



# TaxNewsFlash

## United States



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## IRS expands FAQs on faxing refund claims, NOL carrybacks under CARES Act (COVID-19)

The IRS has updated a set of “frequently asked questions” (FAQs) addressing how taxpayers can file claims for eligible refund claims related to the net operating loss (NOL) carryback provisions of the “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act).

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.

The new FAQs—FAQ 8 through FAQ 14—were added April 16, 2020. Text of all FAQs are provided below.

### ***FAQs 1 thru 7 were originally posted April 13, 2020, and are also included below:***

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*.

- 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
- Stated that beginning April 17, 2020, 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; these fax numbers are scheduled to be operational beginning **April 17**

- Instructed that Forms 1139 and 1045 can be used to carryback losses to section 965 years and that the instructions to the current forms may be disregarded (and will be updated)

**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.

**New FAQs posted April 16, 2020, are as follows:**

**8. Will the IRS be establishing a similar procedure for Form 1120X, Amended U.S. Corporation Income Tax Return?**

No, the Form 1120X must be filed in accordance with existing form instructions. If a Form 1120X is faxed to the fax number noted above, it will not be accepted for processing.

**9. What will happen if I filed a Form 1120X that has not been processed and I used those numbers in my Form 1139 filing?**

Your Form 1139 must reflect your originally filed or previously processed amended return information. If your Form 1139 does not match your IRS account, the Form 1139 cannot be processed because the Form 1120X needs to be processed first. For example, if you gave a Form 1120X to your examination team, it has not been processed.

Do not attempt to file an amended return at time of filing Form 1139. Amended returns will not be acted upon when filed with Form 1139 through the temporary fax procedures.

**10. The current version of Form 1139 (2018) does not provide for tentative refunds for refundable prior year minimum tax credits. How should I complete the Form 1139 if I am only claiming tentative refunds of prior year minimum tax credits? How should I complete the 2018 Form 8827?**

The following instructions apply for the 2018 Forms 1139 and 8827 to allow for the changes per CARES Act Section 2305(b).

**Form 1139**

- Include at the top of Form 1139, "Electing to Take 100% Refundable Credit Amount in 2018 - per CARES Act Section 2305(b)".
- You should complete Lines 1(d) and 29 of the Form 1139. Leave Lines 1a through 1c and 2 through 28 blank.
- Enter on Line 1(d), the minimum tax credit carryforward to 2019, as reported on the original Form 8827 Line 9. Disregard the instructions for Form 1139, Line 1(d) "Other".
- Enter on line 29, the difference between the amount reported on the original 2018 Form 8827 Line 8(c) and the amount reported on the revised 2018 Form 8827 Line 8(c) as described below. Disregard the instructions for Form 1139, Line 29 "Overpayment of tax due to a claim of right adjustment under section 1341(b)(1)."

**Form 8827**

- Include at the top of 2018 Form 8827, "Electing to Take 100% Refundable Credit Amount in 2018 - per CARES Act Section 2305(b)."
- When completing Line 6 of the Worksheet for Calculating the Refundable Minimum Tax Credit Amount on 2018 Form 8827 replace "50%" in the instructions on Line 6 with "100%."
- Complete the remainder of 2018 Form 8827 according to the instructions.

**11. Should I file the application for a tentative refund and claim both the NOL carryback and 100% refundable minimum tax credit on the same 2018 Form 1139 and how?**

Yes, you should use the same Form 1139 for both claims.

- Complete Lines 1a through 1c and 2 through 28 as appropriate, following the existing Form 1139 instructions to report your NOL carryback.
- Enter on Line 1(d), the minimum tax credit carryforward to 2019, as reported on the original Form 8827 Line 9. Disregard the instructions for Form 1139, Line 1(d) "Other".
- Enter on Line 29, the difference between the amount reported on the original 2018 Form 8827 Line 8(c) and the amount reported on the revised 2018 Form 8827 Line 8(c) as described below. Disregard the instructions for Form 1139, Line 29 "Overpayment of tax due to a claim of right adjustment under section 1341(b)(1)."

Complete the 2018 Form 8827 as follows:

- Include at the top of 2018 Form 8827, "Electing to Take 100% Refundable Credit Amount in 2018 - per CARES Act Section 2305(b)."
- When completing Line 6 of the Worksheet for Calculating the Refundable Minimum Tax Credit Amount of the 2018 Form 8827 replace "50%" in the instructions on Line 6 with "100%."
- Complete the remainder of 2018 Form 8827 according to the instructions.

If you have a carryback of a net operating loss for the taxable year and are applying for a tentative carryback refund and a 100% refundable minimum tax credit tentative refund, ordering rules apply. You must take into account any adjustments made in applying for the tentative carryback adjustment before determining the amount of the overpayment attributable to the 100% refundable minimum tax credit refund. (Treas. Reg. § 5.6411-1). Caution: adjustments to alternative minimum tax in the carryback years could affect the amount of the 100% refundable minimum tax credit allowed in 2018.

## **12. What documents should I attach to 2018 Form 1139 for a tentative refund for a 100% refundable minimum tax credit or the NOL carryback?**

A. If you are only claiming a tentative refund for a net operating loss carryback, follow the existing instructions for Form 1139.

B. If you are only claiming a refund for the minimum tax credit, you should attach (1) the first three pages of the originally filed or previously processed amended 2018 Form 1120, including Schedule J, (2) a copy of the originally filed 2018 Form 8827, (3) the first three pages of the revised 2018 Form 1120, reflecting the change with the 100% refundable minimum tax credit, and (4) the revised 2018 Form 8827.

C. If you are claiming both a refund for the minimum tax credit and the NOL carryback, follow the existing instructions for Form 1139 for the NOL carryback and the instructions in (B) above for the 100% refundable minimum tax credit refund. Do not attempt to file an amended return at time of filing Form 1139. Amended returns will not be acted upon when filed with Form 1139 through the temporary fax procedures.

## **13. What will happen if the IRS needs additional information or has questions with my Form 1139?**

If there is missing information or questions about your filing, you will be contacted by phone. It is important to ensure your name and phone number are accurately reflected on the Form 1139. The person listed will need to be able to provide the missing information and possibly authentication information.

## **14. I am currently under examination. Can I give the Form 1139 to the examiner?**

*No, you should not give the Form 1139 to the examiner. You should file it via the normal process or via the temporary procedures outlined within.*

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