

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
R. SANCHEZ

) OTA Case No. 21067965
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OPINION

Representing the Parties:

For Appellant: R. Sanchez

For Respondent: Sarah J. Fassett, Tax Counsel

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Sanchez (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$1,488 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.
2. Appellant reported that he was unmarried in 2018, that his son was the qualifying individual for his HOH filing status, and that his son was neither a full-time student nor permanently or totally disabled. Appellant’s son was 19 years old by the end of 2018.
3. Respondent issued a Notice of Proposed Assessment (NPA), disallowing appellant’s HOH filing status. Appellant protested, and respondent issued a Notice of Action affirming the NPA.

4. Respondent provided information that appellant's son also filed a 2018 tax return and reported California adjusted gross income of \$13,173.
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.*)

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) as a qualifying child or a qualifying relative. Thus, appellant, an unmarried taxpayer, must establish that his son was a qualifying child or qualifying relative under 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 shows that his son was 19 years old by the end of 2018, and also admits that his son was neither a full-time student nor permanently or totally disabled 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). Respondent provided evidence that appellant's son's adjusted gross income in 2018 was \$13,173, which exceeded the exemption amount of \$4,150 for 2018. 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 the Office of Tax Appeals also finds no reason to allow appellant's HOH filing status.

Instead, appellant contends that respondent had already allowed his HOH status and he has already received his refund. However, it appears that appellant may be confusing the tax

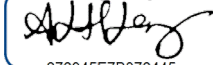
year at issue; respondent had similarly denied appellant the HOH filing status for the 2019 tax year, but the denial has since been reversed.¹

HOLDING

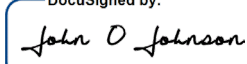
Appellant has not shown respondent erred in disallowing appellant’s HOH filing status.

DISPOSITION

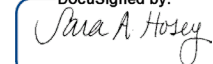
Respondent’s action is sustained.

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Andrea L.H. Long
Administrative Law Judge

We concur:
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John O. Johnson
Administrative Law Judge

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Sara A. Hosey
Administrative Law Judge

Date Issued: 8/3/2023

¹ Each taxable year stands on its own and must be separately considered. (*Appeal of Kwon*, 2021-OTA-296P.)