

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 19125633
G. VILLAFLOR)
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OPINION

Representing the Parties:

For Appellant: G. Villaflor

For Respondent: Melisa Recendez, Legal Assistant

For Office of Tax Appeals: Steven Kim, Tax Counsel

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, G. Villaflor (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing \$1,905 of additional tax and applicable interest for the 2017 taxable year.

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

ISSUE

Whether appellant is entitled to claim head of household (HOH) filing status for 2017.

FACTUAL FINDINGS

1. Appellant filed his 2017 California Resident Income Tax Return (Form 540), using the HOH filing status and identifying his son as the qualifying individual. Appellant also claimed a dependent exemption credit of \$353 for his son.
2. Appellant’s son was 25 years old as of December 31, 2017, was not a full-time student under age 24 in 2017, and was not permanently and totally disabled in 2017.
3. Appellant’s son’s 2017 gross income was over \$5,000.
4. The federal exemption amount for 2017 was \$4,050.

5. FTB issued a Notice of Proposed Assessment (NPA) disallowing appellant's HOH filing status because his son's gross income exceeded the allowable amount. FTB recomputed appellant's tax liability based on a filing status of single, and proposed additional tax of \$1,905, plus applicable interest.
6. After denying appellant's protest, FTB issued a Notice of Action, affirming the NPA.

DISCUSSION

Taxpayers have the burden of proving that they qualify for the HOH filing status. (*Appeal of Sedillo*, 2018-OTA-101P; *Appeal of Verma*, 2018-OTA-080P.) Unsupported assertions are insufficient 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 claiming the HOH filing status by reference to Internal Revenue Code (IRC) section 2(b). One of the requirements for claiming HOH filing status is that the taxpayer maintain a household that constitutes the principal place of abode of a qualifying person for more than one-half of the taxable year. (IRC, § 2(b)(1)(A).) A qualifying person for purposes of the HOH filing status may be either a qualifying child or a dependent of the taxpayer. (*Ibid.*)

IRC section 2(b)(1)(A)(i) provides the requirements for a qualifying child by reference to IRC section 152(c). In relevant part, IRC sections 152(c) and (f) provide that, as of the end of the taxable year, a qualifying child must be under 19 years of age or, if a full-time student, under 24 years of age.¹ At the end of 2017, appellant's son was 25 years old. Therefore, appellant's son was not a qualifying child for HOH filing purposes.

IRC section 2(b)(1)(A)(ii) provides that the taxpayer's dependent can be a qualifying person if the taxpayer is entitled to claim a deduction for the dependent for the tax year under IRC section 151. IRC section 151 defines dependent pursuant to IRC section 152. IRC section 152(a)(2) provides that the definition of dependent includes a qualifying relative. IRC section 152(d)(1)(B) provides that a qualifying relative must have gross income for the calendar year that is less than the federal exemption amount (as defined in IRC section 151(d)). There is no dispute that appellant's son's gross income in 2017 exceeded the 2017 \$4,050 federal

¹ IRC section 152(c)(3)(B) provides a special rule for an individual who is permanently and totally disabled at any time during the calendar year. Appellant does not contend, and the evidence does not show, that appellant's son was disabled at any time during 2017. Accordingly, we will not discuss further the provisions for a disabled qualifying person.

exemption amount. Thus, appellant’s son was not a qualifying relative for HOH filing status purposes.

Appellant contends that he qualified for HOH filing status because he was divorced and supported his son, who lived with him for the entire year; appellant asserted that his son was his dependent and a student who did not earn much income. However, the record shows that in 2017, appellant’s son was overage and earned more than the federal exemption amount. Thus, appellant’s son cannot be a qualifying person for HOH filing purposes.

HOLDING

Appellant did not establish that he was entitled to claim HOH filing status for the 2017 taxable year.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:
Tommy Leung
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Tommy Leung
Administrative Law Judge

We concur:

DocuSigned by:
Andrea L.H. Long
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Andrea L.H. Long
Administrative Law Judge

DocuSigned by:
Josh Aldrich
487459B806914B4...
Josh Aldrich
Administrative Law Judge

Date Issued: 8/19/2020