

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

In the Matter of the Appeal of:  
**MERIDIANT CORPORATION**

) OTA Case No. 18010711  
)  
) Date Issued: June 25, 2019  
)  
)  
)

**OPINION**

Representing the Parties:

For Appellant: Timothy W. Bevan, President

For Respondent: Gi Nam, Tax Counsel

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Meridiant Corporation (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$552.77 for its taxable year ending October 31, 2012 (TYE 2012).

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

**ISSUES**

1. Whether appellant’s claim for refund was filed within the statute of limitations for its TYE 2012.
2. Whether appellant established reasonable cause to abate the late-filing penalty.
3. Whether appellant established that the estimated tax penalty should be abated.
4. Whether appellant established that the collection cost recovery fee should be abated.
5. Whether appellant established that any or all of the interest may be abated.

**FACTUAL FINDINGS**

1. Appellant is a California corporation that reports its taxes on a fiscal year basis. For the period at issue (TYE 2012), appellant’s taxable year began on November 1, 2011, and ended on October 31, 2012.

2. Appellant did not file a California Corporation Franchise or Income Tax Return on or before January 15, 2013, the due date of the return for the TYE 2012.
3. Appellant made a payment of \$800 to FTB on February 15, 2013.
4. Appellant filed its California Corporation Franchise or Income Tax Return for the period at issue on August 13, 2014, reporting negative net income and a total tax due of \$800. Appellant also reported an \$800 payment, which satisfied appellant's reported tax liability.
5. Because appellant's tax return was filed late, FTB assessed a late-filing penalty of \$200, an estimate tax penalty of \$24.94, and accrued interest. By Corporation Past Due Notice dated February 11, 2015, FTB requested that appellant pay the balance due, which consisted of the penalties and interest.
6. Appellant did not respond to the February 11, 2015 notice or make any requested payments.
7. By Corporation Formal Demand dated April 3, 2015, FTB demanded that appellant pay the balance owed. This demand also informed appellant that FTB may impose a collection fee and undertake collection activities against appellant if it failed to pay the amounts owed.
8. Appellant did not respond to the April 3, 2015 demand and did not make any payments.
9. By Corporation Final Notice Before Levy dated May 8, 2015, FTB informed appellant that it will begin collection actions against appellant and impose a \$310 collection fee if appellant failed to pay its balance owed.
10. Appellant did not respond to the May 8, 2015 notice and did not make any payments.
11. FTB issued an Order to Withhold Corporation Tax, dated June 29, 2015, to Bank of America, N.A., requiring the bank to withhold \$552.77 and forward that amount to FTB.
12. FTB received the funds on July 23, 2015, and applied it to appellant's liability.
13. Appellant filed a claim for refund dated January 31, 2017, requesting a refund of the levied funds because appellant allegedly had reasonable cause for the late filing of its return.
14. FTB denied the claim for refund by letter dated June 29, 2017.
15. This timely appeal followed.

## DISCUSSION

Under the applicable statute of limitations, the last day to file a claim for refund is the later of: (1) four years from the date the return is filed, if filed pursuant to a valid extension;<sup>1</sup> (2) four years from the due date of the return, without regard to extensions; or (3) one year from the date of the overpayment. (R&TC, § 19306(a).) “A taxpayer’s failure to file a claim for refund within the statute of limitations, for any reason, bars [the taxpayer] from later claiming a refund.” (*Appeal of Estate of Gillespie* (18-OTA-052P) 2018 WL 6377536.)

“[W]ithout a timely refund claim, [FTB] does not have the statutory authorization to refund amounts paid and [the Office of Tax Appeals (OTA)] does not have statutory authorization to require [FTB] to do so.” (*Appeal of Estate of Gillespie, supra.*) Furthermore, the United States Supreme Court has concluded that the untimely filing of a claim for refund bars a suit for refund regardless of whether the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*United States v. Dalm* (1990) 494 U.S. 596, 602.)

Here, there is no dispute that appellant did not file a return by the due date or within the time period permitted by a valid extension. As a result, the first time period specified in R&TC section 19306 is not applicable to this appeal. The second time period in which to file a timely claim for refund is within four years from the due date of the return. (See R&TC, § 19306(a).) The due date of appellant’s tax return for the TYE 2012 was on or before the 15th day of the third month following the close of the taxable year. (See R&TC, § 18601.) For the period at issue, appellant’s taxable year ended on October 31, 2012. Accordingly, appellant’s tax return was due on or before January 15, 2013, and four years from that date is January 15, 2017. The last time period in which to file a timely claim for refund is one year from the date of payment. In this case, FTB levied funds from appellant’s bank account, which FTB received on July 23, 2015. One year from this date is July 23, 2016.

Based on the foregoing, the statute of limitations for filing a timely claim for refund for the period at issue was January 15, 2017 (the later of the two applicable time periods prescribed by R&TC section 19306). However, appellant’s claim for refund was dated January 31, 2017, which is 16 days *after* the expiration of the January 15, 2017 deadline.

---

<sup>1</sup>For the period at issue, FTB allowed an automatic seven-month extension to file a tax return without the need to file a written request if the return was filed within seven months of the due date of the return. (R&TC, § 18604; FTB Notice 92-11.) The granting of the extension is conditioned on the filing of a return within the automatic extension period. (FTB Notice 92-11.)

Although appellant does not directly address the timeliness of its January 31, 2017 claim for refund, it argues that it “took some time” to actually receive a January 19, 2017 “demand-Final Notice.” However, the notice that appellant submitted, a Corporation Final Notice Before Levy, is for the taxable year ending in 2015. This appeal involves appellant’s TYE 2012, and there were numerous notices sent to appellant for this year. As a result, appellant’s argument is unrelated to the period at issue in this appeal. Nonetheless, even if appellant’s argument was related to this appeal, there is no provision in the Corporation Tax Law that would extend a statute of limitations based on such an argument.

Lastly, while R&TC section 19316 will suspend the running of a statute of limitations during any period in which an individual taxpayer is “financially disabled,” this provision is only applicable to individual taxpayers, and under the Personal Income Tax Law, an “individual” is defined as a natural person and not a corporation. (See R&TC, § 17005.) Thus, even though appellant’s corporate officer was involved in a serious accident that might fall within the definition of “financially disabled,” R&TC section 19316 does not apply to this appeal because a corporation’s tax liabilities are at issue, not the corporation’s officer’s tax liability. Based on the foregoing, appellant’s January 31, 2017 claim for refund was not timely and any refund is barred by the statute of limitations. Because this is dispositive as to all of the issues on appeal, we decline to address the remaining issues.

#### HOLDING

Appellant’s claim for refund was not filed within the statute of limitations for TYE 2012.

DISPOSITION

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

DocuSigned by:  
*Daniel K. Cho*  
7B28A07A7E0A43D...  
Daniel K. Cho  
Administrative Law Judge

We concur:

DocuSigned by:  
*Michael Geary*  
1A9B52EF88AC467...  
Michael F. Geary  
Administrative Law Judge

DocuSigned by:  
*Tommy Leung*  
0C90542DE88D4E7...  
Tommy Leung  
Administrative Law Judge