

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**J. MORELOS**

) OTA Case No. 20076366  
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**OPINION**

Representing the Parties:

For Appellant: J. Morelos

For Respondent: Angelina Yermolich, Legal Assistant

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045 J. Morelos (appellant) appeals an action by Franchise Tax Board (respondent) proposing \$1,060 of additional tax, and applicable interest, for the 2018 tax year.

Appellant waived his right to an oral hearing; therefore, we decide this matter based on the written record.

**ISSUE**

Whether appellant has shown respondent erred in disallowing appellant’s head of household (HOH) filing status for the 2018 tax year.

**FACTUAL FINDINGS**

1. Appellant filed a timely 2018 California Resident Income Tax Return and claimed the HOH filing status.
2. Appellant was not married in 2018 and claimed his son as the qualifying individual for his HOH filing status. Appellant’s son was 20 years old by the end of 2018 and was not a full-time student in 2018. Additionally, appellant reported on his California Form 3532 – Head of Household Filing Status Schedule, that his son had gross income of \$12,000 in 2018. On appeal, appellant corrected that amount to be \$13,258.

3. Respondent issued a Notice of Proposed Assessment (NPA) dated October 22, 2019, disallowing appellant's HOH filing status. Appellant protested, and respondent issued a Notice of Action affirming the NPA on May 21, 2020.
4. Appellant filed this timely appeal.

### DISCUSSION

A taxpayer has the burden of proving that he or she is entitled to the HOH filing status. (*Appeal of Verma*, 2018-OTA-080P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

R&TC section 17042 sets forth the California requirements for the HOH filing status by reference to Internal Revenue Code (IRC) section 2(b) and (c). Pursuant to IRC section 2(b)(1)(A), a taxpayer who is not married may be eligible for the HOH filing status by maintaining a household for a "qualifying child," as defined under IRC section 152(c), or any other person for whom the taxpayer is entitled to a dependent exemption under IRC section 151. A "dependent" for purposes of IRC section 151 is defined in IRC section 152(a). Thus, appellant, an unmarried taxpayer, must establish that his son was a "qualifying child" or "qualifying relative" per IRC section 152.

As defined in IRC section 152(c), a "qualifying child" must be, among other requirements, younger than 19 years old or a full-time student younger than 24 years old as of the end of the calendar year in which the taxpayer's taxable year begins. On appeal, appellant provides evidence that clearly shows that his son was 20 years old by the end of 2018, and also admits that his son was not a full-time student in 2018. Thus, by definition, appellant's son was not a "qualifying child."

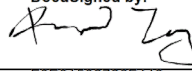
Appellant's son also did not qualify as a "qualifying relative" under IRC section 152(d). Appellant states that his son's gross income in 2018 was \$13,258, which exceeded the exemption amount of \$4,150. Consequently, appellant's son did not qualify as a "qualifying relative" pursuant to IRC section 152(d)(1)(B). Appellant does not make any other argument in support of his position, and we also find no reason to allow appellant's HOH filing status.

HOLDING

Appellant has not shown respondent erred in disallowing appellant’s HOH filing status for the 2018 tax year.

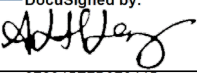
DISPOSITION

Respondent’s action is sustained in full.

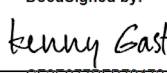
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Richard Tay  
Administrative Law Judge

We concur:

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Andrea L.H. Long  
Administrative Law Judge

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Kenneth Gast  
Administrative Law Judge

Date Issued: 2/1/2021