

Instructions for Form 1139

(Rev. October 1997)

Corporation Application for Tentative Refund

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



Department of the Treasury
Internal Revenue Service

General Instructions

Changes To Note.— The Taxpayer Relief Act of 1997 (the “Act”) changed the tax year to which net operating losses (NOLs) and unused general business credits may be carried.

Generally, NOLs that occur in tax years beginning after August 5, 1997, are carried back 2 years and then carried forward to each of the 20 years following the year of the loss. Certain corporations that qualify as a “small business” or that are engaged in the trade or business of farming may use a 3-year carryback period for losses attributable to Presidentially declared disasters. The new rules do not apply to specified liability losses, excess interest losses, capital losses, or NOLs of real estate investment trusts (REITs). See section 172(b)(1) and section 1212(a) for rules for those losses. For more information, see Act section 1082.

Unused general business credits that arise in tax years beginning after 1997 are carried back 1 year and then forward to each of the 20 years following the unused credit year. For more information, see Act section 1083.

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).

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.

Private delivery services.— You can use certain private delivery services designated by the IRS to meet the “timely mailing as timely filing/paying” rules for

tax returns and payments. The IRS publishes a list of the designated private delivery services in September of each year. The list published in September 1997 includes only the following:

- Airborne Express (Airborne): Overnight Air Express Service, Next Afternoon Service, Second Day Service.
- DHL Worldwide Express (DHL): “Same Day” Service, DHL USA Overnight.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2 Day.
- United Parcel Service (UPS): UPS Next Day Air, Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M.

The private delivery services can tell you how to get written proof of the mailing date.

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.

Adjustments to NOL.— In a tax year in which the NOL occurs, the following adjustments must be made: **(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).

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 a separate Form 1139 for the earlier year(s). To expedite the processing of Form 1139, file both 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 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 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.

If Form 1120X is filed, attach a computation of the NOL and pages 1 and 2 of Form 1120, for the loss year. Complete a separate Form 1120X for each loss 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.— A corporation may carry back an NOL to each of the 3 years (2 years for tax years beginning after August 5, 1997) before the loss year and carry any remaining loss forward to each of the 15 years (20 years for tax years beginning after August 5, 1997) following the loss year.

A corporation may elect to carry forward an NOL only to each of the 15 years (20 years for tax years beginning after August 5, 1997) following the year of the loss. Make this election by attaching a statement making this election to a timely filed return (including extensions) for the year of the NOL. This election is irrevocable.

Special rules apply to the portion of an NOL that qualifies as a specified liability loss. See section 172(b)(1)(C) and section 172(f) for details.

Show on a separate attachment all adjustments required to figure an NOL that may be carried back to any year. Identify 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. For special rules for specified liability losses, see section 172(f) and Notice 97-36, 1997-26 I.R.B. 6.

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 page 1. 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).

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 10, 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.

Lines 13 and 15, columns (d) and (f).— When carrying over a net capital loss (line 13) or a net operating loss (line 15) to a later tax year, reduce the amount of the net capital loss or net operating loss that may be used in the later year(s) by the amount of the net capital loss deductions or net operating loss deductions used in the earlier year(s).

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.