



TaxNewsFlash

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IRS provides Q&As on “quick refunds” process for NOL carrybacks under CARES Act (COVID-19)

The IRS today released a set of “questions and answers” (Q&As) addressing how taxpayers can file claims for “quick refunds” related to the net operating loss (NOL) carryback provisions of the “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act).

Overview

Measures included in the CARES Act provide that:

- A taxpayer with an NOL arising in a 2018, 2019 or 2020 taxable year can carry that loss back to each of the five preceding years unless the taxpayer elects to waive or reduce the carryback.
- The modified credit rules for prior-year minimum tax liability of corporations—including to accelerate the recovery of remaining minimum tax credits of a corporation for its 2019 taxable year from its 2021 taxable year—allow a corporation to elect, instead, to recover 100% of any of its remaining minimum tax credits in its 2018 taxable year.

Read [TaxNewsFlash](#) that examines the guidance provided by Rev. Proc. 2020-24 and Notice 2020-26 on implementation and reporting of the expanded NOL measures.

Today’s [Q&As](#) set forth temporary procedures for taxpayers to make digital transmissions (by fax) of Form 1139, *Corporation Application for Tentative Refund*, or Form 1045, *Application for Tentative Refund*.

Specifically, the Q&As note that only claims allowed under the applicable provisions of the CARES Act (Act sections 2303 and 2305) that are made on Form 1139 or Form 1045 are **eligible refund claims** under the temporary procedures described in today’s Q&As.

Fax numbers

The IRS stated that beginning April 17, 2020 (and until further notice), the IRS will accept eligible refund claims Form 1139 submitted by fax to +1 844-249-6236 and eligible refund claims Form 1045 submitted by fax to +1 844-249-6237.

The fax numbers will not be operational until April 17.

The IRS release "...encourage[s] taxpayers to wait until this procedure is available rather than mail their Forms 1139 and 1045 since mail processing is being impacted by the emergency."

File size limitations

The IRS advised that a maximum of 100 pages can be initially faxed to either of the fax numbers. If additional documentation is required to be attached or deemed to be necessary, taxpayers will be notified during the processing of the Form 1139 or Form 1045.

Below is full text of the Q&As (April 13, 2020).

1. How does the process change from the normal hard copy mailing requirement?

Previously, these forms could be filed only via hard copy delivered through the USPS or by a private delivery service. There are well-established procedures for processing the hard copy forms in order to provide quick tentative refunds to taxpayers. A temporary procedure to accept these forms via fax permits us to make the relief in the CARES Act available to taxpayers before IRS processing centers are able to reopen. The procedures to process claims will remain the same – the only difference is to allow an additional method to file eligible refund claims.

2. If I previously mailed in my Form 1139 or Form 1045, can I now fax it to these numbers?

Yes, if you previously mailed a hard copy of either of these forms that is an eligible refund claim (because it contains changes permitted by the AMT and NOL provisions of the CARES Act identified above) after March 27, 2020, you can now submit that same claim to the fax numbers stated above starting on April 17.

3. Is there an order of priority in processing Form 1139 and Form 1045 under this temporary fax procedure?

All claims (including those received before our processing centers were closed) will be processed in the order of receipt.

4. What happens if a document faxed as instructed above is deemed an ineligible refund claim under this temporary fax procedure?

It will be processed after normal operations resume.

5. Section 2303 of the CARES Act amended section 172(b)(1) to provide for a carryback of any net operating loss (NOL) arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, to each of the five taxable years preceding the taxable year in which the loss arises (carryback period). I am carrying back an NOL to a tax year in which I have a section 965(a) inclusion (section 965 year) and am now entitled to a refund for the section 965 year because my section 965 net tax liability is fully paid. May I use Form 1139 or Form 1045, as applicable, to apply for a refund for the section 965 year?

Yes, you may disregard the instructions for Form 1139 and Form 1045 which prohibit taxpayers from using these forms to apply for refunds for 965 years. The instructions to these forms will be updated to reflect this change. However, please be aware that because the CARES Act added section 172(b)(1)(D)(iv) to provide that a taxpayer who has a carryback to a section 965 year is deemed to have made a section 965(n) election that limits the amount of the loss that can be

carried back to each such year, an NOL can be carried back only to reduce income in excess of the amount of the net section 965(a) inclusion. The IRS expects to issue additional instructions on filing requests for tentative refunds for taxpayers with outstanding section 965(h) net tax liabilities, so that these requests and liabilities can be identified, routed, and tracked appropriately, and so that payment schedules can be adjusted to avoid unintentional or erroneous acceleration of deferred section 965(h) installment payments, delays in refunds, or other processing complications.

6. Will the IRS be establishing a similar procedure for Form 4466 "Corporation Application for Quick Refund of Overpayment of Estimated Tax"?

No, the Form 4466 must be filed in accordance with existing form instructions. If a Form 4466 is faxed to the fax number noted above, it will not be accepted for processing.

7. Will this temporary faxing process become permanent?

No, accepting faxed versions of these forms that are normally delivered through the USPS or by a private delivery service is meant as a short-term measure to assist taxpayers in receiving refunds provided under the CARES Act as quickly as possible.

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