

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

In the Matter of the Appeal of: ) OTA Case No. 19044673  
**D. WATTS** )  
 )  
 )  
 )  
 )  
 )

---

**OPINION**

Representing the Parties:

For Appellant: D. Watts  
For Respondent: Angelina Yermolich, Legal Assistant

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, D. Watts (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing \$1,461 of additional tax, and applicable interest, for the 2017 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 claim the head of household (HOH) filing status for 2017?

**FACTUAL FINDINGS**

1. Appellant filed a timely 2017 California Resident Income Tax Return. On an attached HOH Filing Status Schedule (Form 3532) appellant indicated that he was legally married during 2017 but did not live with his spouse. Appellant reported that the qualifying person was a 15-year-old nephew.
2. FTB issued a Notice of Proposed Assessment (NPA) on October 9, 2018, based on its denial of HOH filing status and a corresponding adjustment to the nonrefundable renter’s credit claimed on appellant’s return. The NPA explained that appellant did not qualify for HOH filing status because he was married on the last day of 2017, and therefore

- appellant's qualifying person must be a child and not the nephew reported by appellant as his qualifying person.
3. Appellant protested the proposed assessment and denial of HOH filing status. Appellant submitted a minute order dated December 14, 2018, showing that his marriage was to be dissolved upon the court's signing of a judgment.
  4. Appellant submitted a Notice of Entry of Judgment of dissolution that indicated the Judgment was signed by the court on January 3, 2019.
  5. FTB issued a Notice of Action affirming the NPA.
  6. 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; *Appeal of Verma* 2018-OTA-080P.) 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 must 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).)

On appeal, appellant requests that the reason for FTB's proposed assessment be explained to him. The NPA issued by FTB shows that appellant's HOH filing status was changed to married filing separately. The NPA explained that because appellant was married on the last day of 2017, that appellant could qualify for HOH filing status if his qualifying dependent was a birth child, stepchild, adopted child, or eligible foster child. Thereafter

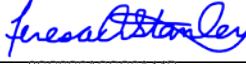
appellant obtained and submitted a document showing that his marriage was dissolved on January 3, 2019. Although the Judgment of Dissolution shows that appellant and his spouse separated as early as 2016,<sup>1</sup> the divorce was not completed until early 2019. Therefore, appellant was married, albeit separated, on the last day of 2017, and therefore did not qualify under IRC section 7703(b) to claim a qualifying dependent other than a son, daughter, stepson, stepdaughter, adopted child, or foster child. Appellant has submitted no documentation showing that his nephew is a dependent child as defined, and he may not claim HOH filing status for 2017.

HOLDING

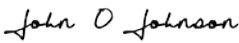
We conclude that appellant was not eligible to claim HOH filing status for 2017 because he was married on December 31, 2017, and his nephew is not a qualifying child.


DISPOSITION

FTB’s action is sustained.

DocuSigned by:  
  
Teresa A. Stanley  
Administrative Law Judge

We concur:

DocuSigned by:  
  
John O. Johnson  
Administrative Law Judge

DocuSigned by:  
  
Andrew J. Kwee  
Administrative Law Judge

Date Issued: 2/27/2020

<sup>1</sup> Judgment of Dissolution of Marriage (Superior Court of the County of San Bernardino, case number FAMSS1510305) indicates that the court acquired jurisdiction over appellant, for purposes of the divorce action, on February 18, 2016.