

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

In the Matter of the Appeal of: ) OTA Case No. 19014172  
**MANOR CARE, INC.** )  
 ) Date Issued: August 22, 2019  
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**OPINION**

Representing the Parties:

For Appellant: Lynne M. Davis, Director of Tax  
For Respondent: David Kowalczyk, Tax Counsel

A. ROSAS, Administrative Law Judge: Under California Revenue and Taxation Code (R&TC) section 19324, appellant Manor Care, Inc. (Manor Care) appeals the Franchise Tax Board’s (FTB) action denying the last of its three claims for refund totaling \$9,555 for the 2011 tax year.<sup>1</sup> Manor Care waived its right to an oral hearing, and therefore we decide this matter based on the written record.

**ISSUE**

Whether the statute of limitations bars Manor Care’s claim for refund.

**FACTUAL FINDINGS**

1. On October 15, 2012, Manor Care filed a short-year 2011 California Corporation Franchise or Income Tax Return. This original return reported a refund of \$62,754, which FTB later issued to Manor Care. This original return did not include a Net Operating Loss (NOL) deduction.

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<sup>1</sup> FTB granted Manor Care’s first claim for refund, and it is not at issue in this appeal. FTB denied Manor Care’s second claim for refund, but Manor Care did not appeal FTB’s denial. And FTB denied Manor Care’s third claim for refund in the sum of \$9,555, and Manor Care appealed this denial.

2. First Claim for Refund: On June 26, 2015, Manor Care filed its first 2011 Amended Corporation Franchise or Income Tax Return. This amended return claimed an NOL carryback deduction of \$142,969 from 2013. This first amended return requested a refund of \$12,639, which FTB refunded to Manor Care.
3. Second Claim for Refund: On June 28, 2017, Manor Care filed its second 2011 Amended Corporation Franchise or Income Tax Return. This amended return solely claimed an additional NOL carryback deduction of \$71,547, attributable to a “specified liability loss” incurred in 2015. This second amended return requested a refund of \$6,325, which FTB later denied. Manor Care did not appeal the denial of this second claim for refund.
4. Third Claim for Refund: On August 15, 2018, Manor Care filed its third 2011 Amended Corporation Franchise or Income Tax Return. This amended return solely claimed an additional NOL carryback deduction of \$108,091 attributable to a “specified liability loss” incurred in 2016. This third amended return requested a refund of \$9,555, which FTB denied.
5. Appellant timely appealed FTB’s denial of the third claim for refund.

#### 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 within the extended due date; (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 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*, 2018-OTA-052P, at p. 4.)

Manor Care filed its original return on October 15, 2012, within the seven-month automatic extension. (R&TC, § 18604.) Manor Care filed its third amended return (the claim for refund at issue in this appeal) on August 15, 2018. There is no evidence indicating that Manor Care made an overpayment within one year from the filing of its third amended returns. Because Manor Care filed its third claim for refund more than four years from October 15, 2012, the statute of limitations bars this claim.

Furthermore, Manor Care may not claim an NOL deduction in 2011 for carrybacks incurred in 2016. Generally, an NOL can be carried back for up to two years and may be carried

forward for up to 20 years. (Int.Rev. Code, § 172(b).) The Internal Revenue Code lists several exceptions to the general two-year carryback and 20-year carryforward treatment. (Int.Rev. Code, § 172(b)(1).) One such exception: when a taxpayer incurs a specified liability loss for a taxable year, the specified liability loss may be carried back ten years. (Int.Rev. Code, § 172(b)(1)(C).) California conforms to Internal Revenue Code section 172 with certain modifications. (R&TC, § 24416.) In California, any NOL “attributable to taxable years beginning on or after January 1, 2013, shall be a [NOL] carryback to each of the two taxable years preceding the taxable year of the loss . . . .” (R&TC, § 24416(d)(2).) Thus, for any NOL attributable to 2016, Manor Care may carry it back to 2014 and 2015 only. Accordingly, Manor Care cannot carryback this loss to 2011.

Therefore, FTB was correct to deny Manor Care’s untimely claim for refund.

HOLDING

The statute of limitations bars Manor Care’s claim for refund.

DISPOSITION

We sustain FTB’s action in full.

DocuSigned by:  
*Alberto Rosas*  
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Alberto T. Rosas  
Administrative Law Judge

We concur:

DocuSigned by:  
*Patrick J. Kusiak*  
8E20779E0CD743E...  
Patrick J. Kusiak  
Administrative Law Judge

DocuSigned by:  
*Josh Lambert*  
B90E40A720E3440...  
Josh Lambert  
Administrative Law Judge