

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 18010887  
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**RICHARD SMITH** ) Date Issued: February 20, 2018  
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**OPINION**

Representing the Parties:

For Appellant: Richard Smith, Pro Per  
For Respondent: Mira Patel, Tax Counsel

THOMPSON, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19045,<sup>1</sup> Richard Smith appeals the action by the Franchise Tax Board (FTB or respondent) proposing additional tax of \$1,751, plus interest, for the 2013 tax year.

Appellant waived his right to an oral hearing and therefore the matter is being decided based on the written record.

**ISSUE**

Has appellant shown he is entitled to the head of household (HOH) filing status for the 2013 tax year?

**FACTUAL FINDINGS**

1. On or about April 14, 2014, appellant filed a 2013 California resident income tax return on Form 540 2EZ. On the return, he claimed HOH filing status. He claimed a dependent exemption for a minor child, whom we will refer to as "H." Appellant listed H as his son.
2. It is undisputed that H lived with appellant for less than one-half of 2013.

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<sup>1</sup> Unless otherwise indicated, all "Section" references are to sections of the California Revenue and Taxation Code.

3. On July 10, 2015, the FTB issued a Notice of Proposed Assessment (NPA) denying HOH filing status and appellant's claimed dependent exemption credit for 2013, and proposing a deficiency in tax of \$2,077, plus interest.
4. During protest, appellant provided a federal Form 8332, entitled "Release/Revocation of Release of Claim to Exemption for Child Custodial Parent" (Release Form). The Release Form lists appellant as the noncustodial parent and indicates that the custodial parent agreed not to claim a dependent exemption for H for the 2013 tax year.
5. Appellant also provided a judgment of marital dissolution, effective November 19, 2013, stating that appellant and his former wife's marriage was dissolved on that date. Appellant provided pages from a Marital Settlement Agreement dated August 7, 2013. Among other things, the agreement states that, beginning with the 2013 tax year, appellant's former wife may claim H as a dependent as long as she is providing more than 50 percent of his living expenses or until further agreement of the parties or order of the court.
6. The FTB notified appellant that, based on the Release Form, it would allow a dependent exemption credit. However, the FTB stated that appellant does not qualify for HOH filing status because his qualifying person did not live with him for more than half of the year.
7. On March 29, 2017, the FTB issued a Notice of Action that revised its NPA to allow the dependent exemption credit. The revision reduced the proposed additional amount due from \$2,077 to \$1,751 in tax, plus interest.
8. Appellant then filed this timely appeal.

### DISCUSSION

#### Has appellant shown he is entitled to HOH filing status for the 2013 tax year?

A taxpayer has the burden of proving that he or she is entitled to the HOH filing status. (*Appeal of Richard Byrd*, 84-SBE-167, Dec. 13, 1984.) 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). As relevant here, pursuant to IRC section 2(b)(1)(A), a taxpayer who is not married may be eligible for the HOH filing status if the taxpayer "maintains as his home a

household which constitutes for more than one-half of such taxable year the principal place of abode” of certain qualifying individuals.

Here, appellant completed a Head of Household Questionnaire, which he signed under penalty of perjury, stating that H lived with him for 52 days. Accordingly, we find that H lived with appellant for 52 days. As appellant’s claimed qualifying person, H, lived with appellant for less than one-half of 2013, appellant cannot satisfy the statutory requirement that he maintained as his home a household which constituted the principal place of abode of a qualifying person for more than one-half of 2013.


Appellant appears to believe that he is entitled to relief because his former spouse signed the Release Form stating that she would not take a dependent exemption credit for H in 2013. However, the FTB has already allowed appellant a dependent exemption credit based on the Release Form. The Release Form does not entitle appellant to the HOH filing status, because, among other things, appellant has not satisfied the requirement that he provided the principal place of abode of his claimed qualifying person for more than one-half of 2013.<sup>2</sup>

#### **HOLDING**

Appellant has not shown he is entitled to the HOH filing status for the 2013 tax year.

#### **DISPOSITION**

Respondent’s proposed assessment is sustained.

  
Grant S. Thompson  
Administrative Law Judge

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<sup>2</sup> IRC section 152(e) allows noncustodial parents to claim a qualifying child as a dependent in certain circumstances. However, IRC section 2(b)(1)(A) provides that, for the purposes of the HOH filing status, the qualifying child definition in IRC section 152(c) is applied without regard to IRC section 152(e), so this provision is not applicable for purposes of HOH filing status. Thus, the fact that appellant’s former spouse released her right to claim Hans as a dependent on her taxes does not entitle appellant to claim Hans as a qualifying person for purposes of the HOH filing status.

We concur:



Neil Robinson  
Administrative Law Judge



Amanda Vassigh  
Administrative Law Judge