

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

In the Matter of the Appeal of:  
**FRANK ALICEA**

) OTA Case No. 18053067  
)  
) Date Issued: October 15, 2019  
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)

**OPINION**

Representing the Parties:

For Appellant: Frank Alicea

For Respondent: Bradley J. Coutinho, Tax Counsel

For Office of Tax Appeals: Ellen L. Swain, Tax Counsel

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Frank Alicea (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing \$562 of additional tax and applicable interest for the 2015 taxable year.

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

**ISSUE**

Is appellant entitled to Head of Household (HOH) filing status for the 2015 taxable year?

**FACTUAL FINDINGS**

1. Appellant claimed HOH filing status on his 2015 California Tax return (Form 540) and listed an individual (claimed dependent) as his qualifying person for the status.
2. On his Head of Household Filing Status Schedule (HOH Form), appellant indicated he was not legally married or in a registered domestic partnership for the 2015 taxable year. Additionally, appellant checked the box to indicate that the claimed dependent was either his grandfather, grandmother, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, sister-in-law, uncle, or aunt.

3. FTB denied the HOH filing status and recalculated the tax based on a single filing status and proposed additional tax of \$562 plus interest.
4. Appellant protested on the basis that the claimed dependent was living with him in 2015. FTB denied the protest on the basis that appellant had not established that the claimed dependent was related to him. FTB requested appellant provide additional evidence to support his position but received no response.
5. This timely appeal followed.

### DISCUSSION

A taxpayer has the burden of proving that he or she qualifies for the HOH filing status. (*Appeal of Sedillo*, 2018-OTA-101P; *Appeal of Verma*, 2018-OTA-080P.) FTB’s determinations 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, 514; *Appeal of Myers* (2001-SBE-001) 2001 WL 37126924.) A taxpayer’s unsupported assertions are insufficient to satisfy his or her burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) A taxpayer’s failure to produce evidence that is within his control gives rise to a presumption that such evidence is unfavorable to his case. (*Appeal of Cookston* (83-SBE-048) 1983 WL 15434.)

R&TC 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).<sup>1</sup> IRC section 2(b) provides that, for a person to claim the HOH filing status, the taxpayer 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), with reference to IRC section 151, a qualifying person for HOH purposes means a “qualifying child” or “qualifying relative.” IRC section 152(c)(2) provides that a qualifying child must be a child, brother, sister, stepbrother, or stepsister of the taxpayer, or a descendent of one of the listed relatives. A qualifying relative is defined in IRC section 152(d)(2) to include a taxpayer’s father or mother (or ancestor of either), stepfather or stepmother, son or daughter of a brother, brother or sister of father or mother, or son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law, in addition to any individuals that satisfy the qualifying child requirements.

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<sup>1</sup> IRC section 2(c) applies to married individuals living apart, and is not applicable here.

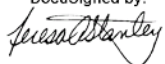
Because appellant indicated on his HOH Form that he was single and not in a registered domestic partnership as defined by R&TC section 17021.7(3)(c), the issue is whether the claimed dependent is a qualifying relative. Appellant has not argued or provided evidence that the claimed dependent is appellant’s sibling, step-sibling, parent, step-parent, niece or nephew, or any other qualifying relative as defined in IRC section 152(d)(2). Instead, appellant asserts that he was entitled to a dependent deduction for the claimed dependent in years past, and therefore he should be entitled to the HOH filing status for 2015. However, the requirements for the HOH filing status are explicit, and individuals may be dependents for purposes of the exemption yet not satisfy the requirements of the HOH filing status. (See *Appeal of Verma*, 2018-OTA-080P.) Consequently, we find that appellant has not established entitlement to the HOH filing status for taxable year 2015.

HOLDING

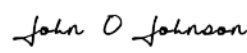
Appellant is not entitled to the HOH filing status for the 2015 taxable year.


DISPOSITION

FTB’s proposed assessment is sustained.

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Teresa A. Stanley  
Administrative Law Judge

We concur:

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John O. Johnson  
Administrative Law Judge

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Richard I. Tay  
Administrative Law Judge