

US IRS issues additional FAQs on faxing Form 1139 with NOL and AMT claims under CARES Act

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On 16 April 2020, the United States (US) Internal Revenue Service (IRS) [announced](#) further details regarding the temporary procedures allowing corporate taxpayers to file eligible Forms 1139 by fax. The new fax procedures went into effect on 17 April 2020 and will be available until further notice.

Only those Forms 1139 claiming 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) are eligible to file by fax. All other Forms 1139 (as well as all Forms 4466 and 1120X) must be filed using normal filing procedures. The IRS will not process any forms that are submitted via fax other than eligible Forms 1139.

The IRS originally released FAQs 1-7, and now has added FAQs 8-14. For more information on the original FAQs, see EY Global Tax Alert, [US IRS announces taxpayers can temporarily fax Forms 1139 and 1045 to claim NOL carrybacks and AMT credits under CARES Act](#), dated 16 April 2020.

Specific form instructions

Claiming NOL carryback only

Taxpayers filing Form 1139 only to claim NOL carrybacks under the CARES Act should follow the existing instructions to the Form 1139, including the instructions for required attachments. As previously noted in FAQ 5, the instructions prohibiting taxpayers from using Form 1139 to apply for refunds for 965 years may be disregarded.

Claiming acceleration of AMT credit only

For taxpayers filing Form 1139 only to claim accelerated AMT credits, the IRS provided the following instructions for completing the Form 1139 (including the accompanying revised Form 8827):

Form 1139

- ▶ Include at the top of Form 1139, "Electing to Take 100% Refundable Credit Amount in 2018 - per CARES Act Section 2305(b)."
- ▶ Complete Lines 1(d) and 29 of the Form 1139 but leave Lines 1a through 1c and 2 through 28 blank.
- ▶ Enter on Line 1(d) the AMT 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)."

Attachments to Form 1139

- ▶ The first three pages of the originally filed (or previously processed amended) 2018 Form 1120, including Schedule J
- ▶ A copy of the originally filed 2018 Form 8827
- ▶ The first three pages of the revised 2018 Form 1120, applying the 100% refundable AMT credit
- ▶ A revised 2018 Form 8827 (per the below instructions)

Revised 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)."

- ▶ Replace "50%" with "100%" when reading the instructions for completing Line 6 of the Worksheet for Calculating the Refundable Minimum Tax Credit Amount on the 2018 Form 8827
- ▶ Complete the remainder of 2018 Form 8827 according to the instructions.

Claiming NOL carryback *and* acceleration of AMT credit

For taxpayers that wish to claim both an NOL carryback and accelerated AMT credits on the same Form 1139, the IRS provided the following instructions:

Form 1139

- ▶ Complete Lines 1a through 1c and 2 through 28 as appropriate, following the existing Form 1139 instructions to report the NOL carryback.
- ▶ Enter on Line 1(d) the AMT 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)."
- ▶ Follow the existing Form 1139 instructions to determine the documents required to be attached to the form. Also attach the documents required for claiming AMT credit acceleration on Form 1139, as described in "Attachments to Form 1139."
- ▶ Follow the instructions for "Revised Form 8827."

The IRS also clarified that the applicable ordering rules require taxpayers to take into account adjustments made in applying the NOL carryback before determining the amount of overpayment attributable to the 2018 100% refundable AMT credit. Adjustments to the AMT in the carryback years could thus affect the amount of the AMT credit allowed in 2018.

Additional procedural details

If the IRS requires additional information about a faxed Form 1139, it will call the person listed on the form. Thus, it is important for that person to have access to the information used to prepare the form and to be able to authenticate his or her identity.

In an apparent departure from prior IRS practice, the new FAQs suggest that taxpayers that have filed a Form 1120X that has not yet been processed by the IRS should not use the numbers from the unprocessed Form 1120X to complete Form 1139. Instead, the Form 1139 should “reflect your originally filed or previously processed amended return information.” A Form 1139 prepared with information from an unprocessed Form 1120X “cannot be processed because the Form 1120X needs to be processed first.”

Taxpayers under examination should not give the Form 1139 to their examiner, but should file it through the normal process or, preferably, the temporary fax procedures, given that the IRS has temporarily suspended the processing of paper-filed returns.

Implications

Given the limited scope of the returns qualifying for the IRS's temporary fax procedures, taxpayers should be careful to follow the previously described filing instructions as closely as possible to avoid a claim being rejected. Forms 1139 submitted by fax will be processed in the order received. Forms that do not qualify for the temporary fax procedures must be submitted in paper form and will not be processed until the IRS service centers re-open.

Because Forms 4466 and 1120X are not eligible to be filed by fax, taxpayers seeking quick refunds under the NOL and AMT credit provisions of the CARES Act should use Form 1139 to claim these benefits if at all possible. It is unlikely that the IRS will be able to process paper-filed returns (such as Forms 4466 and 1120X) as long as shelter-in-place orders remain in effect in the localities where the IRS's major service centers are located.

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