

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

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

) OTA Case No. 21067982  
)  
)  
)  
)  
)

**OPINION**

Representing the Parties:

For Appellant: R. Hill

For Respondent: Leoangelo C. Cristobal, Tax Counsel

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Hill appeals an action by Franchise Tax Board (respondent) proposing additional tax of \$1,911, and applicable interest, for the 2018 tax year.

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

**ISSUE**

Whether appellant has shown she was entitled to file her 2018 California income tax return with the head of household (HOH) filing status.

**FACTUAL FINDINGS**

1. Appellant filed a timely 2018 California income tax return and claimed HOH filing status on her return.
2. In 2018, appellant cared for her mother, and claimed her mother as a dependent on her California income tax return.
3. Appellant was legally married in 2018, but did not live with her spouse.
4. Respondent issued a Notice of Proposed Assessment denying appellant’s HOH filing status, and proposing additional tax, plus applicable interest.

5. Appellant protested, and respondent affirmed its proposed assessment by issuing a Notice of Action on May 17, 2021.

### DISCUSSION

A taxpayer has the burden of proving their entitlement to the HOH filing status. (*Appeal of Verma*, 2018-OTA-080P.) Internal Revenue Code (IRC) sections 2(b) and 2(c) set forth the requirements to claim HOH filing status.<sup>1</sup> IRC section 2(b) provides that, to claim HOH filing status, a taxpayer generally must be not married and maintain a household that constitutes the principal place of abode of a qualifying person for more than one-half of the year.

An exception to the first requirement, that a taxpayer must be not married, exists for taxpayers who are married but living apart. (IRC, §2(c).) A taxpayer who is *married* may be considered *not married* for HOH purposes if the individual is treated as not married under IRC section 7703(b). (IRC, § 2(c).) To be considered not married, as that term is defined with regard to qualifying for HOH filing status, the taxpayer must have maintained a home that was the principal place of a child (as defined by IRC section 152(f)(1)). (IRC, § 7703(b)(1).) IRC section 152(f)(1) defines child as a son, daughter, stepson, stepdaughter, or eligible foster child of the taxpayer.

Here, appellant claimed HOH filing status on her 2018 income tax return. As a married taxpayer, appellant must have met the qualifications under IRC section 7703(b) to be considered “not married” to claim HOH filing status. However, it is uncontroverted that appellant was married, and that appellant maintained a principal place of abode for her mother, and no other dependent. Since appellant’s mother is not a child as defined by IRC section 152(f)(1), appellant cannot be considered “not married” under IRC section 7703(b), and consequently, is not eligible to claim HOH filing status on her 2018 income tax return.<sup>2</sup>

---

<sup>1</sup> Revenue and Taxation Code section 17042 incorporates IRC sections 2(b) and 2(c).

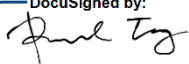
<sup>2</sup> Appellant requested a payment plan in a recent submission on appeal. We have no authority to institute a payment plan for the payment of appellant’s 2018 tax liability; however, appellant may be able to discuss payment options with respondent outside of this proceeding (See respondent’s website: <https://www.ftb.ca.gov/pay/if-you-cant-pay/index.html>).

HOLDING


Appellant has not shown she was entitled to file her 2018 California income tax return with the head of household filing status.


DISPOSITION

Respondent’s action is sustained in full.

DocuSigned by:  
  
\_\_\_\_\_  
F8E81582726F448...  
Richard Tay  
Administrative Law Judge

We concur:

DocuSigned by:  
  
\_\_\_\_\_  
873D9797B9E64E1...  
John O. Johnson  
Administrative Law Judge

DocuSigned by:  
  
\_\_\_\_\_  
7B17E958B7C14AC...  
Amanda Vassigh  
Administrative Law Judge

Date Issued: 10/6/2022