

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
ASHLEY SNYDER

) OTA Case No. 18042800
)
) Date Issued: August 16, 2019
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)
)

OPINION

Representing the Parties:

For Appellant: Ashley Snyder

For Respondent: Lyn Gidding-Theobald, Legal Assistant

For Office of Tax Appeals: Philip Wahlquist, Graduate Student Assistant

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Ashley Snyder (appellant) appeals an action by the Franchise Tax Board (FTB) proposing \$1,780 in additional tax, plus applicable interest, for the 2014 taxable year.

Appellant waived her right to an oral hearing; therefore, this matter is decided based on the written record.

ISSUES

1. Has appellant established that she is entitled to the Head of Household (HOH) filing status for the 2014 taxable year?¹
2. Has appellant established that she is entitled to abatement of interest?

¹ On appeal, appellant requests that her 2015 taxable year be “reopened” in order to dispute the HOH filing status for that year. At the time of that request, FTB had sent a Notice of Action to appellant for taxable year 2015, and the liability became final when she did not appeal within 30 days. On May 17, 2017, appellant paid the 2015 balance due (\$1,871.05) and claimed a refund based on HOH filing status. That claim for refund was directed to FTB’s audit division. Because appellant has not filed an appeal of a denial (or deemed denial) of her claim for refund for the 2015 tax year, that year is not currently before the Office of Tax Appeals.

FACTUAL FINDINGS

1. Appellant timely filed a 2014 California Resident Income Tax Return (Form 540) using the HOH filing status, and claiming her son as her dependent.
2. FTB sent appellant a 2014 Head of Household Audit Questionnaire (Questionnaire). Appellant returned the Questionnaire, on which she claimed her son as her dependent and stated that he lived with appellant for the entire year. Appellant further indicated that she was married as of December 31, 2014, and had lived with her spouse from January 1, 2014 to April 1, 2014, and from November 5, 2014 to December 31, 2014.
3. On February 10, 2016, FTB issued a Notice of Proposed Assessment (NPA) that denied appellant the HOH filing status, revising appellant's filing status to married/RDP filing separately, allowed appellant the dependent exemption credit that she claimed for her son, and disallowed the claimed renter's credit.
4. In the NPA, FTB explained that appellant must have been either unmarried or meet the requirements to be considered unmarried. FTB further explained that because appellant had lived with her spouse during part of the last six months of 2014, she cannot be "considered unmarried" and thus does not qualify for the HOH filing status.
5. FTB proposed an assessment of additional tax in the amount of \$1,780 plus applicable interest.
6. Appellant protested the NPA on February 19, 2016. In appellant's protest letter, appellant stated that she was not living with her spouse during the last six months of 2014, and therefore, qualified for the HOH filing status.
7. FTB sent appellant correspondence on March 3, 2017, requesting verification of the periods that she lived apart from her spouse in 2014. There is no evidence in the record that appellant provided further evidence.
8. FTB issued a Notice of Action affirming the NPA, and appellant filed this timely appeal.
9. Appellant made an electronic payment of \$1,958.01 on February 16, 2018. The payment included \$1,780 of additional tax, plus interest accrued to that date. FTB concedes that it erroneously refunded the payment, on February 22, 2018.

DISCUSSION

Issue 1 – Has appellant established that she is entitled to the HOH filing status for the 2014 taxable year?

A taxpayer has the burden of proving that he or she qualifies for the HOH filing status. (*Appeal of Verma*, 2018-OTA-080P; *Appeal of Byrd* (84-SBE-167) 1984 WL 16246.) So long as FTB's determinations are reasonable and rational, they are presumed correct, and a taxpayer has the burden of proving that the assessment is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Myers* (2001-SBE-001) 2001 WL 37126924.) The requirements for claiming HOH filing status are set forth in R&TC section 17042 by reference to Internal Revenue Code (IRC) sections 2(b) and (c).

IRC section 2(c) provides that certain married persons will be treated as not married for HOH filing status purposes at the close of the taxable year, if they satisfy each of four requirements under IRC section 7703(b). The four criteria are as follows: first, the married individual must maintain 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. (IRC, § 7703(b)(1).) Second, the taxpayer must be entitled to a dependency deduction for the child. (*Ibid.*) Third, the taxpayer must furnish over one-half of the cost of maintaining such household during the taxable year. (IRC, § 7703(b)(2).) Fourth, the taxpayer's spouse may not be a member of the taxpayer's household during the last six months of the taxable year. (IRC, § 7703(b)(3).)

Here, appellant completed the Questionnaire stating that she was married as of December 31, 2014, and that she lived with her spouse during the following periods: January 1, 2014 to April 1, 2014, and November 5, 2014 to December 31, 2014. FTB, therefore, denied her the HOH filing status because she failed the fourth prong -- that she and her spouse must not have lived together at any time during the last six months of 2014.

Subsequently, appellant asserted that she made a mistake when she originally provided the dates that her spouse lived with her in 2014. Due to appellant's contradictory statements, FTB requested further evidence showing that she lived separate and apart from her spouse for the last six months of 2014. There is no evidence in the record that appellant ever responded to that request or provided the types of evidence that FTB specified it would accept as proof. Without more evidence that her original statement was inaccurate, appellant has not met her burden of

demonstrating that she has met all the statutory requirements for entitlement to the HOH filing status for the 2014 taxable year.

Issue 2 – Has appellant established that she is entitled to abatement of interest?²

FTB conceded in its reply brief that it had erroneously refunded appellant's February 16, 2018 payment in satisfaction of her 2014 tax liability. When it makes an erroneous refund, FTB must abate the assessment of all interest until 30 days after the date the demand for repayment is made. (R&TC, § 19104(c).) FTB proposed to abate interest beginning on the date the erroneous refund occurred to the date 30 days after it filed its reply brief, which gave notice to appellant of the erroneous refund and the requirement that appellant must repay the funds, which is what the law requires. Appellant has not shown that she is entitled to any additional abatement of interest.

HOLDINGS

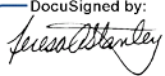
1. Appellant has not established that she is entitled to the HOH filing status for the 2014 taxable year.
2. Interest should be abated, as conceded by FTB, for the period beginning February 22, 2017, through a date 30 days after FTB gave notice for repayment (FTB's reply brief, dated December 19, 2018).³

² Appellant has not alleged nor provided evidence showing that interest should be waived for any period other than that conceded by FTB. Because we sustain FTB's action, abatement of additional interest is not directly at issue.

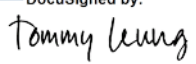
³ No interest should have accrued against appellant between February 16, 2018 (the date the parties agree appellant submitted her payment) and the date of the erroneous refund (February 22, 2018).

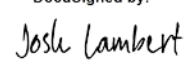
DISPOSITION

Interest shall be abated from the date of the erroneous refund until 30 days after FTB filed its reply brief. In all other respects FTB's action is sustained.

DocuSigned by:

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Tommy Leung
Administrative Law Judge

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Josh Lambert
Administrative Law Judge