

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
R. CLARK

) OTA Case No. 20035954
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OPINION

Representing the Parties:

For Appellant: Sheri E. Looney, Tax Preparer

For Respondent: Melisa Recendez, Legal Assistant

For Office of Tax Appeals: Michael Park, Graduate Student Assistant

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Clark (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing \$2,003 of additional tax, plus applicable interest, for the 2018 taxable year.

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

ISSUE

Whether appellant established that he qualifies for the Head of Household (HOH) filing status for the 2018 taxable year.

FACTUAL FINDINGS

1. Appellant filed a 2018 California Resident Income Tax Return (Form 540), claiming the HOH filing status. On the return, appellant listed his daughter (D) as his dependent and claimed one dependent exemption credit.
2. Additionally, appellant’s return included a HOH Filing Status Schedule (Form 3532) wherein he claimed D as his qualifying individual. Appellant indicated that he was not legally married or in a registered domestic partnership during the 2018 taxable year.

Appellant further reported on Form 3532 that D was 13 years old as of December 31, 2018, that she had zero income, and that she had lived with him for a total of zero days in 2018.

3. FTB issued a Notice of Proposed Assessment (NPA) denying appellant's HOH filing status and proposed an additional tax of \$2,003, plus interest. The NPA explained that appellant did not qualify for the HOH filing status because D did not live with appellant for more than one-half of the 2018 taxable year. The NPA allowed the dependent exemption credit that appellant had claimed, but revised appellant's filing status to single.
4. Appellant protested, explaining that D lived with him the entire year and asserting that he claimed D as his dependent on his tax return based on IRS Form 8332, "Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent," which was signed by the custodial parent, the mother of D, releasing her right to claim exemption for the 2018 taxable year. Appellant also submitted copies of D's report cards, which contained D's address. Appellant believed that this information qualified him for the HOH filing status.
5. When FTB did not receive sufficient proof that D lived with appellant for more than half of 2018, it sent a Notice of Action to appellant 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. (*Ibid.*; *Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) Moreover, FTB's determination cannot be successfully rebutted when the taxpayer fails to present credible, competent, and relevant evidence as to the issues in dispute. (*Appeal of Mazer*, 2020-OTA-263P; *Appeal of Seltzer* (80-SBE-154) 1980 WL 5068.)

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.*)

While appellant meets the requirement of being unmarried, appellant has not shown that D lived with him for more than half of the taxable year as set forth in IRC section 2(b)(1)(A). As support for his claim, appellant provided copies of D's school report cards that had appellant's address on them. Appellant also provided a copy of IRS Form 8332, which was signed by the custodial parent, the mother of D.

This is nevertheless insufficient to prove that D lived with appellant for more than one-half of the 2018 taxable year. Although D's mother signed the IRS Form 8332, releasing her right to claim D for an exemption, it does not mean that appellant is automatically qualified to claim the HOH filing status. It only means that the mother has released her claim to the dependent exemption credit for D so that appellant can claim the exemption for D, which FTB has already allowed. It does not provide any information as to in which home and for how long D actually lived with appellant.¹ D's mother was the custodial parent, and as for the report cards, they are only addressed "To the Parent/Guardian of" D. These also give no concrete indication of the length or location of the stay, or prove D lived with appellant for more than half the taxable year. It is simply the address listed on school records.

Appellant was given several opportunities to produce additional evidence to substantiate the amount of time D lived with him in order to qualify for the HOH filing status. Such evidence requested from appellant included: a complete copy of the Judgment of Dissolution with relevant attachments explaining the custody/visitation arrangements for D; a written statement signed under penalty of perjury setting forth the exact dates that D lived with him in 2018; a written, notarized statement from D's mother, signed under penalty of perjury, specifying the exact dates of where D lived in 2018; and notarized statements from neighbors, clergy, daycare providers, or other individuals who can attest to D's living arrangements in 2018. However, appellant has pursued none of these avenues and has provided none of this information. Standing alone, the Form 8332 and report cards do not satisfactorily rebut what was reported on appellant's Form 540 tax return – that D lived with him for zero days in 2018. Based on the

¹ IRC section 152(e) allows noncustodial parents to claim a qualifying child as a dependent in certain circumstances. However, IRC section 2(b)(1)(A) provides that, for the purposes of the HOH filing status, the qualifying child definition in IRC section 152(c) is applied without regard to IRC section 152(e), so this provision is inapplicable for purposes of the HOH filing status. Thus, the fact that appellant's former spouse released her right to claim D as a dependent on her taxes does not entitle appellant to claim D as a qualifying person for purposes of the HOH filing status.

evidence provided, appellant has not met his burden of proving that D lived with him for more than half of the 2018 taxable year.

HOLDING

Appellant failed to establish that he qualified for the HOH filing status for the 2018 taxable year.

DISPOSITION

FTB’s action is sustained in full.

DocuSigned by:
Tommy Leung
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Tommy Leung
Administrative Law Judge

We concur:

DocuSigned by:
Andrea L.H. Long
272945E7B372445
Andrea L.H. Long
Administrative Law Judge

DocuSigned by:
Daniel Cho
7B28A07A7E0A43D
Daniel K. Cho
Administrative Law Judge

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