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Almost every form and publication also has its own easily accessible information page on IRS.gov. For example, the Form 1040 page is at IRS.gov/form1040; the Form W-2 page is at IRS.gov/w2; the Publication 17 page is at IRS.gov/pub17; the Form W-4 page is at IRS.gov/w4; the Form 8863 page is at IRS.gov/form8863; and the Schedule A (Form 1040) page is at IRS.gov/schedulea. If typing in the links above instead of clicking on them: type the link into the address bar of your browser, not in a Search box; the text after the slash must be lowercase; and your browser may require the link to begin with “www.”. Note that these are shortcut links that will automatically go to the actual link for the page.

If you wish, you can submit comments about draft or final forms, instructions, or publications on the Comment on Tax Forms and Publications page on IRS.gov. We cannot respond to all comments due to the high volume we receive, but we will carefully consider each one. Please note that we may not be able to consider many suggestions until the subsequent revision of the product.

Instructions for Form 1139

(Rev. November 2014)

Corporation Application for Tentative Refund

Department of the Treasury
Internal Revenue Service

DRAFT AS OF July 18, 2014

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 *www.irs.gov/form1139*.

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 (or a loss from operations of a life insurance company),
- The carryback of a net capital loss,
- The carryback of an unused general business credit, or
- An overpayment of tax due to a claim of right adjustment under section 1341(b)(1).

Waiving the NOL carryback period. If the corporation has an NOL, it generally can elect to waive the entire carryback period for the NOL and instead carry the NOL forward to future tax years.

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.

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.

CAUTION *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 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.

CAUTION *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.

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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:

- A prior year minimum tax credit released due to an NOL or net capital loss carryback,
- 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.

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).
- The domestic production activities deduction under section 199 is generally not allowed. See Regulations section 1.199-7(c)(2) for an exception.

The carryback period for an NOL generally is 2 years. Any loss not applied in the preceding years can be carried forward up to 20 years.

Special rules (discussed below) apply to the portion of an NOL attributable to:

- A specified liability loss;
- A farming loss;
- A qualified disaster loss or a qualified GO Zone loss;
- An eligible loss; or
- An excess interest loss.

Specified Liability Losses

Generally, a specified liability loss is a loss arising from:

1. Product liability,

2. An act (or failure to act) that occurred at least 3 years before the beginning of the loss year and resulted in a liability under a federal or state law requiring:

a. Reclamation of land,

b. Decommissioning of a nuclear power plant (or any unit thereof),

c. Dismantling of a drilling platform,

d. Remediation of environmental contamination, or

e. Payment under any workers compensation act.

Any loss from a liability arising from 2a through 2e, above, can be taken into account as a specified liability loss only if the corporation used an accrual method of accounting throughout the period in which the act (or failure to act) occurred. For details, see section 172(f).

To the extent an NOL is a specified liability loss, the carryback period for that part of the NOL is generally 10 years. Any such loss that is not applied in the 10 preceding years can be carried forward up to 20 years.

However, the corporation can make an irrevocable election to figure the carryback period for a specified liability loss without regard to the special 10-year carryback rule. To make the election, attach to the corporation's timely filed tax return for the loss year a statement that the corporation is electing to have the carryback period for the NOL under section 172(b)(1)(C) determined without regard to the special 10-year carryback rule. If the corporation timely filed its tax return without making the election, it can make the election on an amended return filed within 6 months of the due date of the return (excluding extensions). Attach the election to the amended return and write “Filed pursuant to section 301.9100-2” on the election statement.

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 5 years. Any such loss not applied in the 5 preceding years can be carried forward up to 20 years.

However, the corporation can make an irrevocable election to figure the carryback period for a farming loss without regard to the special 5-year carryback rule. To make this election, attach to the corporation's timely filed tax return for the loss year a statement that the corporation is electing to have the carryback period for the NOL under section 172(b)(1)(G) determined without regard to the special 5-year carryback rule. If the corporation timely filed its tax return without making the election, it can make the election on an amended return filed within 6 months of the due date of the return (excluding extensions). Attach the election to the amended return and write "Filed pursuant to section 301.9100-2" on the election statement.

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Qualified Disaster Loss

A qualified disaster loss is the smaller of:

1. The sum of:

a. Any loss occurring in a disaster area and attributable to a federally declared disaster (as defined in section 165(h)(3)(C)) occurring before January 1, 2010, and

b. Any qualified disaster expenses that were allowable under section 198A (even if the corporation did not elect to treat such expenses as qualified disaster expenses), or

2. The NOL for the tax year.

A qualified disaster loss does not include any loss from property used in connection with any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, or any store for which the principal business is the sale of alcoholic beverages for consumption off premises. A qualified disaster loss also does not include any gambling or animal racing property. See sections 172(j)(4) and 1400N(p)(3) for more details.

The portion of an NOL that is a qualified disaster loss can be carried back 5 years. Any such loss not applied in the 5 preceding years can be carried forward up to 20 years.

The corporation can make an irrevocable election to figure the carryback period for the qualified disaster loss without regard to the special 5-year carryback rule. To make this election, attach to the tax return filed by the due date (including extensions), a statement that the corporation is electing to treat the qualified disaster loss without regard to the special 5-year carryback rule. If the corporation timely filed its return without making the election, it can still make the election on an amended return filed within 6 months of the due date of the return (excluding extensions). Attach the election to the amended return and write "Filed pursuant to section 301.9100-2" on the election statement.

Qualified Gulf Opportunity Zone (GO Zone) Loss

A qualified GO Zone loss is the smaller of:

1. The NOL for the tax year reduced by any specified liability loss to which a 10-year carryback applies, or

2. Any depreciation or amortization allowable for any specified GO Zone extension property, as defined in section 1400N(d)(6), (even if an election was made not to claim any special depreciation allowance for such property).

The portion of an NOL that is a qualified GO Zone loss can be carried back 5 years. Any such loss not applied in the 5 preceding years can be carried forward up to 20 years.

A corporation can make an irrevocable election to figure the carryback period for a qualified GO Zone loss without regard to the special 5-year carryback rule. To make the election, attach to the corporation's timely filed tax return for the loss year a statement that the corporation is electing to have the carryback period for the NOL under section 1400N(k)(1)(A)(i) determined without regard to the special 5-year carryback rule. If the corporation timely filed its tax return without making the election, it can make the election on an amended return filed within 6 months of the due date of the return (excluding extensions). Attach the election to the amended return and write "Filed pursuant to section 301.9100-2" on the election statement.

Eligible Loss

To the extent the NOL is an eligible loss, the carryback period is 3 years.

For a small business, an eligible loss is any loss attributable to a federally declared disaster (as defined in section 165(h)(3)(C)), but only if the business meets the gross receipts test of section 448(c). An eligible loss includes an NOL, attributable to a federally declared disaster, of a taxpayer engaged in the trade or business of farming (as defined in section 263A(e)(4)) for the loss year.

Only the eligible loss portion of the NOL can be carried back 3 years. Any such loss not applied in the preceding 3 years can be carried forward up to 20 years.

Excess Interest Loss

If the corporation has a corporate equity reduction transaction, a different carryback period may apply. See section 172(b)(1)(E).

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)(1). See the instructions for line 28, 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 27—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 2014 calendar year and the loss is carried back 5 years, enter "5th" and "12/31/09" in the spaces provided above columns (a) and (b). After making the entries, it reads "5th preceding tax year ended 12/31/09."

Note. Additional Forms 1139 may be needed if the corporation is carrying back an NOL to more than 3 preceding tax years. On the additional forms, complete lines 11 through 27 for each additional preceding tax year as necessary. Skip lines 1 through 10 and do not sign the additional forms.

When completing lines 16 through 25, take into account any write-in amounts that may have appeared on the original return. For example, for a tax year beginning in 2014, 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

See *Definitions and Special Rules* earlier to figure 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 up to 20 years.

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 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 year.

Limit on alternative tax NOL deduction. If the corporation carries back any portion of an alternative tax NOL (ATNOL) based on an NOL carryback attributable to qualified disaster losses or qualified GO Zone losses, the 90%-of-alternative-minimum-taxable-income (AMTI) limit does not apply to such portion of the alternative tax NOL deduction (ATNOLD). To determine the ATNOLD for the carryback year, see section 56(d)(1)(A). Also, see the Instructions for Form 4626.

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Line 19—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 20—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 20, attach a statement identifying the credits claimed.

Line 24—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 24, identify the taxes on an attached statement.

Line 28—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 28 and attach a computation showing the information required by 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	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 concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can send us comments from *www.irs.gov/formspubs*. Or you can send your comments to: Internal Revenue Service, Tax Forms and Publications Division, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the form to this office. Instead, see *Where To File* earlier.

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