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7 **BOARD OF EQUALIZATION**
8 **STATE OF CALIFORNIA**

10 In the Matter of the Appeal of:) **HEARING SUMMARY**
11) **PERSONAL INCOME TAX APPEAL**
12 **RUBY JEFFERY**¹) Case No. 595546

	<u>Year</u>	<u>Proposed Assessment</u>
	2009	\$1,390

17 Representing the Parties:

18 For Appellant: Ruby Jeffery
19 For Franchise Tax Board: Janet Butler, Legal Analyst

21 **QUESTION:** Whether appellant has demonstrated that she is entitled to head of household (HOH)
22 filing status in the 2009 tax year.

23 **HEARING SUMMARY**

24 Background

25 Appellant filed a timely 2009 return in which she claimed HOH filing status and one
26 personal exemption credit. To verify appellant's HOH filing status, respondent sent appellant an HOH

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28 ¹ Appellant resides in Glendora, Los Angeles County.

1 Audit Questionnaire (Questionnaire) on October 1, 2010. On the Questionnaire, appellant reported that
2 her qualifying person was her 24-year old daughter, Noelani Jeffery. Appellant further reported that her
3 daughter's gross income was \$7,210 and her daughter was not a full-time student. In addition, appellant
4 reported that she provided more than half of her daughter's support and her daughter lived with
5 appellant for the entire year in 2009. Appellant also indicated that she was not married or a registered
6 domestic partner as of December 31, 2009. (Resp. Op. Br., p.1, Exs. A & B.)

7 Based on the information in the Questionnaire, respondent issued a Notice of Proposed
8 Assessment (NPA) on February 28, 2011, disallowing appellant's HOH filing status because appellant's
9 qualifying person's gross income exceeded the allowable amount for appellant to qualify for HOH
10 status. The NPA revised appellant's filing status to single, disallowed the dependent exemption, and
11 proposed additional tax of \$1,390, plus applicable interest. (Resp. Op. Br., p. 2, Ex. C.)

12 Appellant protested the NPA, asserting that she qualified for HOH filing status because
13 she provided a home and support for her daughter who earned wages of \$7,041 in 2009. Appellant
14 provided a copy of her daughter's 2009 federal income tax return (Form 1040). Upon review,
15 respondent issued a Notice of Action (NOA) on July 8, 2011, affirming the NPA. Appellant then filed
16 this timely appeal. (Resp. Op. Br., p. 2, Ex. D; App. Op. Br., Atchmt.)

17 Contentions

18 Appellant

19 Appellant contends she is entitled to HOH filing status because she provided a home for
20 her daughter and more than half of her daughter's living expenses, including food, health and dental
21 insurance, for all of 2009. (App. Op. Br., p. 1.)

22 Respondent

23 Respondent contends appellant does not qualify for HOH filing status because appellant
24 does not meet the legal requirements as set forth in Revenue and Taxation Code (R&TC) section 17042
25 and Internal Revenue Code (IRC) section 2(b) and (c). Specifically, respondent contends appellant's
26 daughter did not meet the age test requirement to be appellant's qualifying child. Respondent further
27 contends appellant's daughter did not meet the qualifying relative test because her daughter's gross
28 income exceeded the federal exemption amount of \$3,650. As such, respondent contends appellant has

1 not produced sufficient evidence to show respondent's denial of her claim for HOH filing status was
2 incorrect, citing the Board's decision in the *Appeal of Richard Byrd*, 84-SBE-167, decided on
3 December 13, 1984.² (Resp. Op. Br., pp. 3-4.)

4 Applicable Law

5 The FTB's determination is presumed correct and appellant has the burden of proving it
6 to be wrong. (*Todd v McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Richard Byrd, supra.*)
7 Unsupported statements are insufficient to carry this burden of proof. (*Appeal of Ismael R.*
8 *Manriquez*, 79-SBE-077, Apr. 10, 1979.)

9 R&TC section 17042 sets forth the California requirements for HOH filing status by
10 reference to IRC section 2(b) and (c). As relevant to this appeal, IRC section 2(b) provides that for a
11 person to claim HOH filing status he or she must be unmarried and maintain a household that
12 constitutes the principal place of abode of a qualifying person for more than one-half of the year. A
13 qualifying person can be either a qualifying child or a qualifying relative. (Int.Rev. Code, § 152(a).)
14 To qualify for HOH filing status, a taxpayer's qualifying child must be (1) under 19 years of age; or
15 (2) a full-time student under 24 years of age; or (3) disabled. (Int.Rev. Code, § 152(c)(3)(A) and (B).)
16 To be considered a taxpayer's qualifying relative, the individual must have gross income for the
17 calendar year that is less than the federal exemption amount, which for 2009 is \$3,650. (Int.Rev.
18 Code, § 152(d)(1)(B).)

19 STAFF COMMENTS

20 Appellant contends that her daughter qualifies appellant for HOH filing status. Based on
21 appellant's reporting that her daughter was 24 years old as of December 31, 2009, not a full-time
22 student, and earned gross income in excess of \$7,000, appellant's daughter may not be considered a
23 qualifying person under IRC section 152. At the hearing, appellant should be prepared to explain and
24 to provide evidence to demonstrate that her daughter meets the legal requirements to qualify appellant
25 for HOH filing status. Pursuant to California Code of Regulations, title 18, section 5523.6, if either
26 party has any additional evidence to present, it should be provided to the Board's Board Proceedings
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28 ² Board of Equalization cases are generally available for viewing on the Board's website (www.boe.ca.gov).

1 Division at least 14 days prior to the oral hearing.³

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³ Evidence exhibits should be sent to: Claudia Madrigal, Appeals Analyst, Board Proceedings Division, State Board of Equalization, P.O. Box 942879 MIC:80, Sacramento, California, 94279-0080.