

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18114006
CAROL NGUYEN)
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OPINION

Representing the Parties:

For Appellant: Carol Nguyen
For Respondent: Joel M. Smith, Tax Counsel
For Office of Tax Appeals: James S. Whitehouse, Analyst

J. JOHNSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, appellant Carol Nguyen appeals an action by respondent Franchise Tax Board (FTB) proposing \$1,467 of additional tax, plus applicable interest, for the 2016 tax year.

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

ISSUE

Whether appellant is entitled to claim the head of household (HOH) filing status for the 2016 tax year.

FACTUAL FINDINGS

1. Appellant timely filed a 2016 California personal income tax return claiming the HOH filing status and one dependent exemption. With her return, appellant filed a HOH Filing Status Schedule indicating that she was married, but not living with her spouse during 2016, and listing her brother as her “qualifying person.”
2. FTB issued a Notice of Proposed Assessment (NPA) denying appellant’s claim to the HOH filing status. The NPA explained that appellant may only claim a birth child, stepchild, adopted child, or eligible foster child as her “qualifying person” for the HOH

filing status because she was married as of December 31, 2016. The NPA allowed appellant's claimed personal exemption credit and dependent credit, revised appellant's filing status to married filing separately, recomputed appellant's tax liability, and proposed additional tax of \$1,467, plus interest.

3. Appellant protested the NPA, contending that she did not live with her spouse during 2016, and that she could claim her brother as her qualifying person because he was permanently and totally disabled.¹
4. FTB replied to appellant's protest, confirming its position as stated in the NPA that appellant does not qualify for the HOH filing status because she was married as of the end of the year and was attempting to claim her brother as her qualifying person.
5. In response to appellant's reply, reasserting her position, FTB affirmed the NPA with a Notice of Action.
6. This timely appeal followed.

DISCUSSION

A taxpayer has the burden of proving that he or she qualifies for the HOH filing status, and the presumption of correctness that attends FTB's determination cannot be overcome by unsupported statements. (*Appeal of Sedillo* (2018-OTA-101P); see also *Appeal of Verma* (2018-OTA-080P).) The requirements for claiming the HOH filing status are set forth in R&TC section 17042, which incorporates Internal Revenue Code (IRC) sections 2(b) and (c). To be eligible for the HOH filing status, a taxpayer must be either unmarried or married and considered unmarried on the last day of the tax year. There is no dispute that appellant was married at the end of 2016.

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).² It is the first requirement that is dispositive here: a

¹ It is unclear whether appellant discerns the difference between "qualifying child" and "qualifying person" based on appellant indicating in her protest that her brother was her "qualifying child," over the age of 18, and "[p]ermanently and totally disabled."

² The four requirements are as follows. First, the married individual must maintain as her home 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. (IRC, § 7703(b)(1).) Third, the taxpayer must furnish over one-half of the cost of

married taxpayer may be considered unmarried, for purposes of the HOH filing status, if the taxpayer maintains a household which is the principal place of abode for a child as defined in IRC section 152(f)(1). A “child” means a taxpayer’s son, daughter, stepson, stepdaughter, or eligible foster child. (IRC, § 152(f)(1).) Here, appellant claimed her brother for purposes of establishing eligibility for the HOH filing status. A brother is not a relationship that falls under the definition of a “child” under IRC section 152(f)(1).

Appellant focuses on the fact that her claimed qualifying person was disabled. IRC section 152(c)(3)(B) provides a special rule dictating that the age requirements of IRC section 152(c)(3)(A) shall be treated as met for any individual who is “permanently and totally disabled.” This exception allows for individuals who are disabled and would otherwise meet the requirements of being a qualifying child except for the fact that they are not under the age of 19, to still be considered a qualifying child. However, the individual must still meet the other requirements for a qualifying child (i.e., being a child, stepchild, or eligible foster child of the taxpayer). As stated above, appellant’s brother does not meet the relationship requirements to be a qualifying child. Therefore, appellant does not qualify for HOH status for the 2016 tax year.

Because appellant was married at the close of the 2016 tax year, and appellant’s brother is not eligible to be appellant’s qualifying person for purposes of the HOH filing status, appellant does not qualify for HOH status for 2016.

maintaining her 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).)

HOLDING

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

DISPOSITION

FTB’s action is sustained.

DocuSigned by:

John O Johnson

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John O. Johnson
Administrative Law Judge

We concur:

DocuSigned by:

Sara A Hosey

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Sara A. Hosey
Administrative Law Judge

DocuSigned by:

Jeff Angeja

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Jeffrey G. Angeja
Administrative Law Judge

Date Issued: 12/20/2019