

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

In the Matter of the Appeal of: ) OTA Case No. 19085187  
**J. JUDD** )  
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**OPINION**

Representing the Parties:

For Appellant: J. Judd

For Respondent: Melisa Recendez, Legal Assistant

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (RT&C) section 19324, J. Judd (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing to assess additional tax of \$1,892, plus interest, for the 2017 tax year.

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

**ISSUE**

Whether appellant is entitled to the Head of Household (HOH) filing status.

**FACTUAL FINDINGS**

1. Appellant timely filed a 2017 California income tax return and claimed the HOH filing status. Attached to appellant’s return was a 2017 HOH Filing Status Schedule (Form 3532), which she completed and indicated that she was legally married and lived with her spouse from January 1, 2016, to December 31, 2016. Appellant stated that her qualifying person was her son, who lived with her for the entire year.
2. FTB denied the HOH filing status in a Notice of Proposed Assessment (NPA) dated October 9, 2018, and proposed an assessment of additional tax of \$1,892, plus interest.
3. Subsequently, FTB sent appellant a questionnaire dated May 23, 2019, stating that appellant indicated dates for 2016 on her 2017 HOH Filing Status Schedule, but that the

year at issue was 2017. The questionnaire provided a request for information as to appellant's marital status for 2017. Appellant provided answers to the questionnaire sent on May 23, 2019, signed under the penalty of perjury. She stated that, as of December 31, 2017, she was legally married and that she lived with her spouse from January 1, 2017, to December 31, 2017.<sup>1</sup>

4. Appellant protested the NPA. FTB issued a Notice of Action dated July 23, 2019, affirming the NPA. This timely appeal followed.

#### DISCUSSION

A taxpayer has the burden of proving that he or she is entitled to the HOH filing status. (*Appeal of Byrd* (84-SBE-167) 1984 WL 16246.) 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). IRC section 2(b) provides, in relevant part, that for a person to claim the HOH filing status, the taxpayer must be unmarried at the close of the taxable year. IRC section 2(c) provides that certain married persons who are living apart will be treated as not married (for HOH filing status purposes) at the close of the taxable year, if they satisfy the requirements of IRC section 7703(b), including that, during the last six months of the taxable year, such individual's spouse is not a member of such household.

Appellant provided answers to the questionnaire sent on May 23, 2019, signed under the penalty of perjury. She stated that, as of December 31, 2017, she was legally married and that she lived with her spouse from January 1, 2017, to December 31, 2017. Therefore, appellant's spouse was a member of her household during the last six months of 2017 and, as a result, appellant does not satisfy the requirements of IRC section 7703(b) to be considered unmarried as of the end of 2017. As stated above, to qualify for the HOH filing status, appellant must be unmarried at the close of the taxable year pursuant to IRC section 2(b). Accordingly, appellant does not qualify for HOH status for the 2017 tax year.

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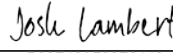
<sup>1</sup> While FTB stated that it did not receive a response to the questionnaire, appellant states that she sent a response, which she provides on appeal.

HOLDING

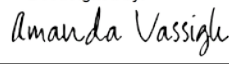
Appellant is not entitled to the HOH filing status.


DISPOSITION

FTB’s action is sustained.

DocuSigned by:  
  
B90E40A72DE3440...  
Josh Lambert  
Administrative Law Judge

We concur:

DocuSigned by:  
  
7B17E958B7C14AC...  
Amanda Vassigh  
Administrative Law Judge

DocuSigned by:  
  
3CAD62E94864CB...  
Andrew Kwee  
Administrative Law Judge

Date Issued: 3/2/2020