

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

In the Matter of the Appeal of:  
**ALEJANDRA R. ARGUELLO**

) OTA Case No. 18124049  
)  
) Date Issued: August 29, 2019  
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)

**OPINION**

Representing the Parties:

For Appellant: Alejandra R. Arguello

For Respondent: Joel M. Smith, Tax Counsel

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Alejandra R. Arguello (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing \$1,849 of additional tax, and applicable interest, for the 2016 taxable year.

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

**ISSUE**

Is appellant entitled to the head of household (HOH) filing status for 2016?

**FACTUAL FINDINGS**

1. In a timely filed 2016 return, appellant claimed HOH filing status, claiming her parents as her qualifying dependents.
2. With the return, appellant submitted to FTB a Head of Household Filing Status Schedule (Form 3532), indicating that at the end of 2016 she was legally married and did not live with her spouse during the year.
3. On March 13, 2018, FTB issued a Notice of Proposed Assessment (NPA) which proposed to modify appellant’s filing status to married, filing separately. FTB proposed

to allow dependent exemptions for both of appellant's parents, and proposed additional tax of \$1,849, plus interest.

4. Appellant protested the NPA, asserting that she qualifies as HOH and "meets all the IRS rules."
5. On August 15, 2018, FTB sent a letter to appellant, explaining that she may not claim her parents for HOH filing status purposes because taxpayers who are married on the last day of a taxable year only qualify if they have a dependent child.
6. FTB issued a Notice of Action confirming its NPA on October 22, 2018.
7. This timely appeal followed.

### DISCUSSION

Taxpayers have the burden of producing sufficient evidence to substantiate that they are entitled to the HOH filing status, and the presumption that FTB properly determined HOH eligibility cannot be overcome by unsupported statements. (*Appeal of Sedillo* (2018-OTA-101P).) R&TC section 17042 sets forth the California requirements for the HOH filing status by reference to Internal Revenue Code (IRC) subsections 2(b) and 2(c). IRC section 2(b) provides that, for a person to claim the HOH filing status, he or she 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. IRC section 2(c) provides an exception to the requirement that to qualify for HOH filing status a taxpayer be unmarried at the close of the taxable year. For married individuals to be entitled to the HOH status, they must meet the following requirements: 1) file a return separate from their spouse, 2) maintain a household which constitutes the principal place of abode for a child (within the meaning of IRC section 152(f)) for more than one-half of the taxable year, 3) furnish over one-half of the cost of maintaining the household, and 4) during the last 6 months of the taxable year did not live with their spouse. (IRC, § 7703(b).) A qualifying child is defined as a son, daughter, stepson, stepdaughter, eligible foster child, or adopted child. (IRC, § 152(f).)

Appellant asserts that she qualifies for HOH filing status because she provided a household for both of her parents and supported them for all of 2016. Appellant admits she was still married at the end of the taxable year, but states that she did not live with her spouse during the year. Appellant meets the requirements to be treated as unmarried for tax purposes; however, that will only qualify her for HOH status if she claims an eligible child, as defined. Appellant's

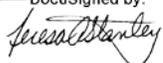
parents are not qualifying dependents because, as a married person, appellant may only claim a qualifying child. Appellant has not presented evidence that she provided support for a dependent child during 2016, and she is therefore not entitled to the HOH filing status.

HOLDING

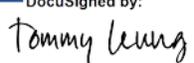
Appellant has not shown that she is entitled to HOH filing status for taxable year 2016.

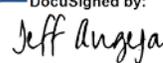
DISPOSITION

FTB's action is sustained.

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Teresa A. Stanley  
Administrative Law Judge

We concur:

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Tommy Leung  
Administrative Law Judge

DocuSigned by:  
  
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Jeffrey G. Angeja  
Administrative Law Judge