

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
LINDA D. WILKIN

) OTA Case No. 18083628
)
) Date Issued: December 2, 2019
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)
)

OPINION

Representing the Parties:

For Appellant: Linda D. Wilkin

For Respondent: Joel Smith, Tax Counsel

For Office of Tax Appeals: Matthew D. Miller, Tax Counsel III

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Linda D. Wilkin (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing \$1,302 of additional tax, a failure to furnish penalty of \$330, and applicable interest, for the 2015 taxable year.

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

ISSUE

Whether appellant established that she is entitled to claim the Head of Household (HOH) filing status for the 2015 tax year.

FACTUAL FINDINGS

1. Appellant filed her 2015 California tax return using the HOH filing status. Appellant claimed her son as her dependent and qualifying individual for HOH.
2. Internal Revenue Service (IRS) wage and income statements show that appellant’s son earned more than \$13,000 in 2015; appellant did not submit information to substantiate her son’s age. FTB sent a HOH audit demand letter to appellant requesting additional information regarding her claimed HOH filing status.

3. After appellant failed to respond by the deadline, FTB sent appellant a Notice of Proposed Assessment (NPA). The NPA recalculated appellant's tax liability based on the single filing status and proposed additional tax of \$1,320, and a failure to furnish information penalty of \$330, plus applicable interest.
4. Appellant protested the NPA, contending that she did not receive the HOH audit demand letter, and that she provided 100 percent of her son's support for more than two years while he was unemployed.
5. FTB responded to appellant's protest and stated that appellant did not qualify for HOH filing status because her son did not meet the requirements to be a qualifying child or a qualifying relative. FTB requested additional information to support appellant's position within 30 days.
6. After appellant failed to respond, FTB issued a Notice of Action affirming its NPA.¹

DISCUSSION

The taxpayer has the burden of proving that she qualifies for the HOH filing status. (*Appeal of Verma* (2018-OTA-080P), citing *Appeal of Byrd* (84-SBE-167) 1984 WL 16246.) An unsupported declaration that a taxpayer qualifies for HOH filing status is insufficient, in the absence of other evidence, to satisfy a taxpayer's burden of proof. (*Appeal of Manriquez* (79-SBE-077) 1979 WL 4118.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

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 (c). IRC section 2(b) provides that, for a taxpayer to claim the HOH filing status, 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 taxable year. Under 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 a "qualifying relative." To be considered a taxpayer's qualifying child, the child must be: (1) under 19 years of age; or (2) a full-time student under 24 years of age; or (3) permanently and totally disabled. (IRC, § 152(c)(3)(A) & (f)(2).) To be considered a taxpayer's qualifying

¹ On appeal, FTB agreed to abate the failure to furnish penalty. Therefore, our opinion does not address the failure to furnish penalty.

relative, the individual's gross income must be less than \$4,000 for the 2015 taxable year. (IRC, §§ 152(d)(1)(B); 151(d).)

Appellant provided no evidence regarding her marital status in 2015. Regarding her son's household expenses, appellant stated that she provided 100 percent of her son's support while he resided in his own apartment and while he resided with her, including expenses for her own household, and expenses for her son's apartment, automobile, utilities, and food. However, she provided no source documents to substantiate payments of these expenses. Therefore, appellant did not establish that she was unmarried and maintained a household that constituted the principal place of abode for her son. Additionally, appellant provided no evidence that her son was a qualifying child, such as evidence of her son's age, educational status, or disability. Therefore, appellant did not demonstrate that her son met the requirements to be considered a qualifying child for purposes of the HOH filing status for the 2015 taxable year. Finally, while appellant stated that her son was unemployed for several years, FTB provided evidence indicating that during the 2015 taxable year her son earned gross income in excess of the \$4,000 threshold. Thus, appellant's son did not meet the requirements to be considered a qualifying relative.

Appellant's unsupported statements are insufficient, in the absence of other evidence, to show that she qualified for the HOH filing status. (*Appeal of Manriquez, supra.*) Therefore, we conclude that appellant did not meet her burden of proof.

HOLDING

Appellant failed to establish that she is entitled to claim the HOH filing status for the 2015 taxable year.

DISPOSITION

Respondent’s action is sustained, including its waiver of the failure to furnish information penalty during this appeal.

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Tommy Leung
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Tommy Leung
Administrative Law Judge

We concur:

DocuSigned by:
Suzanne B. Brown
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Suzanne B. Brown
Administrative Law Judge

DocuSigned by:
John O Johnson
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John O. Johnson
Administrative Law Judge