

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

In the Matter of the Appeal of: ) OTA Case No. 230413078  
T. GIACOMA )  
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**OPINION**

Representing the Parties:

For Appellant: T. Giacomma

For Respondent: Blake Cunningham, Specialist

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, T. Giacomma (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,120 for the 2017 tax year.

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

**ISSUE**

Whether appellant’s claim for refund is barred by the statute of limitations.

**FACTUAL FINDINGS**

1. On February 14, 2019, appellant filed a California Income Tax Return for the 2017 tax year reporting a refundable earned income tax credit (EITC) of \$1,470, which he claimed as an overpayment and requested to be refunded.
2. On March 13, 2019, FTB issued appellant a Notice of Tax Return Change. The Notice stated that FTB was disallowing appellant’s reported EITC, resulting in a zero balance due to appellant. The Notice included an “Explanation of Change(s)” stating that the EITC was disallowed because appellant did not attach Form 3514, California Earned Income Tax Credit. The Notice stated that if appellant disagreed, he should gather any relevant documents and contact FTB.

3. On November 15, 2022, appellant filed an amended return once again claiming the EITC and a \$1,470 refund. Appellant attached Form 3514 to the amended return.
4. FTB processed appellant's amended return and treated it as a claim for refund.
5. On January 17, 2023, FTB issued appellant a notice stating that it had processed the return and allowed a \$1,120 EITC, but that no claim for refund could be granted because the claim for refund was barred by the statute of limitations.
6. Appellant timely filed an appeal of FTB's denial of the \$1,120 EITC.

### DISCUSSION

Adjustments to refundable credits like the EITC may be made by FTB pursuant to R&TC section 19504, and taxpayers may claim a refund of such adjusted amounts within the period described in R&TC section 19306. (R&TC, § 19052.) Under R&TC section 19054, FTB may assess any overstated credit amount on a return as a mathematical error such that when FTB provides the taxpayer notice of the error, the notice is not a deficiency assessment, and the taxpayer has no protest or appeal rights based on that notice. (R&TC, §§ 19054, 19051.) However, any resulting amount due may be assessed and collected as a deficiency assessment. (R&TC, § 19051.)

R&TC section 19306 imposes a statute of limitations to file a claim for refund. R&TC section 19306(a) provides, in part, that no credit or refund shall be allowed unless a claim for refund is filed within the later of: (1) four years from the date the return was filed, if the return was timely filed within the extended filing period pursuant to an extension of time to file; (2) four years from the due date prescribed for filing the return (determined without regard to any extension of time for filing the return); or (3) one year from the date of the overpayment.

The taxpayer has the burden of proof in showing entitlement to a refund and that the claim for refund is timely. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.) The language of R&TC section 19306 is explicit and must be strictly construed, without exception. (*Appeal of Cornbleth*, 2019-OTA-408P.) A taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars the taxpayer from doing so later, even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) This is true even when it is later shown that the tax

was not owed in the first place. (*Ibid.*) While fixed deadlines may appear harsh because they can be missed, the resulting occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

Appellant does not dispute that his November 15, 2022 amended return is untimely. Instead, appellant asserts that his February 14, 2019 original return was a timely filed claim for refund.

FTB issued appellant a Notice of Tax Return Change on March 13, 2019, in response to appellant's February 14, 2019 original return. FTB's Notice stated that FTB had disallowed appellant's claimed EITC, which resulted in no refund due to appellant. The Notice included an "Explanation of Change(s)" stating that the EITC was denied because appellant did not file Form 3514. The Notice constituted an adjustment to a refundable credit pursuant to R&TC section 19052 and, accordingly, is not a deficiency assessment and did not grant appellant protest or appeal rights. To file a timely claim for refund of the adjusted EITC amount, appellant was required to file a new claim for refund within the period described in R&TC section 19306. (R&TC, § 19052 ["claimants shall have the right to claim a refund of adjusted amounts within the period provided in [R&TC section 19306"].) However, following FTB's adjustment, appellant did not file a claim for refund until November 15, 2022, after the running of the statute of limitations as described in R&TC section 19306. FTB correctly notified appellant that his claim for refund was barred by the statute of limitations because it was filed outside of this time period.

HOLDING

Appellant’s claim for refund is barred by the statute of limitations.

DISPOSITION

FTB’s denial of appellant’s claim for refund is sustained.

Signed by:  
*Veronica I. Long*  
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Veronica I. Long  
Administrative Law Judge

We concur:

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*Cheryl L. Akin*  
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Cheryl L. Akin  
Administrative Law Judge

Signed by:  
*Kim Wilson*  
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Kim Wilson  
Hearing Officer

Date Issued: 10/9/2024