

Expediting NOL Refunds

To the Editor:

Since our article, “Navigating IRS Fax Rules to Expedite NOL and Minimum Tax Refunds,” was published in *Tax Notes Federal* (June 8, 2020, p. 1679), the IRS has issued supplemental guidance addressing one of the questions we identified.

Our article analyzes the opportunities and challenges associated with the changes to the Internal Revenue Code’s net operating loss provisions and to the rules concerning the utilization of alternative minimum tax credits (MTCs) contained in the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136), and provides a detailed roadmap to the interaction of these statutory changes with the IRS’s postponement of certain tax filing and payment deadlines in Notices 2020-23, 2020-18 IRB 742 and 2020-26, 2020-18 IRB 1. Those changes, which enhanced opportunities to obtain expedited tentative refunds by carrying back eligible NOLs and claiming unused MTCs by filing Form 1139, “Corporation Application for Tentative Refund,” place a premium on ensuring a corporate taxpayer’s application for a tentative refund on Form 1139 is timely filed.

Because the IRS’s processing of Forms 1139 was significantly affected by the COVID-19-related shutdown of IRS processing centers, our article emphasized the temporary processing procedures adopted by the IRS (“Temporary Procedures”). The IRS announced the procedures on April 17, updated them on April 30, updated them again on May 27, and updated them yet again on June 29. The latest update, which addresses the extended deadline for filing Forms 1139 for certain periods, prompts this letter.

Our article includes a table on pages 1683-1684 that sets forth deadlines for filing Forms 1139. In footnote 30 we explained, “Some short tax years that began in 2018 and ended in 2018, as well as 2018 calendar-year tax years, will have due dates, as extended by Notice 2020-26, that fall within April 1 [2020] and July 15 [2020].” We then added, “It is not clear whether those extended due dates are postponed further by Notice 2020-23.” The IRS has now addressed this issue in a new question and answer added to the Temporary Procedures on June 29.

Specifically, in new Q&A 20, the IRS confirmed that Notice 2020-23 works in tandem with Notice 2020-26 to further extend due dates for filing Forms 1139 (and 1045) for certain periods: “Under Notice 2020-23, a taxpayer filing a Form 1139 or Form 1045 which is due on or after April 1, 2020, and before July 15, 2020, including as a result of the relief provided in Notice 2020-26, is an affected taxpayer performing a specified time-sensitive action, and will have until July 15, 2020, to file the relevant form.”

For the sake of completeness, the table in our article should be revised to include another line confirming a special rule for tax years beginning in 2018 and ending on or before June 30, 2019 when NOL carrybacks with due dates, as extended by Notice 2020-26, that fall within April 1, 2020 and July 15, 2020 are at issue; a Form 1139 filed for those periods may be filed by July 15, 2020. The revised table is set forth below.

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July 9, 2020¹

Deadlines for Filing Forms 1139

NOL Carryback/MTC Refunds	Filing Deadline
Tax years beginning before Jan. 1, 2018, and ending after Dec. 31, 2017, NOL Carrybacks	July 25, 2020 ^a
Tax years beginning in 2018 and ending on or before June 30, 2019, NOL Carrybacks	Tax Year End + 18 months ^b
Special Rule: In case of tax years beginning in 2018 and ending on or before June 30, 2019, NOL carrybacks with due dates, as extended by Notice 2020-26, that fall within April 1, 2020, and July 15, 2020	July 15, 2020 ^c

¹The information in this article is not intended to be written advice concerning one or more federal tax matters subject to the requirements of reg. section 10.37(a)(2) of Treasury Circular 230 because the content is issued for general informational purposes only. The information in this article is of a general nature and based on authorities that are subject to change. Its applicability to specific situations should be determined through consultation with your tax adviser. This article represents the views of the authors only and does not necessarily represent the views or professional advice of KPMG.

Deadlines for Filing Forms 1139 (Continued)

NOL Carryback/MTC Refunds	Filing Deadline
2019 calendar-year NOL carrybacks	December 31, 2020 ^d
Minimum tax credit — section 53 for first tax year beginning in 2018 by reason of a section 53(e)(5) election	December 30, 2020 ^e
<p>^aCARES Act section 2303(d)(4)(A), providing that Form 1139 must be filed within 120 days of the law's date of enactment (March 27, 2020).</p> <p>^bSection 172, CARES Act section 2303(b), Notice 2020-26.</p> <p>^cSee IRS Q&A 20, "Temporary Procedures to Fax Certain Forms 1139 and 1045 Due to COVID-19" (Rev. June 29, 2020), citing Notice 2020-23.</p> <p>^dSection 6411, CARES Act section 2303.</p> <p>^eSee IRS FAQ 6, "Questions and Answers About NOL Carrybacks of C Corporations to Taxable Years in Which the Alternative Minimum Tax Applies." CARES Act section 2305(d) provides that a Form 1139 filed for this purpose must be filed "prior to December 31, 2020." In addition to filing Form 1139 for 2018, taxpayers have other options to claim refunds attributable to their remaining MTCs.</p>	

