

Instructions for Form 1139

(Rev. November 2021)

(For us with the October 2018 revision of Form 1139)

Corporation Application for Tentative Refund



Department of the Treasury
Internal Revenue Service

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

Future Developments

For the latest information and developments related to Form 1139 and its instructions, such as legislation enacted after this form and its instructions were published, go to [IRS.gov/Form1139](https://www.irs.gov/Form1139).

What's New

Repeal of the NOL carryback. For losses incurred in tax years beginning after December 31, 2020, the NOL carryback rules apply only for farming losses and losses from insurance companies, other than life insurance companies. See *Definitions and Special Rules*, later.

NOL deduction limitation. For tax years beginning after December 31, 2020, the deduction of NOLs arising in tax years beginning after December 31, 2017, is

limited. This limitation does not apply to an insurance company, other than a life insurance company. See the instructions for Line 14.

General Instructions

Purpose of Form

A corporation (other than an S corporation) files Form 1139 to apply for a quick refund of taxes from:

- The carryback of an NOL;
- The carryback of a net capital loss;
- The carryback of an unused general business credit;
- An overpayment of tax due to a claim of right adjustment under section 1341(b)(1); or
- An election under section 53(e)(5) to claim 100% of prior year minimum tax for its tax year beginning in 2018.



Tax-exempt organizations claiming a refund of taxes reported on Form 990-T, see the Instructions for Form 990-T for information on how to claim the refund.

Waiving the NOL carryback period. For NOLs arising in tax years beginning after December 31, 2020, a corporation can elect to waive the entire carryback period and instead carry the NOL forward to future tax years *only* if it has an NOL from a farming loss or a loss as an insurance company, other than a life insurance company. See Definitions and Special Rules, later.

Certain corporations can make the election for the loss year by (1) checking the box on Form 1120, Schedule K, line 11 (or the comparable line of the corporation's income tax return), and (2) filing the corporation's return by its due date, including extensions. In this case, do not attach the statement described in Temporary Regulations section 301.9100-12T. Once made, the election is irrevocable.

See the instructions for the corporation's income tax return.

If the corporation timely filed its return for the loss year without making the election, it can make the election on an amended return filed within 6 months of the due date of the loss year return (excluding extensions). Attach the election to the amended return and write "Filed pursuant to section 301.9100-2" on the election statement.

Corporations filing a consolidated return that elect to waive the entire carryback period for the group must also attach the statement required by Regulations section 1.1502-21(b)(3) or the election will not be valid.

Note. If the corporation had an NOL for a tax year beginning after December 31, 2017, and before January 1, 2021, the corporation could make special elections to waive the carryback period or to exclude all of the section 965 years from the NOL carryback period. See Rev. Proc. 2020-24, 2020-18 I.R.B. 750,

available at [IRS.gov/irb/2020-18_IRB#REV-PROC-2020-24](https://www.irs.gov/irb/2020-18_IRB#REV-PROC-2020-24).

When To File

Generally, the corporation must file Form 1139 within 12 months of the end of the tax year in which an NOL, net capital loss, unused credit, or claim of right adjustment arose.



The corporation must file its income tax return for the tax year no later than the date it files Form 1139.

Form 1138. If the corporation filed Form 1138, Extension of Time for Payment of Taxes by a Corporation Expecting a Net Operating Loss Carryback, it can get an additional extension of time to pay. To do so, file Form 1139 by the last day of the month that includes the due date (including extensions) for filing the return for the tax year from which the applicable NOL carryback arose.

Qualified new members of a consolidated group. The general rule above applies to the time for filing of Form 1139 by a consolidated group.

However, for this purpose, a separate return year of a qualified new member (see below) that ends on the date of joining the new group is treated as ending on the same date as the end of the tax year of the consolidated group that includes the date of the end of the separate return year. If this special treatment applies, see the instructions for line 5 below. A new member of a consolidated group is a qualified new member if immediately prior to becoming a new member either:

- It was the common parent of a consolidated group, or
- It was not required to join in the filing of a consolidated return.

Where To File

File Form 1139 with the Internal Revenue Service Center where the corporation files its income tax return.



Do not file Form 1139 with the corporation's income tax return.

What To Attach

Attach to Form 1139 copies of the following, if applicable, for the year of the loss or credit.

- The first two pages of the corporation's income tax return.
- All other forms and schedules from which a carryback results (for example, Schedule D (Form 1120), Capital Gains and Losses; Form 3800, General Business Credit, etc.).
- All Forms 8886, Reportable Transaction Disclosure Statement, attached to the corporation's tax return.

- Any applicable election statement. See *Definitions and Special Rules*, below.
- All carryback year forms and schedules for which items were refigured.
- Form 8302, Electronic Deposit of Tax Refund of \$1 Million or More. Electronic deposits can be made only for a carryback year for which the refund is at least \$1 million. Attach a separate form for each such carryback year.

Processing the Application

The IRS will process this application within 90 days of the later of:

- The date the corporation files the complete application, or
- The last day of the month that includes the due date (including extensions) for filing the corporation's income tax return for the year in which the loss or credit arose (or, for a claim of right adjustment,

the date of the overpayment under section 1341(b)(1)).

The payment of the requested refund does not mean the IRS has accepted the application as correct. If the IRS later determines the claimed deductions or credits are due to an overstatement of the value of property, negligence, disregard of rules, or substantial understatement of income tax, the corporation may be assessed penalties. Interest is also charged on any amounts erroneously refunded, credited, or applied.

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.

Disallowance of the Application

An application for a tentative refund is not treated as a claim for credit or refund. It may

be disallowed if there are any material omissions or math errors that are not corrected within the 90-day period. If the application is disallowed in whole or in part, no suit challenging the disallowance may be brought in any court. But the corporation can file a regular claim for credit or refund. See *Filing Form 1120X or Other Amended Return*, below.

Excessive Allowances

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.

Filing Form 1120X or Other Amended Return

A corporation can get a refund by filing Form 1120X (or other amended return, such as an amended Form 1120-PC) instead of Form

1139. Generally, the corporation must file an amended return within 3 years after the date the return was due for the tax year in which an NOL, net capital loss, or unused credit arose (or, if later, the date the return for that year was filed).

Corporations must file Form 1120X (or other amended return) instead of Form 1139 to carry back:

- Any item, other than an NOL, to a section 965 year;
- A prior year foreign tax credit released due to an NOL or net capital loss carryback; or
- A prior year general business credit released because of the release of the foreign tax credit.

Because of the changes in the NOL rules under the CARES Act, a corporation may file Form 1139 for an NOL it carries back to a section 965 year.



If a corporation carries back its NOL to a section 965 year in the 5-year carryback period, it is deemed to have made an election under section 965(n). See section 172(b)(1)(D)(iv). Also, go to [IRS.gov/Form1139](https://www.irs.gov/Form1139) to find links to updates on carrying back losses to a section 965 year.

The procedures for processing an amended return and Form 1139 are different. The IRS is not required to process an amended return within 90 days. However, if the IRS does not process it within 6 months from the date a corporation files it, the corporation can file suit in court. If the IRS disallows a claim on an amended return and the corporation disagrees with that determination, the corporation must file suit no later than 2 years after the date the IRS disallows it.

Definitions and Special Rules

Net Operating Loss (NOL)

For corporations, an NOL is the excess of the deductions allowed over gross income, computed with the following adjustments.

- The NOL deduction for an NOL carryback or carryover from another year is not allowed.
- 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).
- 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).

- No deduction under section 199A is allowed.
- The section 250 deduction for foreign based intangible income is not allowed.

For losses incurred in tax years beginning after December 31, 2020, only farming losses (discussed below) and losses of an insurance company, other than a life insurance company (discussed below), can be carried back. The carryback for these losses is 2 years. See *Waiving the NOL carryback period*, earlier.

Losses not used can be carried forward indefinitely, except for the losses of insurance companies, other than life insurance companies. These losses can be carried forward 20 years.

Note. The carryback period for NOLs incurred in tax years beginning after December 31, 2017, and before January 1, 2021, is 5 years. See section 172(b)(1)(D)(i). Any loss not

used can be carried forward indefinitely except for the loss of an insurance company, other than a life insurance company, which can be carried forward 20 years.

Farming Loss

A farming loss is the smaller of:

1. The amount that would be the NOL for the tax year if only income and deductions attributable to farming businesses (as defined in section 263A(e)(4)) were taken into account, or
2. The NOL for the tax year.

To the extent the NOL is a farming loss, the carryback period is 2 years. Any such loss not applied in the 2 preceding years can be carried forward indefinitely (subject to limitations). See the instructions for line 14.

The corporation can make an irrevocable election to forgo the 2-year carryback period. See section 172(b)(1) (B)(iv).

Insurance Loss

An insurance company (as defined in section 816(a)), other than a life insurance company, can carry back an NOL to each of the 2 preceding tax years. Any such loss not applied in the 2 preceding years can be carried forward up to 20 years.

Allocation of NOLs when a loss corporation has an ownership change. If the corporation has a loss for a year and has an ownership change, special rules apply for allocating NOLs. For details, see Regulations section 1.382-6.

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.

If the corporation receives its mail in care of a third party (such as an accountant or an attorney), enter on the street address line "C/O" followed by the third party's name and street address or P.O. box.

Line 1a—Net Operating Loss

If the corporation is claiming a tentative refund based on the carryback of any of the NOLs discussed under Definitions and Special Rules, include the amount of the carryback on line 1a. Attach any statements required. See What To Attach, earlier.

Line 1b—Net Capital Loss

Generally, a net capital loss can be carried back 3 years and treated as a short-term capital loss in the carryback year. The net capital loss can 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 sections 1212(a)(3) and (4).

Line 1c—Unused General Business Credit

If the corporation is claiming a tentative refund based on a carryback of an unused general business credit (GBC), attach a copy of the appropriate credit form for the tax year in which the credit arose. Except as provided in section 39(d), an unused GBC can be carried back 1 year. Refigure the credit for the carryback year on Form 3800, or the applicable credit form. See the Instructions for Form 3800.

Line 1d—Other

Complete line 1d if Form 1139 is filed to claim a tentative refund based on an overpayment of tax due to a claim of right adjustment under section 1341(b). See the instructions for line 29, later.

Line 4

Foreign taxes taken as a credit in a prior year can be reduced to zero by the carryback of an NOL or a net capital loss on Form 1139. A corporation must file Form 1120X (or other amended return) instead of Form 1139 to carry back a prior year foreign tax credit released due to an NOL or net capital loss carryback. See *Filing Form 1120X or Other Amended Return*, earlier.

Line 5

If the common parent of a consolidated group files Form 1139 to carry back a loss or credit arising in a corporation's separate return year

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 (or agent designated under Regulations section 1.1502-77(d) for the carryback year). See Regulations sections 1.1502-78(a) and (b).

If the corporation is filing Form 1139 for a short tax year created when the corporation became a qualified new member of a consolidated group (see Qualified new members of a consolidated group, earlier) the corporation must answer “Yes” on line 5a and enter the tax year ending date, name, and EIN of the new common parent on line 5b.

Lines 11 through 28 — Computation of Decrease in Tax

In columns (a), (c), and (e), enter the amount for the applicable carryback year as

shown on your original or amended return or as adjusted by the IRS.

Use columns (a) and (b), (c) and (d), or (e) and (f) to enter amounts before and after carryback for each year to which the loss is carried. Start with the earliest carryback year. Use the remaining pairs of columns for each consecutive preceding year until the loss is fully absorbed. Enter the ordinal number of years the loss is being carried back and the date the carryback year ends in the spaces provided above columns (a) and (b), (c) and (d), or (e) and (f).

For example, if the loss year is the 2021 calendar year and the loss is carried back 2 years, enter "2nd" and "12/31/19" in the spaces provided above columns (a) and (b). After making the entries, it reads "2nd preceding tax year ended 12/31/19 ."

When completing lines 16 through 26, take into account any write-in amounts that may have appeared on the original return. For

example, for a tax year beginning in 2021, if Form 1120, Schedule J, line 2, was increased by deferred tax under section 1291, include that amount on line 16.

Line 11—Taxable Income From Tax Return

Enter in columns (b), (d), and (f), the amounts from columns (a), (c), and (e), respectively.

Line 12—Capital Loss Carryback

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 12.

When carrying over a net capital loss to a later tax year, reduce the amount of the net

capital loss that can be used in the later years by the amount of the net capital loss deductions used in the earlier years. For details, see section 1212(a)(1).

Line 14—NOL Deduction

For tax years beginning before January 1, 2021, the NOL deduction is the total of the NOL carryforwards to such year plus the NOL carrybacks to that year.

For tax years beginning after December 31, 2020, the NOL deduction for the year cannot exceed the aggregate amount of NOLs arising in tax years beginning before January 1, 2018, carried to such year plus the lesser of:

1. The aggregate amount of NOLs arising in tax years beginning after December 31, 2017, carried to such tax year; or
2. 80 percent of the excess, if any, of taxable income determined without any NOL deduction, section 199A

deduction, or section 250 deduction, over any NOL carryover to the tax year from tax years beginning before January 1, 2018.

An exception applies for NOLs from insurance companies other than life insurance companies. The 80% taxable income limit does not apply for these entities. See sections 172(b) and (f).

Unless the corporation has elected to waive the carryback or elected to exclude section 965 years from the carryback period, NOLs are first applied to the earliest year in the carryback period. Any unused amount is carried to the next tax year in the carryback period. Any amount not used during the carryback period is carried forward. See *Definitions and Special Rules*, earlier.

Line 16—Income Tax

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 details on how to figure the income tax. Attach a computation of the refigured tax. Take into account section 1561 when refiguring the income tax.

Line 17—Alternative Minimum Tax

For columns (b), (d), and (f), refigure the alternative minimum tax. Complete and attach Form 4626 for the appropriate tax years before 2018. For tax years after 2017, the corporate alternative minimum tax has been repealed.

Line 18—Base Erosion Minimum Tax

The base erosion minimum tax applies to corporations, other than regulated investment companies (RICs), real estate investment trusts (REITs), and S corporations, that have average annual gross receipts for the 3

preceding tax years of \$500 million or more and that have deductions paid or accrued to foreign related parties that are greater than 3% of their total deductions (2% in the case of certain banks or registered securities dealers). See section 59A, the regulations under section 59A, and the Instructions for Form 8991 for further guidance on determining the base erosion minimum tax amount.

Line 20—General Business Credit

In columns (b), (d), and (f), enter the total of the corrected GBCs. Attach all applicable forms used to redetermine the GBC. Also, see the instructions for line 1c.

Released general business credits. If an NOL carryback or a net capital loss carryback eliminates or reduces a GBC in an earlier tax year, the released GBC can be carried back 1 year.

See section 39 and the Instructions for Form 3800 for more details on GBC carrybacks.

Line 21—Other Credits

See the corporation's tax return for the carryback year for any additional credits that will apply in that year. If any entry is made on line 21, attach a statement identifying the credits claimed.

Line 25—Other Taxes

For columns (b), (d), and (f), refigure any other taxes not mentioned above, such as recapture taxes, that will apply in that year. If an entry is made on line 25, identify the taxes on an attached statement.

Line 29—Overpayment of Tax Under Section 1341(b)(1)

For a tentative refund based on an overpayment of tax under section 1341(b)(1), enter the overpayment on line 29 and attach

a computation showing the information required by Regulations section 5.6411-1(d).

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The time needed to complete and file this form will vary depending on individual

circumstances. The estimated average time is:

Recordkeeping..... 27 hr., 44 min.

Learning about the law or the form . 4 hr.,
55 min.

Preparing the form 10 hr., 14 min.

**Copying, assembling, and sending the
form to the IRS.....**1 hr., 20 min.

If you have comments or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.