

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
P. CARROLL

) OTA Case No. 21067991
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OPINION

Representing the Parties:

For Appellant: P. Carroll

For Respondent: Dawn Russ, Administrator I

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, P. Carroll (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$1,557, 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 respondent erred in disallowing appellant’s head of household (HOH) filing status.

FACTUAL FINDINGS

1. Appellant filed a timely 2018 California Resident Income Tax Return and claimed the HOH filing status. On Form 3532, Head of Household Filing Status Schedule, appellant checked the box indicating that the qualifying individual for his HOH filing status was a grandchild, brother, sister, half-brother, half-sister, stepbrother, stepsister, nephew or niece, who was under 19 years of age and lived with appellant for 157 days in 2018. Appellant also reported that the qualifying individual’s income was \$91,653 in 2018.
2. Respondent issued a Notice of Proposed Assessment (NPA), disallowing appellant’s HOH filing status because the qualifying individual’s income exceeded the allowable

amount and the qualifying individual did not live with appellant for more than one-half of the taxable year.

3. Appellant protested, stating that he could claim his son for purposes of the HOH filing status¹ pursuant to an Order of the Superior Court of California. Appellant provided a copy of the Judgment of Dissolution and IRS Form 8332 Release of Claim to Exemption for Child of Divorced or Separated Parents.
4. Respondent issued a Notice of Action affirming the NPA.
5. This timely appeal followed.

DISCUSSION

The 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 insufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

The HOH filing status prescribes a favorable tax rate schedule for a taxpayer who qualifies as a "head of household." 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) and (c). As relevant here, HOH is an individual who: (1) is unmarried at the close of the taxable year; and (2) maintains 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 either be a qualifying child (defined under IRC section 152(c)) or a dependent of the taxpayer (defined under IRC section 152(a)).

Appellant has not shown that his named dependent lived with him for more than one-half of the taxable year. Appellant provided a copy of his dissolution agreement, which states that appellant has custody of the minor during even numbered years and a copy of IRS Form 8332, which was signed by appellant's former spouse.

Nevertheless, these documents do not indicate the number of days the minor lived with appellant in 2018. Although IRS Form 8332 releases the custodial parent's claim to the dependency exemption for the minor child so the noncustodial parent can claim it, that does not mean appellant is automatically qualified to claim the HOH filing status because the Form does

¹ Although appellant did not check the box on Form 3532 to indicate that the qualifying person is appellant's child, the record supports appellant's claim that the minor was in fact appellant's child and respondent does not dispute this.

not provide any information as to which home and for how long the minor actually lived with appellant. (See IRC, § 2(b)(1)(A)(i); *Porter v. Commissioner*, T.C. Memo. 2015-141, fn. 5.) Similarly, the dissolution agreement indicates appellant’s responsibility for even numbered years in relation to the minor; however, it is not proof of the actual number of days that the minor lived with appellant to meet the requirements of a qualifying child under IRC section 152(c).

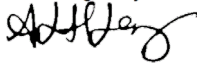
The Office of Tax Appeals provided appellant the opportunity to submit additional evidence to prove his entitlement to the HOH filing status for the 2018 tax year. No response was received. Absent any evidence, appellant has not met his burden of proof.

HOLDING

Appellant has not shown respondent erred in disallowing appellant’s HOH filing status.

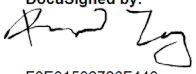
DISPOSITION

Respondent’s action is sustained.

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Andrea L.H. Long
Administrative Law Judge

We concur:

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Richard Tay
Administrative Law Judge

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Daniel K. Cho
Administrative Law Judge

Date Issued: 2/25/2022