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7 **BOARD OF EQUALIZATION**

8 **STATE OF CALIFORNIA**

9  
10 In the Matter of the Appeal of:

) **HEARING SUMMARY**

) **PERSONAL INCOME TAX APPEAL**

11  
12 **CECILIA REZA**<sup>1</sup>

) Case No. 506933  
)  
)  
)

13  
14  
15 Year  
2007

Proposed  
Assessment  
\$1,575

16  
17 Representing the Parties:

18 For Appellant:

Samantha Lohman-Creer,  
Tax Appeals Assistance Program (TAAP)<sup>2</sup>

19  
20 For Franchise Tax Board:

Claudia L. Cross, Legal Analyst

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22 **QUESTION:** Whether appellant has established that she qualifies for head of household (HOH) filing  
23 status for 2007.

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27 <sup>1</sup> Appellant resides in Los Angeles County, California.

28 <sup>2</sup> Appellant was previously represented by Quan Vuong and Michelle Wuerz of TAAP.

1 HEARING SUMMARY

2 Background

3 Appellant filed a timely 2007 California Resident Income Tax Return (Form 540A) on  
4 which she claimed HOH filing status. On the return, appellant claimed a dependent exemption credit,  
5 but she did not list the name and relationship of her dependent. To verify appellant's filing status, the  
6 FTB sent appellant an HOH audit questionnaire to complete. In response, appellant completed an  
7 "Internet Audit Letter," indicating that (i) she was single as of December 31, 2007, and (ii) her  
8 qualifying person was a "Non Relative or Unrelated Child" named Nancy Ercolono (Nancy), who was  
9 14 years of old, and who lived with appellant from June 1, 2007, through December 31, 2007.

10 Based upon appellant's responses, the FTB issued a Notice of Proposed Assessment  
11 (NPA) that disallowed appellant's HOH filing status for 2007, resulting in a proposed additional tax  
12 assessment of \$1,575, plus applicable interest. In the NPA, the FTB explained that non-relatives may  
13 not be claimed as appellant's qualifying person.

14 Appellant timely protested the NPA, arguing that she qualified for HOH filing status in  
15 2007 because (i) she lived with Nancy's father for part of 2001, 2002, and 2006, in addition to being a  
16 surrogate parent for his children, and (ii) Nancy lived with appellant for part of 2007 because Nancy's  
17 father had a severe heart attack and could not care for all of his children or provide appellant with  
18 financial assistance. Also, appellant argues that if she has to pay the assessment, she will have to enter  
19 into an installment payment plan.

20 On July 8, 2009, the FTB and appellant had a telephone conversation regarding  
21 appellant's filing status. During this conversation, the FTB allegedly explained that appellant did not  
22 qualify for HOH filing status because Nancy is a non-relative. In response, appellant allegedly stated  
23 that the FTB's determination was unfair because she supported Nancy and gave her a place to live in  
24 2007.

25 On July 22, 2009, the FTB issued a Notice of Action (NOA), affirming the NPA. This  
26 timely appeal followed.

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1           Contentions

2           Appellant

3           In her appeal letter, appellant took the position that she is entitled to claim HOH filing  
4 status for 2007 because Nancy was her “step-daughter.” Appellant explained that (i) even though she  
5 was not married to Nancy’s father, they had lived together in the past and she helped raise his children,  
6 who often referred to her as their mom, and (ii) Nancy’s father suffered a severe heart attack in May of  
7 2007 and was unable to care for his children; thus, Nancy lived with appellant from June 2007 to April  
8 2008. Also, appellant argued that she saved the State of California money by preventing Nancy from  
9 being placed in the state foster care system.

10           In a reply brief dated March 22, 2010, appellant argues that she created a ‘family  
11 environment’ for Nancy, and therefore, the fact that Nancy was not placed with appellant by “an  
12 authorized agency,” as provided for in Internal Revenue Code (IRC) section 152, subdivision (f)(1)(C),  
13 is “irrelevant.”

14           Later, appellant filed a reply brief dated July 22, 2010, arguing that she is entitled to  
15 claim HOH filing status because Nancy is “basically her foster child based on the dictionary definition  
16 that [appellant] is ‘affording, receiving, or sharing nurture or parental care though not related by blood  
17 or legal ties.’”<sup>3</sup> Likewise, appellant argues that she is entitled to claim HOH filing status because “she  
18 took care of Nancy as her own child.” Finally, appellant again argues that she saved the State of  
19 California money by preventing Nancy from being placed in the state foster care system.

20           The FTB

21           The FTB argues that appellant is not entitled to claim HOH filing status because  
22 appellant has not shown that Nancy is a qualifying person for HOH purposes. First, the FTB argues that  
23 appellant provided no evidence showing that Nancy was appellant’s stepdaughter in 2007, as appellant  
24 alleges. In this respect, the FTB states that because appellant and Nancy’s father were never married,  
25 Nancy cannot be considered appellant’s stepchild.

26           Second, the FTB argues that appellant has provided no evidence showing that Nancy was  
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<sup>3</sup> It appears that appellant is citing to Webster’s Dictionary, but she did not provide a citation in her reply brief.

1 appellant's "foster child" in 2007, as appellant alleges. In this respect, the FTB notes that the definition  
2 of an "eligible foster child" is narrowly construed under IRC section 152, subdivision (f)(1)(C), as "an  
3 individual who is placed with the taxpayer by an authorized placement agency or by judgment, decree,  
4 or other order of any court of competent jurisdiction." And the FTB states that appellant has provided  
5 no evidence showing that she comes within this definition.

6 Finally, the FTB states that if appellant cannot pay the assessment in one lump sum, she  
7 can enter into an installment payment plan.

8 We note that the FTB did not file a reply brief discussing appellant's argument that  
9 appellant is entitled to claim HOH filing status because Nancy is "basically her foster child based on the  
10 *dictionary definition* that [appellant] is 'affording, receiving, or sharing nurture or parental care though  
11 not related by blood or legal ties.'" (Emphasis supplied.)

#### 12 Applicable Law

13 Revenue and Taxation Code (R&TC) section 17042 sets forth the requirements for HOH  
14 filing status by reference to IRC sections 2(b). IRC section 2(b) provides that the taxpayer must be  
15 unmarried (at the close of the taxable year), and must maintain as her home a household which  
16 constitutes the principal place of abode, as a member of the household, of a qualifying individual for  
17 more than one-half of the year. The list of potential qualifying individuals includes, for purposes herein,  
18 the taxpayer's child, stepchild, or eligible foster child. (Int.Rev. Code, §§ 2(b) and 152(c)(2) and (f)(1);  
19 Rev. & Tax Code, § 17056; see also, FTB's Law Summary, Head of Household Filing Status, 2007.)  
20 The term "eligible foster child" is defined in IRC section 152, subdivision (f)(1)(C), as "an individual  
21 who is placed with the taxpayer by an authorized placement agency or by judgment, decree, or other  
22 order of any court of competent jurisdiction."<sup>4</sup> Although term "stepchild" is not defined in the IRC or  
23 the R&TC, the California Court of Appeal has noted that "[t]he status of stepparent arises solely as a  
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26 <sup>4</sup> We note that Treasury Regulation 1.152-2(c)(4) and some of this Board's prior decisions (i.e., *Appeal of Louis P. Halvas*,  
27 97-SBE-013, Nov. 20, 1997; *Appeal of Michael E. Curtis*, 97-SBE-012, Aug. 1, 1997) address a prior version (i.e., a pre-  
28 2005 version) of IRC section 152, which defined an eligible foster child more broadly. However, as of January 1, 2005, a  
child will only be considered an eligible foster child if that child "is placed with the taxpayer by an authorized placement  
agency or by judgment, decree, or other order of any court of competent jurisdiction." (See Int.Rev. Code, § 152(f)(1)(C),  
which became effective January 1, 2005, and to which California conformed in 2005 through AB115 (Stats. 2005, ch. 691).)  
Treasury Regulation 1.152-2 has not been updated to reflect the changes made to IRC section 152 by 108-311 P.L. 94-455.

1 result of . . . marriage . . .” (*Jodi B. v. James P.* (1991) 227 Cal.App.3d 1322, 1328) and “a person  
2 becomes a stepparent by marrying . . . and loses stepparent status should the marriage be terminated.”  
3 (*Clifford v. Superior Court* (1995) 38 Cal.App.4th 747, 752.) In addition, the Ninth Circuit Court of  
4 Appeals has stated that “state law should be used to determine marital status for federal tax purposes.”  
5 (*Lee v. Commissioner* (9th Cir. 1977) 550 F.2d 1201, 1202.)

6 Appellant has the burden of proving that she is entitled to HOH filing status. (*Appeal of*  
7 *Richard Byrd*, 84-SBE-167, Dec. 13, 1984.)<sup>5</sup> The FTB’s determinations are generally presumed correct,  
8 and an appellant bears the burden of proving error. (*Appeal of Sheldon I. and Helen E. Brockett*, 86-  
9 SBE-109, June 18, 1986; *Todd v. McColgan* (1949) 89 Cal.App.2d 509.) Unsupported assertions are  
10 insufficient to carry appellant’s burden of proof. (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274,  
11 Nov. 17, 1982.)

## 12 STAFF COMMENTS

13 As discussed above, although the term “stepchild” is not defined in the IRC or the  
14 R&TC, the California Court of Appeal has noted that “[t]he status of stepparent arises solely as a result  
15 of . . . marriage . . .” (*Jodi B. v. James P.*, *supra*, at 1328) and “a person becomes a stepparent by  
16 marrying . . . and loses stepparent status should the marriage be terminated.” (*Clifford v. Superior*  
17 *Court, supra*, at 752.) In addition, the Ninth Circuit Court of Appeals has stated that “state law should  
18 be used to determine marital status for federal tax purposes.” (*Lee v. Commissioner, supra*, at 1202.)  
19 Based on the foregoing authorities, it does not appear to staff that Nancy qualifies as appellant’s  
20 “stepchild” in 2007, given that appellant and Nancy’s father were apparently never married as of the end  
21 of the 2007 tax year.

22 In relation to whether Nancy qualifies as appellant’s foster child in 2007, appellant  
23 appears to concede that Nancy was not placed with appellant by “an authorized placement agency or by  
24 judgment, decree, or other order of any court of competent jurisdiction,” as provided for in IRC section  
25 152, subdivision (f)(1)(C). As noted above, appellant argues that (i) the fact Nancy was not placed with  
26 appellant by an “authorized agency” is “irrelevant,” given that appellant provided Nancy with a “family  
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28 <sup>5</sup> State Board of Equalization cases can generally be viewed on the Board’s website ([www.boe.ca.gov](http://www.boe.ca.gov)).

1 environment,” and (ii) Nancy qualifies as appellant’s foster child because Nancy is “basically her foster  
2 child based on the dictionary definition that [appellant] is ‘affording, receiving, or sharing nurture or  
3 parental care though not related by blood or legal ties.’” (As noted above, appellant is apparently citing  
4 to Webster’s Dictionary). Here, it does not appear that appellant can avoid the application of the IRC  
5 definition of “eligible foster child.”

6 As noted above, Treasury Regulation 1.152-2(c)(4) and some of this Board’s prior  
7 decisions (i.e., *Appeal of Louis P. Halvas, supra*; *Appeal of Michael E. Curtis, supra*.) address a prior  
8 version (i.e., a pre-2005 version) of IRC section 152, which defined an eligible foster child more  
9 broadly. However, as of January 1, 2005, it appears that a child will only be considered an eligible  
10 foster child if that child “is placed with the taxpayer by an authorized placement agency or by judgment,  
11 decree, or other order of any court of competent jurisdiction.”

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