an NPA dated October 7, 2015, which denied appellant's HOH filing status for 2014 because appellant lacked a qualifying person in his household. The NPA revised appellant's filing status from HOH to single, reduced his standard deduction to \$3,992, and disallowed the claimed renter's credit. The NPA allowed appellant a personal exemption credit and a dependent exemption credit. The NPA proposed an assessment of additional tax of \$972, plus applicable interest.

Protest of 2013 and 2014 Proposed Assessments

7. Appellant protested FTB's denial of his HOH filing status for the 2013 and 2014 taxable years. Appellant conceded that he was not married to Ms. Sanders in 2013 or 2014, although he did refer to her as his fiancée during 2014. Appellant stated that Ms. Sanders had lived with him prior to 2013 and that she was unemployed during the taxable years at issue. Appellant asserted his inability to claim the HOH filing status would cause him economic hardship.
8. Appellant requested an oral protest hearing by telephone with FTB. FTB attempted to schedule an oral protest hearing and offered appellant several potential hearing dates. Appellant did not reply to FTB's potential hearing dates.
9. FTB issued two Notices of Action dated December 4, 2017, affirming the 2013 and 2014 NPAs. Appellant timely filed the instant appeals.

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).)

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.)

Appellant contends that his qualifying individual was his fiancée, who lived with him before, during, and after the taxable years at issue in this appeal. Appellant also states that he was the sole provider for both himself and Ms. Sanders. As a result, appellant argues that he should be entitled to claim the HOH filing status. However, a fiancée does not meet the requirements of a qualifying child or qualifying relative. Therefore, appellant does not satisfy the requirements for the HOH filing status as set forth in IRC section 2(b) for the 2013 and 2014 taxable years.

Although appellant asserts that losing the HOH filing status would result in an economic hardship, OTA lacks the legal authority to strike down a valid tax assessment on the ground that payment will be difficult for the taxpayer. (See *Appeal of Estate of Richard Luebbert, Deceased, and Verla Luebbert* (71-SBE-028) 1971 WL 2708.) Appellant’s financial and personal difficulties do not constitute a basis for obtaining the HOH filing status without satisfying the statutory requirements of IRC section 2, subdivisions (b) or (c), which appellant has not done.

HOLDING

Appellant has failed to establish that he qualifies for the HOH filing status for the 2013 and 2014 taxable years.

DISPOSITION

The FTB's actions are sustained.

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Daniel K. Cho
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Daniel K. Cho
Administrative Law Judge

We concur:

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Alberto T. Rosas
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Alberto T. Rosas
Administrative Law Judge

DocuSigned by:
Nguyen Dang
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Nguyen Dang
Administrative Law Judge