

US IRS announces taxpayers can temporarily fax Forms 1139 and 1045 to claim NOL carrybacks and AMT credits under CARES Act

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The United States (US) Internal Revenue Service (IRS) [announced](#) on 13 April 2020, that taxpayers can temporarily file by fax Form 1139 (refunds for corporations) and Form 1045 (refunds for individuals, estates, and trusts) to claim refunds under the net operating loss (NOL) carryback and alternative minimum tax (AMT) credit acceleration provisions of the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act).

Previously, these forms had to be paper-filed; with the closure of all IRS service centers, however, the agency is no longer able to process paper-filed returns. Consistent with the intent of the CARES Act to increase liquidity by getting cash into taxpayers' hands, the IRS has provided this temporary procedure to allow the processing of Forms 1139 and 1045 on an expedited basis. Taxpayers may fax the forms beginning on 17 April 2020, and until further notice.

The IRS "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."

Eligible returns

The temporary fax submission procedures only apply to Forms 1139 and 1045 claiming the benefits of the following two CARES Act provisions:

- Internal Revenue Code¹ Section 2303, which permits a taxpayer with an NOL arising in a 2018, 2019, or 2020 tax year to carry that loss back to each of the five preceding years

- Section 2305, which permits a corporation to accelerate the recovery of its remaining pre-TCJA² AMT credits in its tax year beginning in 2019 (as opposed to its tax year beginning in 2021), or to elect to recover 100% of such credits in its tax year beginning in 2018

The forms can be faxed to the following numbers:

- Form 1139: (844) 249-6236
- Form 1045: (844) 249-6237

No more than 100 pages may be faxed to these numbers. The IRS said that it will notify taxpayers during the processing of their forms if further information beyond the initial 100 pages is necessary.

Taxpayers that mailed fax-eligible Forms 1139 or 1045 to the IRS after 27 March 2020, can fax copies of the originally filed forms to expedite their processing. Forms sent via fax will be processed in order of receipt. Taxpayers with previously mailed forms may wish to include a reference to the date of mailing and/or include proof of mailing with their faxed copy.

Form 1139 can be used for Section 965(a) inclusion years

The IRS will also allow Form 1139 to be used to claim refunds for a Section 965(a) inclusion year, even though the instructions for Form 1139 prohibit such use. Under the CARES Act, however, a taxpayer with a carryback to a Section 965(a) inclusion year is deemed to have made an election under Section 965(n) limiting the amount of NOLs that may be carried back to that year. Thus, an NOL can only be carried back to an inclusion year to reduce income exceeding the amount of the net Section 965(a) inclusion.

The IRS also signaled that it will issue additional instructions on filing requests for tentative refunds for taxpayers with outstanding Section 965(h) net tax liabilities.

Form 4466 excluded

The IRS stated that it will not extend this procedure to Form 4466 for “quick” refunds for corporate overpayment of estimated tax, which must still be paper-filed.

Filing deadlines

Forms 1139 and 1045 filed to claim NOL carrybacks generally must be filed within 12 months of the close of the tax year in which the NOL arose, meaning the deadline for filing such forms for the 2018 calendar year has already passed. In Notice 2020-26, however, the IRS extended by six months the date for filing Forms 1139 and 1045 for taxpayers with an NOL that arose in a tax year beginning 1 January 2018 or later and ending on or before 30 June 2019. Thus, calendar-year taxpayers now have until 30 June 2020, to claim an NOL carryback from the 2018 tax year on Forms 1139 or 1045.

Under the CARES Act, the deadline to claim an acceleration of AMT credits is 30 December 2020. Taxpayers wishing to claim both NOL carrybacks and accelerated AMT credits on a single Form 1139 should be mindful to file by the earliest applicable deadline.

Implications

Taxpayers eager to realize the benefits of the CARES Act welcomed this new procedure, which will allow more rapid processing of claims related to the Act’s NOL carryback and AMT credit acceleration provisions. With paper-filed returns and other mail now piling up in trailers at closed IRS service centers, many of the traditional avenues for taxpayers to apply for refunds are no longer a viable option for cash-strapped businesses.

While taxpayers seeking CARES Act-related refunds may also do so by filing an amended return for the affected years, Forms 1139 and 1045 will generally offer a quicker option in that claims filed on those forms are not subject to review by the Joint Committee on Taxation (JCT) until *after* the claim has been paid. In contrast, large refund claims filed via amended returns (e.g., on Forms 1120-X or 1040-X) are subject to JCT review prior to payment, a process that can significantly delay payment, particularly in the current environment.

Endnotes

1. All “Section” references are to the Internal Revenue Code of 1986, and the regulations promulgated thereunder.
2. *Tax Cuts and Jobs Act*.

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