

## Tax Notes

# CARES Act – Income Tax Refund Opportunities for Corporations

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The Coronavirus Aid, Relief, and Economic Security (CARES) Act (H.R. 748) was signed into law on March 27, 2020 with the intention of providing liquidity to individual workers and businesses as the country battles the medical and economic effects of the current COVID-19 pandemic.

Included in the legislation are various income tax law changes that will provide certain taxpayers with the ability to file refund claims to recoup taxes paid in previous years or reduce tax in future years. This article will address two of the refund opportunities that are now available to corporations.

**Note:** On April 6, 2020, the IRS issued a statement saying they are “exploring options” for taxpayers to file refund claims and have asked taxpayers to avoid traditional refund claim processes for now. Therefore, we expect that the IRS will be providing future guidance with regard to refund claim procedures. This article explains the changes made by the CARES Act and existing rules regarding how to claim a refund. It would be prudent to wait until the IRS issues guidance before filing any refund claims.

## Changes to Net Operating Losses for Corporations

The CARES Act allows NOLs originating in tax years beginning after December 31, 2017 – and before January 1, 2021 (2018, 2019 and 2020 for calendar year taxpayers) – to be carried back 5 years from the year the NOL originated. For tax years ending before January 1, 2021, the Act eliminated the 80% taxable income limitation for NOL carryforwards.

**Note:** There are special NOL utilization rules for years that a corporation has IRC §965 inclusions or as they apply to real estate investment trusts (REITS) and insurance companies that are beyond the scope of this article.

### ***Can You Elect to Forego the 5-Year Carryback?***

The CARES Act permits corporations to elect to forego carrying back an NOL that originated in taxable years beginning in 2018 or 2019 by the due date (including extensions) for filing the corporation's tax return for its first taxable year ending after March 27, 2020. For calendar year corporations, this would be October 15, 2021.

### ***Should You Elect to Forego an NOL Carryback?***

The decision whether or not to carry back an NOL requires a great deal of consideration. For any year an NOL is carried back or forward to, you are bound by the tax law that applied in that year. So, there are many factors to consider when evaluating the best way to utilize an NOL.

## ***How Does an NOL Carryback Affect the Statute of Limitations for Examination?***

Generally, an amended return can be filed within 3 years from the later of: (1) the due date of the original return (excluding extensions); or (2) when the return was filed. However, when a return is amended because of an NOL carryback, you look to the year the loss originated and not the year the loss is being carried back to when applying the 3-year statute of limitations rule. Conversely, the IRS can audit a return within the same 3-year statute of limitations period that a taxpayer has for filing an amended return. A carryback to a tax year that was still open for the IRS to audit will not start a new 3- year statute of limitations for that year.

## ***How Do You Claim an NOL Carryback Refund?***

There are two methods a corporation can use to carry back an NOL. You can file what's called a "Quickie Refund" claim ([Corporation Application for Tentative Refund, Form 1139](#) and [instructions](#)), or file an amended return for the year the NOL is being carried back to. Certain criteria must be met in order to be able to file Form 1139.

Form 1139 must be filed within 12 months from the last day of the year that the NOL originated. So, for 2018 calendar year NOLs, Form 1139 needed to be filed by December 31, 2019. **As a result, unless further guidance is provided by the IRS, in order to carry back a calendar 2018 NOL, you will need to file an amended tax return and are precluded from filing a Form 1139 carryback claim.**

The CARES Act contains a special rule for taxpayers with NOLs for tax years beginning before January 1, 2018 and ending after December 31, 2018. Such taxpayers **now have until July 25, 2020 (120 days from March 27, 2020) to file Form 1139 as well as to: (1) forego any carryback of such NOL; (2) reduce any period to which such NOL may be carried back; or (3) revoke any election made under IRC 172(b) to forego any carryback of such NOL.**

**Note:** It is unclear if excluding 2018 calendar year NOLs from these special rules was intentional by Congress. We expect the IRS to provide technical and administrative guidance on this special rule in the near future.

## ***What Is the Timing of Getting Your Refund?***

In order to be able to claim a refund for an NOL carryback, the tax return for the year the NOL originated needs to be filed. A Form 1139 will generally get you a faster refund than filing an amended return because of the different rules that apply when the IRS reviews each type of refund claim. The IRS does reserve the right to perform a full audit of the year that the NOL originated as well as the year the loss was carried back to, but it will be after the refund has already been issued. If the statute of limitations has expired for any carryback year, the adjustment is limited to the amount of the NOL carryback.)

Filing an amended return will delay the receipt of the refund because the IRS will not issue a refund check until they have made a final determination about the claim. It should also be noted that corporation refund claims in excess of \$5 million (increased from \$2 million for claims filed after December 19, 2014) have an additional statutory Joint Committee review

## ***Changes to Refunds for Corporations with Alternative Minimum Tax (AMT) Credit Carryforwards***

For tax years beginning in 2018, 2019 and 2020, the Tax Cuts and Jobs Act (TCJA) allowed, as a **refundable credit**, 50% of the excess of a corporation's remaining AMT credit over its regular income tax liability. Such excess could be claimed as a refundable credit over a 4-year period as follows: 50% in 2018; 50% of the remaining credit in tax years 2019 and 2020; with the balance of any remaining credit allowable in 2021.

The CARES Act now allows a corporation to claim any unused AMT credit immediately on its 2018 or 2019 income tax returns. For corporations wishing to claim the AMT credit on its 2018 return, the CARES Act contains a special rule that will allow an AMT credit refund claim to be filed with a Corporation Application for Tentative Refund (Form 1139) and has extended the date to file such refund claim until December 31, 2020. Before this change, an AMT credit carryback claim would have to be made with an amended return.

Remember, this is a refundable credit which means the entire amount of the remaining AMT credit will result in a cash refund if carried back to 2018 (even for taxpayers with a taxable loss in that year).

## Contact Us

The tax professionals at PKF O'Connor Davies are here to help during these trying times. We know the tax law and can help you make an informed decision about the optimal utilization of these new refund opportunities. If you have any questions or need assistance, please contact your client partner in charge or either of the following:

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