

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
C. WRIGHT

) OTA Case No. 21098648
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OPINION

Representing the Parties:

For Appellant: C. Wright

For Respondent: Joel M. Smith, Tax Counsel III

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. Wright (appellant) appeals an action by the Franchise Tax Board (respondent) issuing a denial of a claim for refund of an earned income tax credit (EITC) for the 2016 tax year when appellant had not filed such a claim.¹

This matter is being decided on the basis of the written record because appellant waived the right to an oral hearing.

ISSUES

Does the evidence establish error in respondent’s issuance to appellant of a denial of a claim for refund for the 2016 tax year when appellant had not filed such a claim?

FACTUAL FINDINGS

1. Appellant timely filed a 2016 California income tax return, reporting no tax or refund due. Respondent accepted the return as filed.
2. On July 8, 2021, respondent received appellant’s claims for refund, which were based on allegedly unclaimed EITCs, for the 2017 through 2020 tax years.² Appellant did not

¹ It is undisputed that appellant did not file a claim for refund for the 2016 tax year and that this appeal is the result of FTB’s erroneous issuance of a denial of a claim for refund that appellant did not make.

² The Office of Tax Appeals has no appeals pending for these tax years.

- make a claim for refund for the 2016 tax year.
3. Although appellant did not claim a refund for the 2016 tax year, respondent nevertheless sent appellant an August 30, 2021 letter denying a claim for refund of the EITC for the 2016 tax year on the ground that the claim was barred by the statute of limitations. The letter also advised appellant to file an appeal with the Office of Tax Appeals (OTA) if appellant believed the denial was incorrect.
 4. On or about September 13, 2021, appellant filed an appeal of respondent's action with OTA. In this appeal, appellant states that he received an "EIC" for the 2016 tax year and is concerned that respondent's "denial" will result in an action by respondent to offset any amounts claimed due against any amounts to which appellant is entitled on the claims for refund for the 2017 through 2020 tax years.

DISCUSSION


Appellant did not file a claim for refund for the 2016 tax year. Consequently, there was no refund claim for respondent to deny. While such denial letters generally provide a basis for OTA to exercise jurisdiction over respondent's denial of a claim for refund (see Cal. Code Regs., tit. 18, § 30103(a)(3)), the mere issuance of a denial letter when there was no claim for refund, perfected or otherwise, is a nullity. We find that respondent's August 30, 2021 denial letter was an error and had no force or effect. We also note that this finding, along with the evidence (i.e., appellant's 2016 California income tax return) that appellant did not claim an EITC for the 2016 tax year and the fact that respondent has not asserted an underpayment of tax for the 2016 tax year, should alleviate appellant's concerns that respondent will take some action, based on its August 30, 2021 denial letter, to deny or limit the refund to which appellant might otherwise be entitled for the 2017 through 2020 tax years.

HOLDING

The evidence establishes error in respondent’s issuance to appellant of a denial of a claim for refund for the 2016 tax year when appellant had not filed such a claim.


DISPOSITION

Respondent’s August 30, 2021 letter denying a claim for refund for the 2016 tax year is a nullity and shall be of no force or effect.

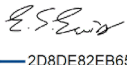
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Michael F. Geary
Administrative Law Judge

We concur:

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Administrative Law Judge

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Elliott Scott Ewing
Administrative Law Judge

Date Issued: 6/9/2022