

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
JOSIE R. MACADANGDANG

) OTA Case No. 18042865
)
) Date Issued: April 10, 2019
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)

OPINION

Representing the Parties:

For Appellant: Josie R. Macadangdang
George Clifton, Representative

For Respondent: Bradley Coutinho, Tax Counsel
Marguerite Mosnier, Tax Counsel

D. BRAMHALL, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19045,¹ Josie R. Macadangdang (appellant) appeals an action by the Franchise Tax Board (FTB) proposing \$436 of additional tax, and applicable interest, for the 2014 tax year.

Office of Tax Appeals (OTA) Administrative Law Judges Douglas Bramhall, Jeffrey Margolis, and Linda C. Cheng, held an oral hearing for this matter in Los Angeles, California, on February 20, 2019. At the conclusion of the hearing, the record was closed and this matter was submitted for decision.

ISSUE

Whether appellant has established that she is qualified to file her 2014 California resident tax return using the Head of Household (HOH) filing status?

FACTUAL FINDINGS

1. Appellant filed a timely California Resident Income Tax Return (Form 540) on which she claimed the head of household filing status. On line 10 of the return, George Clifton was claimed as a dependent and identified as her fiancé.

¹ Unless otherwise indicated, all statutory references are to sections of the Revenue and Taxation Code (R&TC).

2. On November 10, 2015, FTB sent appellant a 2014 Head of Household Audit Questionnaire (Questionnaire) as an audit inquiry.
3. On December 8, 2015, appellant responded by noting, in part, that the relationship of the person she believed qualified her for HOH filing status was her fiancé, that she was not married or a registered domestic partner (RDP) as of December 31, 2014, that her fiancé was not married and had gross income of less than \$3,950, that she provided more than half the support for her fiancé in 2014, and that they lived together for the entire year.
4. FTB issued a Notice of Proposed Assessment (NPA) on February 10, 2016, that denied appellant the HOH filing status. The NPA explained that appellant did not have a qualifying person living with her during the 2014 taxable year. The NPA revised appellant's filing status to single, allowed a dependent exemption credit, and reduced the non-refundable renter's credit to \$60 based on the change in filing status -- all resulting in an NPA for additional tax of \$436 plus applicable interest for the 2014 tax year.
5. Appellant protested the NPA on March 4, 2016, citing FTB form instructions and contractual related arguments.
6. FTB acknowledged receipt of the protest on April 27, 2016, and on May 31, 2017, FTB sent another letter acknowledging receipt of the protest and setting forth FTB's position.
7. On June 9, 2017, appellant replied repeating her protest positions and adding additional contractual related arguments to support her position of entitlement to HOH filing status.
8. FTB issued a Notice of Action (NOA) on January 24, 2018, affirming the NPA.
9. This timely appeal followed.

DISCUSSION

A taxpayer has the burden of proving that she or he is entitled to the HOH filing status. (*Appeal of Byrd*, 84-SBE-167, Dec. 13, 1984.)² Unsupported assertions are not enough to satisfy a taxpayer's burden of proof. (*Appeal of Magidow*, 82-SBE-274, Nov. 17, 1982.) Section 17042 sets forth the California requirements for the HOH filing status by reference to Internal Revenue Code (IRC) sections 2(b) and 2(c). IRC section 2(b) provides in relevant part that, for a person

² Pursuant to the Office of Tax Appeals Rules for Tax Appeals, California Code of Regulations, tit. 18, § 30501(d)(3), precedential opinions of the State Board of Equalization (BOE) that were adopted prior to January 1, 2018, may be cited as precedential authority to the Office of Tax Appeals unless a panel removes, in whole or in part, the precedential status of the opinion. BOE's precedential opinions are available for viewing on the BOE's website: <<http://www.boe.ca.gov/legal/legalopcont.htm#boeopinion>>.

to claim the HOH filing status, she or he generally must be unmarried and maintain a household that constitutes the principal place of abode of a qualifying person for more than one-half of the year. 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. As relevant to this appeal, the qualified person must be a “dependent” as defined in IRC section 152. IRC section 152(a) provides that a dependent generally means a qualifying child or a “qualifying relative.” And, IRC section 152(c)(2) defines “qualifying relative” as a brother, sister, stepbrother, or stepsister of the taxpayer, or a descendant of any such relative. To qualify for the HOH filing status on her 2014 return, appellant, as an unmarried taxpayer, must establish that she maintained a household that was the principal place of abode for over one-half of 2014 for a qualified person. However, on her original return and in her responses to the Questionnaire, appellant indicated that she was claiming her fiancé as a qualifying person. Based on this response, appellant did not satisfy the requirements for the HOH filing status for 2014, because a fiancé is not a qualified person.

On appeal (and during her protest of FTB’s proposed assessment), appellant has noted that FTB’s Form 540 instructions state, regarding filing status, “Use the same filing status for California that you used for your federal income tax return.” According to appellant, because she filed her 2014 federal return using HOH status and her return was accepted as filed by the IRS, she has fully complied with the FTB instructions and the FTB cannot challenge her filing status. Further, appellant argues that these instructions create a contractual type of relationship which binds FTB to allowing appellant’s claimed filing status.

FTB argues that its instructions create no contractual relationship with taxpayers, that the instructions presuppose that the filing status used for federal purposes is correct, and that if it determines a federal filing status is incorrect, it possesses the authority to issue proposed assessments based upon a corrected filing status. Further, FTB argues that even if there is a conflict between form instructions and the law, the law must be followed.

We note that determining whether one qualifies for the HOH filing status can be confusing, since the legal requirements do not necessarily conform to the general understanding of what it means to be the head of one’s household. But the law is clear, for both federal and

state purposes, that the benefits accorded the filing status are reserved for those who meet the statutory requirements. In this case, since the person claimed by appellant to support HOH status is not a qualified person under the law, appellant is not entitled to those benefits.

First, we note that under section 18521(a)(2), the FTB is authorized to issue a proposed assessment to correct a California filing status if it determines that an incorrect filing status was used on a federal return.

Additionally, the substance of appellant's contractual argument is essentially an estoppel argument. Her position is that FTB should be estopped from applying the law because its form instructions were misleading. However, that exact position was rejected by the BOE in *Appeal of Campbell*, 79-SBE-035, Feb. 8, 1979. In that case, FTB's instructions were erroneous, stating that an unrelated person could, in certain circumstances, qualify the taxpayer for HOH filing status. Despite the actual error in the instructions in that appeal, the BOE held the estoppel doctrine was inapplicable for two reasons. First, the taxpayer had not established that she detrimentally relied on those instructions since her living arrangements were established *before* she relied on the form to determine her filing status for 1974. Second, the BOE held that "taxpayers should not regard such informal publications as the instruction pamphlet as sources of authoritative law which give rise to the doctrine of estoppel where misleading statements are made therein."

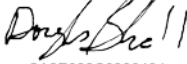
Accordingly, we find appellant has failed to meet her burden of proving entitlement to HOH filing status.

HOLDING

Appellant failed to establish that she qualified for the HOH filing status for tax year 2014.


DISPOSITION

FTB's action is sustained.

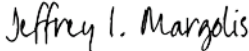
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Douglas Bramhall
Administrative Law Judge

We concur:

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Linda C. Cheng
Administrative Law Judge

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Jeffrey Margolis
Administrative Law Judge