

IRM PROCEDURAL UPDATE

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SUBJECT: Carryback Elections on Superseding Returns; Freeze Release and Hold Code Reminders; Nonrefundable Credit Exhibit Updated

AFFECTED IRM(s)/SUBSECTION(s): 21.5.9

CHANGE(s):

IRM 21.5.9.5.2(1) Added clarification that a taxpayer may revoke an election to forgo the carryback period on a superseding return. Added a reminder to release the -A freeze if appropriate. Reminder added due to SERP Feedback #13618.

(1) For net operating losses (NOLs) arising in tax periods beginning before January 1, 2018, taxpayers may elect to forgo the carryback period and carry the entire NOL forward 20 years (15 years for NOLs arising in tax years beginning on or before August 5, 1997). For NOLs arising in tax periods beginning in 2018, 2019, and 2020, taxpayers may elect to forgo the carryback period and carry the entire NOL forward to future tax periods until it is exhausted. For NOLs arising in tax periods beginning after 2020, option to forgo a carryback period only applies to a limited class of NOLs that still qualify to be carried back. See IRM 21.5.9.5.10.3.1, *TCJA - NOL Carryback and Carryforward Periods*, and IRM 21.5.9.5.10.8, *Coronavirus Aid, Relief, and Economic Security Act of 2020 (PL 116-136, Section 2303, Section 2304, and 2305) Overview - Net Operating Losses*, for additional information.

Reminder: Carryback teams work carryforward cases and elections to forgo the carryback period. Do not reassign these case types to a non-carryback team.

- a. The election must be made in writing and attached to the loss year return.

Exception: Certain Form 1120 series returns include an option to elect to forgo the carryback period and carryforward an NOL by checking a box on a schedule. By checking this box, the taxpayer is not required to include a statement to forgo the carryback period per Temporary Regulations Section 301.9100-12T. The chart below provides the Form 1120 series return and the location of the box the taxpayer can check to elect a carryforward of the NOL.

1120 Series	Location of Election to Forgo the Carryback Period
Form 1120	Schedule K, Line 11
Form 1120-C	Schedule K, Line 12

Form 1120-F	Additional Information, Line R
Form 1120-FSC	Schedule A, Additional Information, Line 6
Form 1120-L	Schedule M, Line 12 for 2017 and earlier. No line for this purpose included in 2018 and subsequent
Form 1120-PC	Schedule I, Line 11

Note: A corporation filing a consolidated return must include the required election statement per Regulations Section 1.1502-21(b)(3). Consolidated returns do not have the option of checking a box on a Form 1120 series return to indicate an election to forgo the carryback period to carryforward an NOL.

- b. The election must be made by the due date or extended due date of the loss year return.

Note: Section 301.9100-2 of the regulations provides that an election may be made on an "amended" return if it is filed within six months of the due date of the original return (determined without regard to extensions) provided the taxpayer timely files the loss year return by its due date or extended due date. For example, a 2017 Form 1040 loss year return is filed (with extension) on July 15, 2018. An amended Form 1040 return claiming the election is timely if filed by October 15, 2018, but if filed on or after October 16, 2018, the election is not timely. For taxpayers affected by a federally declared disaster, the due date of the original return is the postponed due date allowed for the disaster (determined without regard to any other extensions).

- c. Generally, the election is irrevocable. Listed below are exceptions:
- When new legislation specifically allows taxpayers to revoke the election, such as the provision in ARRA 2009, Section 1211, which allowed taxpayers until April 17, 2009 to revoke a prior election to waive the carryback period. See the archived revision of IRM 21.5.9.5.14.6.5, *Revocation of Prior Election to Waive the Carryback Period under Section 172(b)(3)*.
 - A Bankruptcy Trustee can revoke a valid election to forgo the carryback period.
 - Rev. Proc. 2020-24, section 4.04, which provides guidance specific to the CARES Act of 2020, allows taxpayers to revoke a prior election to relinquish the carryback period for NOLs sustained in a taxable year beginning before 2018 and ending after 2017.
 - A taxpayer may revoke an election to forgo the carryback period on a superseding return. The position that the taxpayer takes on the superseding return, whether to forgo the carryback period or to revoke such an election, is the position to which the taxpayer is bound.

- d. An election made by a parent company in a consolidated return is binding for all members of the group.
- e. If an election statement is timely filed on an amended tax return, allow and process with a TC 290.00. Use blocking series 18.

Note: If a return is electronically filed, a blocking series 05 must be used. See IRM 21.6.6.2.25, *Electronic Filing System (e-file)*, for further information.

- f. The Tax Cuts and Jobs Act of 2017, section 13302, as amended by section 2303 of the Coronavirus Aid, Relief, and Economic Security Act of 2020 (The CARES Act), limited the option to carryback a net operating loss to certain farming losses and to NOLs of non-life insurance companies. This rule was then suspended by the CARES Act for NOLs arising in taxable years beginning in 2018 through 2020. Therefore, for loss years beginning after 2020, only taxpayers reporting NOLs from a farming loss or non-life insurance companies are eligible to elect to forgo a carryback period. See IRM 21.5.9.5.10.3.1, *TCJA - NOL Carryback and Carryforward Periods*, for additional information.

Note: Take no action on elections to forgo a carryback period received from an entity no longer eligible to carry net operating loss back per TCJA. Close these types of cases as *No Action* and document CII indicating the taxpayer is no longer eligible to carry back their net operating losses per TCJA.

Reminder: Release the -A freeze if appropriate.

- g. The CARES Act reversed the provisions provided in TCJA thus requiring any entity to carry back five years NOLs incurred in tax years 2018, 2019, and 2020 unless the entity elects to forgo the entire carryback period. See IRM 21.5.9.5.10.8, *Coronavirus Aid, Relief, and Economic Security Act of 2020 (PL 116-136, Section 2303, Section 2304, and Section 2305) Overview - Net Operating Losses*, for additional information.
- h. If an election statement is late filed on an amended tax return, follow the direction outlined in the IF/AND/THEN guidance below.

If	And	Then
Carryforward claim is filed on a gain year	Taxpayer mentions the election and the loss year return was timely filed by its due date or extended due date	Check CFOL to verify the loss and accept the NOL carryforward.
Carryforward claim is filed on a gain year	Taxpayer does not mention the election and there is no modified taxable income in any of the	Check CFOL to verify the loss and accept the NOL carryforward. If the original return was e-filed, then check CC TRDBV. Any Modernized e-Filed (MeF) returns will be displayed in the Return Request Display

	applicable gain years and the loss year return was timely filed by its due date or extended due date	(RDD) by accessing the Employee User Portal (EUP).
Carryforward claim is filed on a gain year	Taxpayer does not mention the election and there is modified taxable income in any of the applicable gain years	Request the original loss year return to verify the election and the loss. If the original return was e-filed, then check CC TRDBV. Any Modernized e-Filed (MeF) returns will be displayed in the Return Request Display (RDD) by accessing the Employee User Portal (EUP). When the original return is received: <ul style="list-style-type: none"> • If there is no election, inform the taxpayer that the NOL must be carried back to any applicable gain year before it can be carried forward. • If the taxpayer filed an election, accept the carryforward.
Carryforward claim is filed on a gain year	Taxpayer's loss year return was not filed by the due date (including extensions) and there is no modified taxable income in any of the applicable gain years	Request CFOL information to verify the loss and accept the NOL carryforward. Close the case as CFWD or ICFD as appropriate.
Carryforward claim is filed on a gain year.	Taxpayer's loss year return was not filed by the due date (including extensions) and there is modified taxable income in any of the applicable gain years	Follow guidance in IRM 21.5.3.4.6.1, <i>Disallowance and Partial Disallowance Procedures</i> , to disallow the claim and inform the taxpayer that the election to waive the carryback period was not timely filed; therefore, the NOL must be carried back to any applicable gain year before it can be carried forward. Close the case as CFWD or ICFD as appropriate.
Claim is filed to increase or include an NOL on the loss year	A late election to forgo the carryback period is attached and a timely election, filed by the due date (including extensions), cannot be located after research of CII, CFOL, MeF or TRDBV.	Process the claim increasing or adding the NOL. Follow guidance in IRM 21.5.3.4.6.1, <i>Disallowance and Partial Disallowance Procedures</i> , to partially disallow the election to forgo the carryback period and inform the taxpayer the election to waive the carryback period was not timely filed, therefore, the NOL must be carried back to any applicable gain years before it can be carried forward. Close the case as CFWD or ICFD as appropriate.

Reminder: The election to forgo the carryback period is **only** applicable for a Net Operating Loss. Taxpayers cannot elect to forgo the carryback period for a Net Capital Loss or unused general business credits.

IRM 21.5.9.5.6(1) Added a reminder to use the appropriate Hold Code to hold the credit when multiple adjustments are required and a manual refund will be issued. Change due to SERP Feedback #13152.

(1) At times, a carryback may involve different loss years or may result in an assessment. Do not combine these adjustments. A general tax adjustment and a carryback adjustment to the same gain year must be input separately, using the appropriate transaction codes. Carryback adjustments to the same gain year from multiple loss years or to the same gain year and loss year but with different received dates must also be input separately, using the appropriate interest computation dates. Refer to the table below for processing multiple carryback adjustments.

Caution: When inputting multiple adjustments to one tax module, remember that only one adjustment will post per cycle. If two adjustments are input, one will post in the normal time, but the second one will resequence to post in the next cycle. It is critical to keep this in mind when determining if the 45-day interest-free period will be met. Because of the resequencing, a manual refund may be required when, if one adjustment was input, a computer-generated refund could otherwise be allowed. This resequencing occurs regardless of the transaction codes or item references involved. Even a TC 290.00 correcting the AGI or TXI will cause the second adjustment, TC 299/TC 295, to resequence for one cycle. Adjustments post in sequential order, so a TC 290 adjustment will post one cycle before a TC 295 adjustment.

Reminder: Include the appropriate hold code on the adjustment to hold the credit if a manual refund will be issued and/or prevent the issuance of an adjustment notice if a carryback letter will be issued.

If	Then
The carryback(s) are from the same loss year	<ol style="list-style-type: none">1. Compute tax with the Net Operating Loss (NOL) and/or Net Capital Loss (NCL) first; then apply the carryback credits.2. Input TC (Transaction Code) 295/TC 299, blocking series 91/blocking series 92, to decrease tax.
The carryback(s) are from different loss years	<ol style="list-style-type: none">1. Process adjustments separately, applying the earliest loss year first.2. Input TC 295/TC 299, blocking series 91/blocking series 92, to decrease tax.

	Use the applicable interest computation dates for each of the losses.
A carryback recapture (tax increase) is input for one gain year, and a carryback allowance (tax decrease) is input for different gain year.	<ol style="list-style-type: none"> 1. Input TC 294/298 blocking series 91/92/95, to increase tax. 2. Input TC 295/TC 299, blocking series 91/ blocking series 92, to decrease the tax. 3. Post delay TC 295/TC 299 adjustment to allow offset to take place.

Exhibit 21.5.9-1 Added a link to IRM 21.5.9.5.12.7, Carryback of Excess Foreign Tax Credit (FTC). Added information for Form 5695 Part I, Residential Clean Energy Credit.

In general, the carryback period for general business credits is one year, and the carryforward period is 20 years. For a complete listing of general business credits, and additional information, see Form 3800, *General Business Credit*, and Instructions for Form 3800. For additional information about specific non-refundable credits see IRM 21.5.9.5.12.7, **Carryback of Excess Foreign Tax Credit (FTC)**, IRM 21.6.3.4.1, *Non-Refundable Credits Procedures*, (Individual Master File), and IRM 21.7.4.4.8.3, *Information on Specific Non-Refundable Credits*.

The table below lists the availability of non-refundable credits, other than general business credits, for carryback/carryforward.

Other Credits	Carry Back	Carry Forward
Child and Dependent Care Credit Form 2441	No	No
Credit for the Elderly or Permanently and Totally Disabled Schedule R	No	No
Child Tax Credit	No	No
Education Credits Form 8863	No	No
Mortgage Interest Form 8396	No	three years
Adoption Credit Form 8839	No	five years
District of Columbia First-Time Homebuyer Credit (DC Residents Only) Form 8859	No	Unlimited (until used)
FOREIGN TAX CREDIT - Individuals, Estates, and Trusts Form 1116 Carryback of excess taxes arising in tax years beginning prior to	one year	10 years

October 23, 2004; carryover of excess taxes carried to tax years ending prior to October 23, 2004 Note: Excess Foreign Tax Credits can only be carried to a year in which there was foreign income subject to U.S. tax.		
FOREIGN TAX CREDIT - Individuals, Estates, and Trusts Form 1116 Carryback of excess taxes arising in tax years beginning after October 22, 2004; carryover of excess taxes carried to tax years ending after October 22, 2004 Note: Excess Foreign Tax Credits can only be carried to a year in which there was foreign income subject to U.S. tax.	one year	10 years
FOREIGN TAX CREDIT - Corporations Form 1118 Carryback of excess taxes arising in tax years beginning prior to October 23, 2004; carryover of excess taxes carried to tax years ending prior to October 23, 2004 Note: Excess Foreign Tax Credits can only be carried to a year in which there was foreign income subject to U.S. tax.	one year	10 years
FOREIGN TAX CREDIT - Corporations Form 1118 Carryback of excess taxes arising in tax years beginning after October 22, 2004; carryover of excess taxes carried to tax years ending after October 22, 2004 Note: Excess Foreign Tax Credits can only be carried to a year in which there was foreign income subject to U.S. tax. Taxpayers may not carryover or carryback excess foreign taxes that they are deemed to pay or accrue under IRC 960(d).	one year	10 years
Residential Clean Energy Credit Form 5695 Part I	No	Unlimited (until used)