

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 230814054  
MERIDIAN INDUSTRIES, INC. )  
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**OPINION**

Representing the Parties:

For Appellant: Craig A. Cooke, CPA

For Respondent: Vivian Ho, Attorney

For Office of Tax Appeals: Thomas Lo Grossman, Attorney

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Meridian Industries, Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$18,980.51 for the 2019 tax year.

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

**ISSUES**

1. Has appellant met its burden of proof to abate the late filing penalty?
2. Has appellant shown that it is entitled to interest abatement?

**FACTUAL FINDINGS**

1. Based on information that Kleen Test Products Corp. (Kleen) received income subject to tax by California during the 2019 tax year, FTB issued it a Demand for Tax Return (Demand) on May 18, 2022.

2. On August 15, 2022, in response to the Demand, Kleen's parent company, appellant, filed a group nonresident tax return on behalf of its qualifying nonresident individual shareholders, reporting tax due.<sup>1</sup> Appellant untimely paid the tax due on September 12, 2022.
3. FTB processed the return, and on September 19, 2022, it issued appellant a Notice of Tax Return Change – Revised Balance, which imposed a late filing penalty and interest.
4. On January 5, 2023, appellant requested penalty and interest abatement for 2019<sup>2</sup> based on one-time abatement under R&TC section 19132.5 and reasonable cause.
5. FTB denied appellant's penalty waiver request.
6. Appellant paid the penalty and interest and submitted a claim for refund.
7. On May 16, 2023, FTB issued appellant a Notice of Action denying the claim for refund.
8. Appellant timely appealed.

### DISCUSSION

#### Issue 1: Has appellant met its burden of proof to abate the late filing penalty?

California imposes a penalty for failure to file a return by its due date, unless the failure was due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) When FTB imposes a late filing penalty, it is presumed to have been correctly imposed, and the burden of proof is on the taxpayer to show that reasonable cause exists to abate the penalty. (*Appeal of Xie*, 2018-OTA-076P.) To establish reasonable cause, a taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P (*GEF Operating*)).) Even if a taxpayer is unaware of a filing requirement, ignorance of the law does not excuse a late filing. (*Ibid.*) A taxpayer does not exercise ordinary business care and prudence

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<sup>1</sup> In lieu of nonresident individuals each filing California nonresident income tax returns, eligible business entities doing business in, or deriving income from, California may elect to file a group return for one or more electing nonresident individuals (i.e., shareholders, partners, or members), and the business entity, as agent for these electing individuals, shall make the payments of tax, additions to tax, interest and penalties otherwise required to be paid by these shareholders. (R&TC, § 18535.) Appellant appears to be an S corporation that filed a nonresident group return on behalf of its qualified nonresident individual shareholders.

<sup>2</sup> Appellant made penalty abatement requests for the 2019 and 2020 tax years. However, appellant stated that it planned to file a separate claim for the 2020 tax year. Accordingly, only the 2019 tax year is on appeal.

when it fails to acquaint itself with the requirements of California tax law. (*Appeals of Cremel and Koepfel*, 2021-OTA-222P.)

Appellant does not dispute that it untimely filed the nonresident group return. Therefore, the remaining inquiry is whether appellant had reasonable cause for failing to timely file the return. On appeal, appellant provides no explanation for why it failed to timely file the nonresident group return. Rather, appellant focuses on its prompt compliance efforts after Kleen received the Demand. However, appellant's mitigation efforts cannot establish reasonable cause because reasonable cause is based on whether appellant's failure to comply with the law was excusable, not based on the promptness with which appellant remedied the failure. Accordingly, appellant has produced no argument or evidence of reasonable cause for its failure to timely file the nonresident group return. To the extent that appellant was unaware of its filing requirement until it received the Demand, ignorance of the law does not excuse a late filing. (*GEF Operating, supra.*) Moreover, appellant did not exercise ordinary business care and prudence because it failed to acquaint itself with its filing requirement under California tax law. (*Appeals of Cremel and Koepfel, supra.*)

Appellant also raises R&TC section 19132.5 as grounds for a one-time abatement for failure to timely file. However, this statute does not apply until the 2022 tax year and therefore is not grounds for abatement for the 2019 tax year on appeal. (R&TC, § 19132.5(f).)

Issue 2: Has appellant shown that it is entitled to interest abatement?

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101(a).) Imposition of interest is mandatory; it is not a penalty, but it is compensation for appellant's use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*) To obtain relief from interest, appellant must qualify under R&TC sections 19104 or 21012.<sup>3</sup> (*Ibid.*) Appellant does not allege, and the evidence does not show, that either statutory provision for interest abatement applies to the facts of this appeal. R&TC section 19104 does not apply here because appellant does not allege, and the evidence does not show, that the interest is attributable, in whole or in part, to any unreasonable error or delay by an FTB

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<sup>3</sup> Under R&TC section 19112, FTB may waive unpaid interest for any period for which FTB determines that an individual or fiduciary is unable to pay interest due to extreme financial hardship. However, the Office of Tax Appeals does not have authority to review FTB's denial of a request to waive interest under R&TC section 19112. (*Appeal of Moy, supra.*)


employee. R&TC section 21012 does not apply because FTB did not provide appellant with any requested written advice. Therefore, FTB properly imposed interest and the Office of Tax Appeals has no basis to abate it.

HOLDINGS


1. Appellant has not met its burden of proof to abate the late filing penalty.
2. Appellant has not shown that it is entitled to interest abatement.

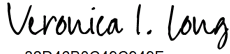
DISPOSITION

FTB’s action denying appellant’s claim for refund is sustained in full.

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 Asaf Ketter  
 Administrative Law Judge

We concur:

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 Josh Lambert  
 Administrative Law Judge

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 Veronica I. Long  
 Administrative Law Judge

Date Issued: 7/25/2024