

Instructions for Form 1139

(Rev. May 1999)

Corporation Application for Tentative Refund

Section references are to the Internal Revenue Code unless otherwise noted.



Department of the Treasury
Internal Revenue Service

Changes To Note

- For tax years beginning after 1997, a special 5-year carryback period is allowed for a farming loss. The carryforward period remains at 20 years. For more information, see section 172(i).
- For specified liability losses arising in tax years ending after October 21, 1998, the definition for such losses has changed. For more information, see section 172(f).

General Instructions

Purpose of Form

Corporations (other than S corporations) use Form 1139 to apply for:

- A quick refund of taxes from a carryback of a net operating loss (NOL), net capital loss, or unused general business credit.
- A quick refund of taxes from an overpayment of tax due to a claim of right adjustment under section 1341(b)(1).

Waiving the Carryback Period

A corporation may elect to only carry forward an NOL to each of the 20 years (15 years for tax years beginning before August 6, 1997) following the year of the loss. Make this election by attaching a statement to a timely filed return (including extensions) for the tax year of the NOL indicating that the corporation is electing to relinquish the entire carryback period under section 172(b)(1) with regard to any net operating losses incurred in that tax year. Also, if the corporation timely filed its return for the loss year without making the election, the corporation may still make the election by filing an amended return within 6 months of the due date of the loss year return (excluding extensions). Attach the election to the amended return and write "Filed pursuant to section 301.9100-2" on the election statement. File the amended return

at the same address the original return was filed. Once made, the election is irrevocable.

When and Where To File

File Form 1139 within 1 year of the end of the tax year in which the NOL, net capital loss, unused credit, or claim of right adjustment occurred, but not before the corporation files its income tax return. File Form 1139 with the Internal Revenue Service Center where the corporation files its income tax return. Do not mail Form 1139 with the corporation's income tax return.

If **Form 1138**, Extension of Time for Payment of Taxes by a Corporation Expecting a Net Operating Loss Carryback, was filed and the corporation wants an additional extension of time to pay, file Form 1139. File it by the last day of the month that includes the due date (with extensions) for filing the return for the tax year of the NOL from which the carryback results.

What To Attach

Attach copies of the following, if applicable:

- The first two pages of the corporation's income tax return for the loss year.
- Any form or schedule from which the carryback results (e.g., Schedule D (Form 1120), Form 3800, etc.).
- Forms or schedules (e.g., Schedule D (Form 1120), Form 3800, etc.), for items refigured in the carryback years.
- If the loss or unused credit is from a tax shelter, **Form 8271**, Investor Reporting of Tax Shelter Registration Number, for the year of the loss or unused credit.
- **Form 8302**, Application for Electronic Funds Transfer (EFT) of Tax Refund of \$1 Million or More, if the refund for any carryback year is \$1 million or more and the corporation wants the refund wired to a financial institution.

IRS Actions

The IRS will act on this application within 90 days from the later of:

1. The date the completed application is filed **or**
2. The last day of the month that includes the due date (with extensions) for filing the income tax return for the tax year of the NOL, net capital loss, or unused credit (or the date of the overpayment under section 1341(b)(1) in the case of a claim of right adjustment).

The IRS may need to contact the corporation or its authorized representative for more information. To designate an attorney or representative, attach **Form 2848**, Power of Attorney and Declaration of Representative, to Form 1139.

A tentative carryback adjustment is not a claim for credit or refund. **It may be disallowed if any required attachments are missing or there are material omissions or math errors that cannot be corrected within the 90-day period.** If any part of the tax is disallowed, no suit may be brought in any court for the recovery of that tax.

Any amount applied, credited, or refunded based on this application that the IRS later determines to be excessive may be billed as if it were due to a math or clerical error on the return.

In addition, the accuracy related penalty or the fraud penalty may be assessed. See sections 6662 and 6663. Interest is also charged on amounts erroneously refunded, credited, or applied.

Release of the General Business Credits

When an NOL carryback or a net capital loss carryback eliminates or reduces a credit in an earlier tax year, the released credit may be carried back 3 more years (1 year for general business credits originating in tax years beginning after 1997). Use separate Forms 1139 for the earlier

year(s). To expedite the processing of Form 1139, file all Forms 1139 at the same time. See section 39 and the instructions for **Form 3800**, General Business Credit, and **Form 8844**, Empowerment Zone Employment Credit, for additional information on credit carrybacks.

Released Foreign Tax Credits

If foreign tax credits are released because of the carryback of a net operating loss or net capital loss, Form 1139 cannot be used to carry a released foreign tax credit to earlier years. **Form 1120X**, Amended U.S. Corporation Income Tax Return, must be used to carry back the released foreign tax credits. In addition, if other credits are released because of the release of the foreign tax credit, Form 1120X must be used. See the instructions for line 4, Form 1139.

Form 1120X

Form 1120X may be filed instead of Form 1139 to get a refund. Generally, the corporation must file Form 1120X within 3 years after the later of the due date of the return for the tax year of the NOL, net capital loss, or unused credit, or the date the corporation filed its income tax return for that year.

Specific Instructions

Address

Include the room, suite, or other unit number after the street address. If the Post Office does not deliver mail to the street address and the corporation has a P.O. box, enter the box number instead of the street address.

Line 1a

An NOL is the excess of the deductions allowed over gross income, computed with the following adjustments: **(a)** the NOL deduction is not allowed; **(b)** the dividends-received deductions for dividends received from domestic and foreign corporations and for dividends received on certain preferred stock of a public utility are computed without regard to the limitation on the aggregate amount of deductions under section 246(b); and **(c)** the dividends-paid deduction for dividends paid on certain preferred stock of a public utility is computed

without regard to the limitation under section 247(a)(1)(B).

Line 1b

A net capital loss may be carried back 3 years and treated as a short-term capital loss in the carryback year. The net capital loss may be carried back only to the extent it does not increase or produce an NOL in the tax year to which it is carried. For special rules for capital loss carrybacks, see section 1212(a)(3).

Line 1c

If a tentative refund is claimed based on a carryback of a general business credit, attach a copy of the appropriate credit form for the tax year in which the credit arose. Refigure the credit for each carryback year on Form 3800 or Form 8844 and attach it to Form 1139.

Line 4

Foreign taxes taken as a credit in a prior year may be reduced to zero by the carryback of a net operating loss or a net capital loss on Form 1139. See **Released Foreign Tax Credits** on this page. Also see Rev. Rul. 82-154, 1982-2 C.B. 394.

Line 5

If Form 1139 is filed to carry back a loss or unused credit to a year in which the corporation joined in the filing of a consolidated return, the IRS is required to send the refund for that year directly to, and in the name of, the common parent. See Regulations sections 1.1502-78(a) and (b).

Line 11

If the NOL arises in a tax year ending before October 22, 1998, the corporation must attach a statement identifying the part of the NOL, if any, that qualifies as a specified liability loss. Also identify the part of the specified liability loss that is attributable to: **(1)** product liability and **(2)** a Federal or state law or tort (other than product liability). For each of these parts of the specified liability loss, separately identify the types of deductions (e.g., nuclear decommissioning costs) that generate that part of the loss. For any part of a specified liability loss that is attributable to a Federal or state law or a tort (other than product liability) describe the act or actions (or failures to act) giving rise to each

deduction that occurred at least 3 years before the loss year. See section 172(f) (prior to its amendment by the Tax and Trade Relief Extension Act of 1998) and Notice 97-36, 1997-1 C.B. 433.

Lines 12 through 25

In columns (a), (c), and (e), enter the amount for the applicable carryback year as shown on your original or amended return or due to an IRS audit. Use the amounts on the amended return even if the IRS has not acted on it. Also attach a copy of the amended return to Form 1139 and write "Attachment to Form 1139" across the top. If the return was examined, enter the amounts determined as a result of the examination.

When completing lines 17 through 25, take into account any write-in amounts that may have appeared on the original return. For example, if Form 1120, Schedule J, line 12, was increased by interest on tax attributable to a payment received on a timeshare or residential lot, include that amount on line 25.

Line 12

Enter in columns (b), (d), and (f) the amounts from columns (a), (c), and (e), respectively.

Line 13

Enter the capital loss carryback but not more than capital gain net income. Capital gain net income is figured without regard to the capital loss carryback of the loss year or any later year. Attach a copy of Schedule D (Form 1120) for the carryback year. Enter the amount of the capital loss carryback as a positive number on line 13.

When carrying over a net capital loss to a later tax year, reduce the amount of the net capital loss that may be used in the later year(s) by the amount of the net capital loss deductions used in the earlier year(s). For more details, see section 1212(a)(1).

Line 15

A corporation must generally carry back the entire NOL to the 2nd tax year before the loss year. For losses occurring in tax years beginning before August 6, 1997, carry back the NOL to the 3rd tax year before the loss year. Any NOL not used in the

first carryback year is carried back to the next preceding year. Reduce the amount of the NOL carried to the next preceding year by the amount of the NOL deduction used in the earlier year. See section 172(b)(2) for details. Any NOL not used in preceding years is carried forward to each of the 20 years following the loss year (15 years for loss years beginning before August 6, 1997). Attach a statement showing all adjustments required to figure an NOL that may be carried back to any tax year.

Exceptions

Specified liability loss. Any portion of an NOL that is a specified liability loss is carried back to the 10th tax year before the year of the loss. A **specified liability loss** is limited to a loss arising from:

- Product liability **or**
- An act (or failure to act) that occurred at least 3 years before the beginning of the loss year and that resulted in a liability under a Federal or state law requiring:

1. The reclamation of land,
2. The decommissioning of a nuclear power plant (or any unit thereof),
3. The dismantling of a drilling platform,
4. The remediation of environmental contamination, or
5. A payment under any workers compensation act.

Except for losses arising from product liability, a specified liability loss is available only to taxpayers that used an accrual method of accounting throughout the period in which the act (or failure to act) occurred.

For further details, see section 172(f).

However, a corporation may elect to treat a specified liability loss as if it were not a specified liability loss. If the corporation makes this election, the loss carryback period will be 2, 3, or 5 years (see below). Make this election by attaching a statement to a timely filed return (including extensions) for the tax year of the NOL indicating that the corporation is electing to treat any specified liability losses under section 172(b)(1)(C) for that tax year as if they were not specified liability losses. Also, if the

corporation timely filed its return for the loss year without making the election, the corporation may still make the election by filing an amended return within six months of the due date of the loss year return (excluding extensions). Attach the election to the amended return and write "Filed pursuant to section 301.9100-2" on the election statement. File the amended return at the same address the original return was filed. Once made, the election is irrevocable.

Farming loss. Any portion of an NOL that is a farming loss in a tax year beginning after 1997 is carried back to the 5th tax year before the year of the loss. A **farming loss** is the smaller of :

- The amount that would be the NOL for the tax year if only income and deductions attributable to farming were taken into account, **or**
- The NOL for the tax year (reduced by any specified liability loss).

However, a corporation may elect to treat a farming loss as if it were not a farming loss. If the corporation makes this election, the loss carryback period will be 2 years or 3 years (see below). Make this election by attaching a statement to a timely filed return (including extensions) for the tax year of the NOL indicating that the corporation is electing to treat any farming losses under section 172(i) for that tax year as if they were not farming losses. Also, if the corporation timely filed its return for the loss year without making the election, the corporation may still make the election by filing an amended return within six months of the due date of the loss year return (excluding extensions). Attach the election to the amended return and write "Filed pursuant to section 301.9100-2" on the election statement. File the amended return at the same address the original return was filed. Once made, the election is irrevocable.

Eligible loss. Any portion of an NOL attributable to an eligible loss in a tax year beginning after August 5, 1997, is carried back to the 3rd tax year before the year of the loss. An **eligible loss** is a net operating loss attributable to a Presidentially declared disaster if the corporation was engaged in the trade or business of farming or the corporation is a

small business that meets the gross receipts test of section 448(c) for the tax year in which the NOL arose. An eligible loss does not include any farming loss or specified liability loss described above.

Excess interest loss. If the corporation has a corporate equity reduction transaction, a different carryback period may apply. See section 172(b)(1)(E).

Note: *Additional Forms 1139 may be needed if the corporation is carrying back an NOL to more than 3 preceding tax years. On the additional Form(s) 1139, complete lines 12 through 27 for each additional preceding tax year as necessary. Skip lines 1 through 11 and do not sign the additional Form(s) 1139.*

Line 17

In columns (b), (d), and (f), enter the refigured income tax after taking into account the carryback(s). See the instructions for the corporate income tax return for the applicable year for more details on how to figure the tax and attach a computation of the refigured tax. Take into account section 1561 when refiguring the income tax.

Line 18

In columns (b), (d), and (f), enter the total of the corrected general business credits. Attach all Forms 3800 and Forms 8844 used to redetermine the amount of general business credit.

Line 24

For columns (b), (d), and (f), refigure the alternative minimum tax and the environmental tax. Complete and attach Form 4626 for the appropriate year.

Line 26

In columns (a), (c), and (e), enter the amount from line 25, columns (b), (d), and (f), respectively.

Line 28

For a tentative refund based on an overpayment of tax under section 1341(b)(1), enter the overpayment on line 28 and attach a computation showing the information required by Temporary Regulations section 5.6411-1(d).

Paperwork Reduction Act Notice.

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid

OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping 25 hr., 35 min.

Learning about the law or the form 3 hr., 26 min.

Preparing the form 8 hr., 39 min.

Copying, assembling, and sending the form to the IRS 1 hr., 20 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **DO NOT** send the form to this office. Instead, see **When and Where To File** on page 1.