

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
N. NGUYEN

) OTA Case No. 20046099
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OPINION

Representing the Parties:

For Appellant: N. Nguyen

For Respondent: Angelina Yermolich, Legal Assistant

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, N. Nguyen (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing \$1,514 of additional tax, and applicable interest, for the 2018 tax year.

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

ISSUE

Whether appellant has shown that she is entitled to claim the head of household (HOH) filing status for the 2018 tax year.

FACTUAL FINDINGS

1. Appellant filed a timely California resident income tax return (Form 540) for the 2018 tax year. Appellant claimed the HOH filing status claiming a parent as a dependent.¹
2. With the return, appellant submitted to FTB an HOH Filing Status Schedule (Form 3532) claiming a “father, mother, stepfather, or stepmother” as her qualifying person. Appellant also indicated that at the end of 2018 she was legally married and that she did not live with her spouse during the year.

¹ Thereafter, in correspondence with FTB, appellant identified the claimed dependent as her mother.

3. On October 3, 2019, FTB issued a Notice of Proposed Assessment (NPA) which denied the claimed HOH filing status, and revised appellant's filing status to married, filing separately. The NPA allowed the claimed dependent exemption and proposed additional tax of \$1,514, plus interest.
4. Appellant protested the NPA asserting that she and her husband were married in December 2018 but did not live together until January 2019. Appellant argued that she did not receive support from her husband during the 2018 tax year and is entitled to the HOH filing status because she provided for her mother's expenses during that year.
5. On February 6, 2020, FTB issued a letter to appellant explaining that a taxpayer and spouse are considered members of the same household from the date of their marriage. FTB also explained that the absence of either spouse from the household is considered a temporary absence, unless they are in the process of ending the marital union. Finally, FTB explained that appellant could not claim her mother for HOH filing status purposes unless appellant was never married or received a final decree of legal separation or final judgment of dissolution of marriage by the last day of the taxable year.
6. On March 27, 2020, FTB issued a Notice of Action affirming the NPA.
7. This timely appeal followed.
8. On July 7, 2020, appellant paid the tax liability. The amount of accrued interest is still outstanding.²

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.) 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 that,

² With respect to the amount of interest accrued, appellant makes a number of assertions regarding financial difficulties. FTB offers an Offer in Compromise program pursuant to R&TC section 19443, under which FTB may consider a taxpayer's ability to pay in determining how much to collect on certain liabilities once they have gone final. (FTB Offer in Compromise Program: <https://www.ftb.ca.gov/pay/if-you-cant-pay/offer-in-compromise.html>.) Taxpayers also may apply to enter into an installment payment agreement with FTB. (FTB Payment Plans: <https://www.ftb.ca.gov/pay/payment-plans/index.asp>.) Additionally, FTB offers a settlement program pursuant to R&TC section 19442, under which FTB can evaluate the costs and risks associated with the appeal. (FTB Notice 2007-2: <https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2007-2.pdf>.) Appellant can contact FTB for further information about these programs once this appeal is complete.

for a person to claim the HOH filing status, he or she generally must be unmarried at the close of the taxable year, 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 that certain married persons living apart will be treated as not married (for the HOH filing status purpose) at the close of the taxable year if they satisfy the requirements of IRC section 7703(b). To claim the HOH filing status, married individuals must meet the following requirements: 1) the individual must file a return separate from their spouse; 2) the individual must 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) the individual must furnish over one-half of the cost of maintaining the household; and 4) during the last 6 months of the taxable year the individual must not live with their spouse. (IRC, § 7703(b).) Under IRC section 152(f), a child is defined as a son, daughter, stepson, stepdaughter, eligible foster child, or adopted child. The determination of whether an individual is married shall be made as of the close of the taxable year (in this case, December 31, 2018). (IRC, § 7703(a).)

Here, there is no dispute that appellant was married as of December 31, 2018. Therefore, appellant must show that she meets the requirements to be treated as unmarried for HOH filing status purposes. Appellant asserts that she did not live with her husband until January 2019. However, appellant has not provided any evidence, such as proof of her husband’s address, in support of her contention. Appellant’s unsupported assertion is not sufficient to satisfy the burden of proof. (*Appeal of Sedillo, supra.*)

Even if appellant and her husband did not live together in December 2018, appellant has not met the requirements of IRC section 7703 to be treated as unmarried. A married person may only claim a qualifying child for HOH filing status purposes. That is, appellant may only claim the HOH filing status if she claims a son, daughter, stepson, stepdaughter, eligible foster child, or adopted child, for whom she maintained a household that is the child’s principal place of abode for more than one-half of the taxable year. (IRC, §§ 152(f), 7703(b).) Consequently, appellant may not claim her mother as a qualifying person, and she is therefore not entitled to the HOH filing status.

HOLDING

Appellant has not shown that she is entitled to claim the HOH filing status for the 2018 tax year.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:

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Keith T. Long
Administrative Law Judge

We concur:

DocuSigned by:

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Teresa A. Stanley
Administrative Law Judge

DocuSigned by:

67F043D83FF547C
Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 12/21/2020