

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20056175
M. MANN)
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OPINION

Representing the Parties:

For Appellant: M. Mann

For Respondent: Melisa Recendez, Legal Assistant

E. S. EWING, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, M. Mann (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing \$597 of additional tax plus 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 is entitled to claim head of household (HOH) filing status for the 2018 tax year.

FACTUAL FINDINGS

1. Appellant filed a timely California resident income tax return (Form 540) for the 2018 tax year. On that return, appellant filed using the HOH filing status and included the appropriate HOH Filing Status Schedule (Form 3532), claiming one dependent. On the Form 3532, in the Marital Status section, appellant checked the box for “Legally married/RDP and did not live with spouse/RDP during 2018.” Also on the Form 3532, in the Qualifying Person section, appellant checked the box for “Grandchild, brother, sister, half brother, half sister, stepbrother, stepsister, nephew, or niece.”

2. Based on the information in the tax return, FTB issued a Notice of Proposed Assessment (NPA) which denied the claimed HOH filing status and revised appellant's filing status to married, filing separately. The NPA proposed additional tax of \$597 plus applicable interest.
3. Appellant protested the NPA. FTB denied appellant's protest and issued a Notice of Action affirming the NPA.
4. Appellant then filed this timely appeal.

DISCUSSION

Taxpayers have the burden of producing sufficient evidence to substantiate that they are entitled to the HOH filing status, and the presumption that FTB properly determined HOH eligibility cannot be overcome by unsupported statements. (*Appeal of Sedillo*, 2018-OTA-101P.) R&TC section 17042 sets forth the California requirements for the HOH filing status by reference to Internal Revenue Code (IRC) sections 2(b) and 2(c). IRC section 2(b) provides that, for a person to claim the HOH filing status, he or she generally must be unmarried at the close of the taxable year, and maintain a household that constitutes the principal place of abode of a "qualifying person" for more than one-half of the year. The determination of whether an individual is married shall be made as of the close of the taxable year (in this case, December 31, 2018). (IRC, § 7703(a)(1).)

In the Marital Status section on the Form 3532 HOH Filing Status Schedule, appellant checked the box for "Legally married/RDP and did not live with spouse/RDP during 2018." In this situation, IRC section 2(c) provides that certain married individuals living apart will be treated as not married at the close of the taxable year if they satisfy the requirements of IRC section 7703(b). To claim the HOH filing status, married individuals must maintain a household which constitutes the principal place of abode for a *child* (within the meaning of IRC section 152(f)(1)) for more than one-half of the taxable year. (IRC, § 7703(b)(1), emphasis added.)

Under IRC section 152(f)(1), a child is defined as a son, daughter, stepson, stepdaughter, eligible foster child, or adopted child. Here, in the Qualifying Person section on the Form 3532, appellant checked the box for "Grandchild, brother, sister, half brother, half sister, stepbrother, stepsister, nephew, or niece." There is nothing in the record to indicate appellant asserts otherwise. Therefore, this is the only evidence before us as it relates to the relationship of


appellant with appellant’s claimed dependent. As discussed above, an individual claiming HOH status who is legally married at the end of the taxable year, must maintain a household which constitutes the principal place of abode for a child (within the meaning of IRC section 152(f)(1)). (IRC, § 7703(b)(1).) The familial categories for which appellant checked the box on the Form 3532 do not meet the definition of a child. Consequently, appellant is not entitled to the HOH filing status.

HOLDING


Appellant is not entitled to claim head of household (HOH) filing status for the 2018 tax year.


DISPOSITION

FTB’s action is sustained.

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Elliott Scott Ewing
Administrative Law Judge

We concur:

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Cheryl L. Akin
Administrative Law Judge

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Kenneth Gast
Administrative Law Judge

Date Issued: 2/1/2021