

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
M. ALONSO, JR.

) OTA Case No. 20025879
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OPINION

Representing the Parties:

For Appellant:

M. Alonso, Jr.

For Respondent:

Sarah J. Fassett, Tax Counsel
Cynthia Kent, Tax Counsel IV

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, M. Alonso, Jr. (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$1,871, and applicable interest, for the 2018 tax year.

Office of Tax Appeals Administrative Law Judges Huy “Mike” Le, Alberto T. Rosas, and Andrew Wong held an oral hearing for this matter on August 17, 2021.¹ At the conclusion of the hearing, the record was closed, and we submitted this matter for an opinion.

ISSUE

Whether appellant qualifies for the Head of Household (HOH) filing status for the 2018 tax year.

FACTUAL FINDINGS

1. Appellant claimed the HOH filing status on his 2018 California Tax Return.
2. On his HOH Filing Status Schedule, appellant listed his mother as the person who qualifies him for the HOH filing status.

¹ The oral hearing was conducted electronically due to COVID-19.

3. Respondent issued a Notice of Proposed Assessment (NPA) that denied appellant's HOH filing status, recalculated the tax based on a single filing status, and proposed additional tax of \$1,871, plus interest.
4. In response to the NPA, appellant filed a protest and included his mother's Social Security Benefit Statement, showing benefits of \$16,740 in 2018.
5. Respondent denied appellant's protest and subsequently issued a Notice of Action.
6. This timely appeal followed.

DISCUSSION

Taxpayers have the burden of proving that they qualify for the HOH filing status. (*Appeal of Verma*, 2018-OTA-080P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Ibid.*) The burden of proof requires proof by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).)

R&TC section 17042 sets forth the California requirements for claiming the HOH filing status by referencing Internal Revenue Code (IRC) section 2(b) and 2(c). In general, IRC section 2(b)(1) provides that unmarried taxpayers who claim the HOH filing status must maintain a household that constitutes the principal place of abode of a qualifying person for more than one-half of the year. A qualifying person can be either: (1) a qualifying child; or (2) a qualifying relative. (IRC, §§ 2(b)(1), 152(a).) As relevant to this appeal, a qualifying relative includes an individual who is the taxpayer's father or mother, and the taxpayer must provide over one-half of the individual's support for the calendar year. (IRC, § 152(d)(1).) In determining whether the taxpayer has provided over one-half of the individual's support, there is taken into account the amount of support the individual received from the taxpayer as compared to the entire amount of support that the individual received from all sources, including income that is ordinarily excludable from gross income, such as Social Security benefits. (Treas. Reg. § 1.152-1(a)(2)(i), (ii).)

Here, the parties' sole dispute is whether appellant has proven that he provided over one-half of his mother's support for the 2018 tax year. Appellant's mother received \$16,740 in Social Security benefits in 2018; thus, for appellant's mother to be appellant's qualifying relative, appellant would need to prove that he provided more than \$16,740 to support his mother.

Appellant testifies that he helped his mother with her expenses in 2018 and provides four receipts dated in 2019 and 2020. However, evidence of some expenses paid in 2019 and 2020 does not support appellant’s claim that he provided over one-half of his mother’s support in 2018. Thus, appellant’s testimony is unsupported by evidence. In addition, appellant states that “These expenses that I pay for typically range from \$300.00 to \$500.00 a month. Several times a year[,] however, the total can double per month.” Even assuming appellant paid double of the high end of his asserted support range (\$1,000 each month or \$12,000 in 2018), his support of his mother would still be less than \$16,740.


Consequently, we find that appellant has not proven by the preponderance of the evidence that he provided over one-half of his mother’s support for the 2018 tax year.

HOLDING


Appellant does not qualify for the HOH filing status for the 2018 tax year.


DISPOSITION

We sustain respondent’s action.

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Huy "Mike" Le
Administrative Law Judge

We concur:

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Alberto T. Rosas
Administrative Law Judge

DocuSigned by:

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Andrew Wong
Administrative Law Judge

Date Issued: 9/21/2021