

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
E. SANCHEZ

) OTA Case No. 20066274
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OPINION

Representing the Parties:

For Appellant: E. Sanchez

For Respondent: Angelina Yermolich, Legal Assistant

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, E. Sanchez (appellant) appeals an action by respondent Franchise Tax Board proposing \$1,156 of additional tax, and applicable interest, for the 2018 tax year.

We decide this matter based on the written record because appellant waived an oral hearing.

ISSUE

Was appellant entitled to file as head of household (HOH) for the 2018 tax year?

FACTUAL FINDINGS

1. On January 11, 2019, appellant’s daughter executed a “Minor (Child) Power of Attorney Form” (POA), which purported to transfer to appellant responsibility to provide for all the needs of, and the power make all parental decisions concerning, appellant’s minor grandchild, effective March 1, 2019.
2. On or about February 3, 2019, appellant filed a 2018 California Resident Income Tax Return (Form 540) using the HOH filing status.
3. On the “Head of Household Filing Status Schedule” (Form 3532) filed with the 2018 Form 540, appellant identified his minor grandchild as the qualifying person for the HOH

- filing status and stated that the qualifying person had no income during 2018 and did not live with him during that year.¹
4. By Notice of Proposed Assessment (NPA) dated October 3, 2019, respondent informed appellant that because his qualifying person did not live with him during 2018, he did not qualify for the HOH filing status and, consequently, respondent proposed to assess additional tax of \$1,156, plus applicable interest, based on a revised “single” filing status.²
 5. In apparent reply to the NPA, appellant submitted to respondent an amended Form 3532, which indicated appellant’s qualifying person lived with him during the entire 2018 tax year.
 6. By letter dated January 23, 2020, respondent informed appellant that, due to the conflicting information provided regarding how long the qualifying person lived with appellant during 2018, appellant should provide additional specific evidence to prove that the qualifying person lived with appellant during more than half of 2018.³
 7. Appellant provided a copy of the POA and a copy of the qualifying person’s “Academic Achievement Report” (report card) for the 2018-2019 school year, but no other evidence.
 8. By letter dated March 10, 2020, respondent informed appellant that the evidence provided was insufficient to entitle appellant to claim the HOH filing status and that respondent would affirm the NPA unless appellant provided additional evidence by April 9, 2020.

¹ In response to the question “Number of days your qualifying person lived with you during 2018,” appellant indicated “0.”

² As we understand it, the sole factual issue is whether the qualifying person lived with appellant during most of 2018.

³ The letter requested: (1) appellant’s notarized statement, signed under penalty of perjury, stating the beginning and ending dates for each period of time the qualifying person lived with appellant during tax year 2018; (2) a notarized statement, signed under penalty of perjury, from a relative, friend, neighbor, social worker, clergy, etc., that establishes where the qualifying person lived during the tax year and showed the signer’s relationship to appellant, the length of time the signer had known appellant, and how the signer knew that the qualifying person lived with appellant during the tax year; *and* (3) a notarized statement, signed under penalty of perjury, from appellant’s landlord stating who lived with appellant and for what periods during tax year 2018. The letter further advised appellant that if he could not provide any of the items listed in 2 or 3, appellant should provide any other documents (such as employment or school records) that would prove where the qualifying person lived during the tax year.

9. Appellant did not provide additional evidence. Consequently, on May 4, 2020, respondent issued a Notice of Action affirming the NPA. This timely appeal followed.

DISCUSSION

Eligibility for the HOH filing status is governed by Internal Revenue Code (IRC) section 2(b) and (c), which California generally conforms to under R&TC section 17042. As relevant here, IRC section 2(b)(1)(A) provides that a taxpayer may file as the HOH only if the taxpayer maintains as his or her home a household which constitutes the principal place of abode for the qualifying person for more than one-half of the tax year. The taxpayer has the burden of proving entitlement to the HOH filing status, and unsupported assertions are not sufficient to satisfy that burden. (*Appeal of Verma*, 2018-OTA-080P.)

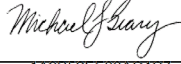
Initially, respondent correctly denied appellant's eligibility for the HOH filing status on the basis of appellant's statement (in the original Form 3532) that the qualifying person did not live with appellant during the tax year at issue. Appellant's amended Form 3532, which completely contradicted the first, created the conflict that respondent correctly attempted to resolve by directing appellant to provide additional evidence. Respondent explained to appellant the kind of evidence that might help to resolve the conflict, but appellant did not follow respondent's instructions. Instead of providing sworn statements from third parties to establish that the qualifying person lived with appellant during 2018, appellant provided the report card, which does not address the qualifying person's residence at all, and the POA, which purports to transfer parental rights and obligations to appellant effective March 1, 2019, *after* the tax year in question. We cannot speculate regarding why appellant did not provide the required proof. We must base our decision on the evidence provided by the parties, and that evidence is simply not enough to prove that the qualifying person lived with appellant for more than half of the 2018 tax year.

HOLDING

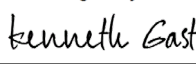
Appellant was not entitled to the HOH filing status for the 2018 tax year.


DISPOSITION

Respondent’s action is sustained.

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Michael F. Geary
Administrative Law Judge

We concur:

DocuSigned by:

:4283B8CD40F34BC...
Kenneth Gast
Administrative Law Judge

DocuSigned by:

:F8E81582726F448...
Richard Tay
Administrative Law Judge

Date Issued: 12/29/2020