

Tax Notes

IRS Issues Guidance on Refunds for NOL and AMT Carrybacks

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In a previous Thought Leadership article (see [CARES Act – Income Tax Refund Opportunities for Corporations](#)), we analyzed two provisions contained in the Coronavirus Aid, Relief, and Economic Security (CARES) Act (H.R. 748). One provided corporations with previously unavailable refund opportunities which allowed net operating losses (NOLs) originating in tax years beginning after December 31, 2017 and ending before January 1, 2021, to be carried back to the previous five years. The second provision allowed corporate taxpayers to claim an immediate refund of any unused alternative minimum (AMT) tax credit on either their 2018 or 2019 income tax returns. The much needed guidance has now been issued and that is the subject of this article.

New Guidance

On Friday, April 10th, the IRS issued guidance with respect to both of the CARES Act provisions outlined above. [Notice 2020-26](#) provides an extension of time to file certain Form 1139 refund claims and [Revenue Procedure 2020-24](#) provides guidance on how to apply and report certain provisions and elections contained in the CARES Act that related to NOLs.

Our previous article explained that a refund claim can be filed either with an amended return or with a Corporation Application for Tentative Refund, Form 1139, and that filing a Form 1139 would result in a much quicker refund. However, whether or not intentional, the legislative wording in the CARES Act provided an extension of time to file a Form 1139 to claim the AMT credit in 2018 but did not provide a similar extension of time to file Form 1139 to carryback an NOL that arose in taxable years beginning in 2018 (including calendar year 2018 NOLs).

Unless there is a special rule, a Form 1139 is required to be filed within 12 months following the end of the year that the NOL originated. So for calendar year 2018 NOLs, Form 1139 was required to be filed no later than December 31, 2019. As a result, the only option a corporation with a 2018 calendar year NOL had to file a refund claim was with an amended tax return. **However, the CARES Act does provide an extension of time until December 31, 2020 in which to file Form 1139 to claim the AMT credit in 2018.**

Notice 2020-26

On Friday, April 10th, the IRS issued Notice 2020-26 which provided the following:

- A six-month extension of time to file Form 1139 to carryback an NOL that originated in a taxable year that began in 2018 and ended before June 30, 2019. **For a calendar 2018 NOL a Form 1139 can now be filed by June 30, 2020.**
- As stated above, the CARES Act had provided an extension to file a Form 1139 for an AMT credit carryback to 2018 until December 31, 2020. However, **for corporations that are looking to**

carryback **both** an NOL and an AMT credit using Form 1139 at the same time, the earlier six-month extension to file an NOL carryback provided by Notice 2020-26 applies.

- Corporations that wish take advantage of this extended filing deadline should write the following on the top of Form 1139 **“Notice 2020-26, Extension of Time to File Application for Tentative Carryback Adjustment.”**

The CARES Act also provided corporations with added flexibility to utilize their NOLs in the most tax efficient manner by allowing the following:

- waive the carryback of NOLs originating in a taxable year beginning in 2018 or 2019;
- election to exclude all IRC §965 (relating to certain foreign income) years from the carryback period; and
- under a special rule that applied to NOLs originating in a taxable year that began before January 1, 2018, and ended after December 31, 2017, provided an extension of time to file Form 1139 to claim an NOL carryback and to either revoke or elect to forego an NOL carryback, and to reduce the period an NOL can be carried back to.

Revenue Procedure (Rev. Proc.) 2020-24

The IRS also released Rev. Proc. 2020-24 on Friday, April 10th which provided the following:

- With regard to a corporation’s ability to revoke the five-year NOL carryback period provided by the CARES Act – for taxable years beginning in 2018 or 2019 – such election must be made by the due date, including extensions, for the tax return for the first year ending after March 27, 2020. For a calendar year corporation, the election must be made no later than October 15, 2021. The election needs to be made in a separate statement for each applicable return that says: **“The taxpayer is electing to apply IRC §172(b)(3) under Rev. Proc. 2020-24”** and the taxable year for which the statement applies. Once made, the election is irrevocable.
- With regard to a corporation’s ability to exclude IRC §965 years from the carryback period:
 - For NOLs originating in a taxable year beginning in 2018 and 2019 – an election needs to be made on a separate statement with the applicable tax return by the due date, including extensions, for the tax return for the first year ending after March 27, 2020. For a calendar year corporation, the election must be made no later than October 15, 2021.
 - For NOLs originating in a taxable year beginning after December 31, 2019, and before January 1, 2021 – an election needs to be made with a separate statement with the applicable tax return no later than the due date, including extensions, for the filing of the tax return for the year in which the NOL originates.

Note: As indicated in our previous Thought Leadership article, the provisions regarding the special rules that apply to NOL carrybacks and IRC §965 are beyond the scope of this article. Please see Rev. Proc. 2020-24 for the specific items needed in the election statement with regard to excluding all IRC §965 years from an NOL carryback.

- With regard to the Special Rule contained in the CARES Act that applies to NOLs originating in years beginning before January 1, 2018 and ending after December 31, 2017:
 - Time for filing Form 1139 – Must be filed no later than July 27, 2020 and **needs to indicate the following on the top of Form 1139 “Filed Pursuant to Rev. Proc. 2020-24.”** (Same notation needed if filing an amended return to claim the NOL carryback.)

- Time to elect to waive any carryback period, or to reduce any carryback period, or to revoke an election made under IRC §172(b) to waive any carryback period – No later than July 27, 2020 by attaching a statement to the income tax return that indicates:
 - o pursuant to what IRC section for which you are making the election,
 - o identification of the election and the period for which it applies, and
 - o the taxpayer’s basis and entitlement to make the election.

Contact Us

The IRS has provided much needed guidance and clarification of the new rules regarding NOL and AMT credit utilization and refund claims. Please consult with your PKF O’Connor Davies tax advisor to assist you in determining the optimum manner to apply these rules to your facts and circumstances and to understand and adhere to the procedural filing requirements. You may also contact either of the following:

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