

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**R. WETZEL**

) OTA Case No. 20025896  
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**OPINION**

Representing the Parties:

For Appellant: Catherine E. Sewell

For Respondent: Melisa Recendez, Legal Assistant

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045 R. Wetzel (appellant) appeals an action by the respondent Franchise Tax Board (FTB) proposing \$1,862 of additional tax, and applicable interest, for the 2018 taxable year.

Appellant waived the right to an oral hearing and opted to have the matter decided based on the written record.

**ISSUE**

Did appellant show that he was entitled to claim the Head of Household (HOH) filing status for 2018?

**FACTUAL FINDINGS**

1. Appellant filed a California Non-Resident or Part-Year Resident Income Tax Return (Form 540NR) for taxable year 2018, on which he claimed the HOH filing status.

2. Appellant claimed one of his two children as a qualifying child (claimed child) for purposes of claiming the HOH status. The claimed child spent between 130 and 150 days in appellant's home,<sup>1</sup> which was less than one-half of the taxable year.
3. FTB changed appellant's filing status to single and issued a Notice of Proposed Assessment (NPA), proposing additional tax of \$1,862.
4. Appellant protested the NPA and submitted a copy of a Judgement of Dissolution that did not include appellant's child custody arrangement.
5. FTB issued a Notice of Action affirming its NPA. This timely appeal followed.

### DISCUSSION

R&TC section 17042 sets forth the California requirements for the HOH filing status by reference to Internal Revenue Code section (IRC) 2(b).<sup>2</sup> In general, taxpayers filing under the HOH status enjoy lower tax rates and a higher standard deduction than those filing under the single status. An individual who claims the HOH status must be unmarried at the close of the taxable year and maintain a household which constitutes the principal place of abode of a qualifying person for "more than one-half" of the tax year. (IRC, § 2(b)(1)(A).) FTB's determination is presumed correct, and that presumption may not be overcome by unsupported assertions. (*Appeal of Sedillo*, 2018-OTA-101P.) A taxpayer has the burden to produce sufficient evidence to substantiate entitlement to the HOH filing status. (*Ibid.*)

For purposes of the HOH filing status at issue, the parties solely dispute whether appellant's claimed child lived with him for more than one-half of the 2018 tax year. Appellant initially claimed on FTB Form 3532 that the claimed child lived with him for 130 days in 2018. In response to FTB's request for additional information and supporting evidence, appellant asserted that the claimed child lived with him for 150 days in 2018. Appellant did not substantiate either statement

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<sup>1</sup> Appellant reported on the HOH Filing Status form (FTB Form 3532) that the claimed child lived with him for 130 days in 2018. Appellant's representative stated in a letter to FTB that the child lived with appellant for 150 days in 2018.

<sup>2</sup> For the 2018 tax year, R&TC section 17024.5(a)(1)(P), provides that for Personal Income Tax Law (PITL) purposes, California conforms to the January 1, 2015 version of the IRC. Thus, references herein to the IRC are to that version. R&TC section 17024.5(d) also provides that when applying the IRC for California PITL purposes, federal regulations shall be applicable as California regulations to the extent they do not conflict with the R&TC or regulations issued by FTB. Further, it is well settled that where federal law and California law are the same, federal rulings and regulations dealing with the IRC are persuasive authority in interpreting the applicable California statute. (See *J. H. McKnight Ranch v. Franchise Tax Bd.* (2003) 110 Cal.App.4th 978, fn.1, citing *Calhoun v. Franchise Tax Bd.* (1978) 20 Cal.3d 881, 884.)


with evidence to show that the child lived with him for at least one-half of 2018. FTB requested various supporting evidence, such as a copy of appellant’s child custody arrangement or a notarized statement from the other parent indicating that the claimed child was with his father at least one-half of 2018. None was submitted. In any event, even were we to accept appellant’s assertion that the claimed child lived with him for 150 days in 2018, this amount of time falls short of the 183 days required by the federal statute. Thus, even if the Judgment of Dissolution provides that appellant is entitled to use the HOH filing status and to claim his child as a dependent<sup>3</sup>, appellant’s household must still have constituted the principal place of abode of the dependent for more than one-half of the year for purposes of qualifying appellant for the HOH filing status. (IRC, § 2(b)(1)(A); *Appeal of Sedillo, supra.*) As stated above, the evidence shows this was not the case. Accordingly, appellant does not meet the requirements to claim the HOH filing status for the 2018 tax year.

#### HOLDING

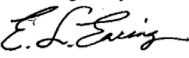
Appellant failed to show that he is entitled to claim the HOH filing status for 2018.


#### DISPOSITION

FTB’s action is sustained.

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 Teresa A. Stanley  
 Administrative Law Judge

We concur:

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 Elliott Scott Ewing  
 Administrative Law Judge

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 Huy “Mike” Le  
 Administrative Law Judge

Date Issued: 1/6/2021

<sup>3</sup> We note that the rules for claiming a dependency exemption are different from claiming the HOH filing status. Pursuant to R&TC section 17054(d)(1) a taxpayer may claim a dependent exemption credit for each dependent (as defined in R&TC section 17056) for whom an exemption is allowable under IRC section 151(c). FTB allowed the claimed dependent exemption credit, and it is not at issue on appeal.