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7 **BOARD OF EQUALIZATION**
8 **STATE OF CALIFORNIA**
9

10 In the Matter of the Appeal of:) **HEARING SUMMARY²**
11) **PERSONAL INCOME TAX APPEAL**
12 **CRAIG NORTON¹**) Case No. 693097
13

	<u>Year</u>	<u>Proposed Assessment</u>
	2010	\$1,648

16 Representing the Parties:

17 For Appellant: Craig Norton
18 For Franchise Tax Board: Janet Butler, Senior Legal Analyst
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20 QUESTION: Whether appellant is entitled to the head of household (HOH) filing status for the
21 2010 tax year.

22 HEARING SUMMARY

23 Background

24 Appellant filed a California income tax return for the 2010 tax year, claiming the HOH
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26 ¹ Appellant resides in Riverside County.

27 ² This appeal was originally scheduled for the Board's July 17, 2013 oral hearing calendar. Afterwards, appellant requested
28 a postponement. Appellant's request for a postponement was granted and this appeal was rescheduled for the Board's
October 29-31, 2013 oral hearing calendar.

1 filing status. On the return, appellant claimed one dependent exemption credit for Jennifer Norton.³

2 To verify appellant's HOH filing status, the Franchise Tax Board (FTB or respondent)
3 sent appellant a 2010 Head of Household Audit Questionnaire (Audit Questionnaire), which appellant
4 completed and signed under penalty of perjury. On the Audit Questionnaire, appellant stated that his
5 "stepchild's mother," Jennifer Norton, qualified him for the HOH filing status. Appellant stated that
6 Ms. Norton was 38 years old in 2010, that Ms. Norton's gross income was less than \$3,650 in 2010,
7 that appellant provided more than one-half of the support for Ms. Norton, and that Ms. Norton was
8 not a full-time student at a recognized educational institution for at least five months during 2010.
9 Appellant also indicated that Ms. Norton lived with him for the entire year in 2010 and that
10 Ms. Norton was not married as of December 31, 2010. Appellant indicated that he was not married
11 or a registered domestic partner (RDP) as of December 31, 2010. (Resp. Opening Br., p. 1, exhibits
12 A and B.)

13 Based on this information, the FTB issued a Notice of Proposed Assessment (NPA) on
14 July 31, 2012, that denied appellant's claim for the HOH filing status. The NPA explained that a
15 non-relative may not be claimed as a qualifying person for purposes of the HOH filing status. The NPA
16 revised appellant's filing status to single, allowed appellant one personal exemption credit and one
17 dependent exemption credit, recomputed his tax liability, and proposed additional tax of \$1,648, plus
18 applicable interest, for the 2010 tax year. (Resp. Op. Br., pp.1-2, Exhibit C.)

19 Appellant protested the NPA, contending that Ms. Norton was a qualifying person.
20 Appellant asserted that Ms. Norton had been a family member since 1997, had multiple health
21 disabilities, and was fully supported by appellant. Appellant stated that he is experiencing financial
22 hardship and requested that the FTB reconsider the assessment of additional tax. After reviewing
23 appellant's protest, the FTB issued a Notice of Action (NOA) on November 9, 2012, affirming the
24 NPA. The NOA explained that appellant did not qualify for the HOH filing status because
25 non-relatives may not be claimed as appellant's qualifying person. Appellant then filed this timely
26 appeal. (Resp. Opening Br., p. 2, exhibits D and E.)
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28 ³ Appellant did not indicate on the return Ms. Norton's relationship to appellant.

1 Contentions

2 Appellant's Contentions

3 On appeal, appellant contends that Ms. Norton is a qualifying person. Appellant asserts
4 that he fully supports Ms. Norton, who has been a family member since 1997, and has multiple mental
5 health disabilities. Appellant stated that he is experiencing financial hardship and requested that the
6 assessment of additional tax be reconsidered.

7 Respondent's Contentions

8 The FTB contends that appellant does not qualify for the HOH filing status in 2010
9 because Ms. Norton cannot be appellant's qualifying person. Specifically, the FTB argues that
10 Ms. Norton's relationship to appellant ("stepchild's mother") does not meet the requirements to be a
11 qualifying relative.

12 With respect to appellant's request for an abatement of the tax liabilities due to financial
13 hardship, the FTB states that its collection programs potentially address appellant's concerns regarding
14 financial hardship: (1) Offers in Compromise (OIC) (a website link to an information booklet
15 pertaining to OIC was included in the FTB's brief for appellant's consideration); and (2) an installment
16 agreement (a website link to an information booklet pertaining to an installment agreement was
17 included in the FTB's brief for appellant's consideration). The FTB states that appellant should
18 understand that these potential forms of relief are collection matters and, as a result, may be considered
19 by the FTB only after the closure of this appeal.

20 Applicable Law

21 In resolving an issue on appeal, the FTB's determination is presumed correct and an
22 appellant has the burden of proving it to be wrong. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509;
23 *Appeal of Richard Byrd*, 84-SBE-167, Dec. 13, 1984.) Unsupported statements are insufficient to carry
24 this burden of proof. (*Appeal of Ismael R. Manriquez*, 79-SBE-077, Apr. 10, 1979.) Self-serving,
25 unsupported assertions are not sufficient to satisfy an appellant's burden. (See, e.g., *Appeal of Ismael*

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1 *R. Manriquez, supra*; and *Appeal of James C. and Monablanche A. Walshe*, 75-SBE-o73, Oct. 20,
2 1975.)⁴

3 R&TC section 17042 sets forth the California requirements for the HOH filing status by
4 reference to Internal Revenue Code (IRC) sections 2(b) and 2(c).⁵ IRC section 2(b) provides that, for a
5 person to claim the HOH filing status, he or she must be unmarried (at the close of the taxable year) and
6 maintain as a home a household that constitutes the principal place of abode, as a member of the
7 household, of a qualifying person for more than one-half of the year. A qualifying person can be either
8 a qualifying child or a qualifying relative. (Int.Rev. Code, § 152(a).)

9 IRC section 2(b)(1)(A)(ii) provides that a person may claim the HOH filing status if he
10 maintains as his home a household that constitutes for more than one-half of the taxable year the
11 principal place of abode, as a member of the household, of a person whom the taxpayer is entitled to
12 claim as a dependent under IRC section 151. IRC section 151(c) permits a dependent exemption for
13 each individual who qualifies as a dependent under IRC section 152. The list of potential qualifying
14 individuals includes unmarried descendants of the taxpayer and other closely related dependents, as
15 listed in IRC section 152, subparagraphs (d)(2)(A) through (G), legally adopted children of the taxpayer,
16 and eligible foster children of the taxpayer. (Int.Rev. Code, §§ 2(b), 152(f)(1)(A)-(B).)

17 IRC section 152(d)(2)(H) also provides that a “qualifying relative” can include an
18 individual, other than a spouse, who had the same principal place of abode as the taxpayer and was a
19 member of the taxpayer’s household for the taxable year. IRC section 2(b), however, precludes from
20 the list of potential qualifying individuals those individuals who qualify as a taxpayer’s dependent
21 based solely on having as their principal place of abode the home of the taxpayer and as living as a
22 member of the taxpayer’s household. (Int.Rev. Code, § 2(b)(3)(B)(i).)

23 **STAFF COMMENTS**

24 Ms. Norton, appellant’s stepchild’s mother, is not one of the persons identified under
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27 ⁴ Board of Equalization cases (designated “SBE”) may generally be found at: www.boe.ca.gov.

28 ⁵ IRC section 2(c) provides for the treatment of taxpayers that are married but living apart. Here, appellant indicated on the Audit Questionnaire that he was not married or a RDP. Therefore, IRC section 2(c) is not applicable and will not be discussed herein.

1 subparagraphs (2)(A) through (G) of IRC section 152(d), but she does qualify as appellant's dependent
2 pursuant to subparagraph (2)(H). However, a dependent defined by subparagraph (2)(H) is specifically
3 excluded as an individual who can qualify appellant for the HOH filing status. Here, Ms. Norton
4 qualifies as appellant's dependent based solely on having as her principal place of abode appellant's
5 home and by living as a member of appellant's household. (Int.Rev. Code, § 2(b)(3)(B)(i).)

6 Based on appellant's reporting that Ms. Norton is appellant's stepchild's mother,
7 Ms. Norton may not be considered a qualifying person under IRC section 152. At the hearing,
8 appellant should be prepared to explain, and to provide evidence to demonstrate, how Ms. Norton
9 meets the legal requirements to qualify appellant for the HOH filing status. Pursuant to California Code
10 of Regulations, title 18, section 5523.6, if either party has any additional evidence to present, it should
11 be provided to the Board's Board Proceedings Division at least 14 days prior to the oral hearing.⁶

12 Appellant states that he is experiencing financial hardship, which suggests that he might
13 be eligible for the OIC program, a program which is administered by the FTB, not the Board. In this
14 appeal, the Board's jurisdiction is limited to determining the correct amount of appellant's California
15 personal income tax liability. (*Appeal of Fred R. Dauberger, et. al.*, 82-SBE-082, Mar. 31, 1982.)
16 Once the decision in this appeal becomes final, appellant may contact the FTB to determine whether he
17 is eligible to participate in the OIC program or whether he can enter into an installment agreement with
18 the FTB.

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⁶ Evidence exhibits should be sent to: Khaaliq Abd'Allah, Associate Government Program Analyst, Board Proceedings Division, State Board of Equalization, P.O. Box 942879 MIC:80, Sacramento, California, 94279-0080.