

# Instructions for Form 1139

(Rev. September 2000)

## 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

#### Purpose of Form

Corporations (other than S corporations) use Form 1139 to apply for a quick refund of taxes from:

- The carryback of a net operating loss (NOL), net capital loss, or unused general business credit,
- An overpayment of tax due to a claim of right adjustment under section 1341(b)(1), or
- A suspended research credit allowed for the current year.

#### Waiving the Carryback Period

A corporation may elect to carry an NOL forward instead of first carrying it back. Make this election by attaching a statement to a timely filed return (including extensions) for the tax year of the NOL indicating that the corporation is electing to relinquish the entire carryback period under section 172(b)(1) for any NOLs incurred in that tax year. Also, if the corporation timely filed its return for the loss year without making the election, it may 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. File the amended return at the same address the original return was filed. Once made, the election is irrevocable.

#### Released General Business Credits (GBCs)

When an NOL carryback or a net capital loss carryback eliminates or reduces a GBC in an earlier tax year, the released GBC may be carried back 1 more year (3 years for GBCs originating in tax years beginning before 1998). See section 39 and the instructions for **Form 3800**, General Business Credit, and **Form 8844**, Empowerment Zone Employment Credit, for more details on GBC carrybacks.

#### Released Foreign Tax Credits

The corporation **must** use **1120X**, Amended U.S. Corporation Income Tax Return, instead of Form 1139 if:

- Foreign tax credits are released because of the carryback of an NOL or net capital loss or
- Other credits are released because of the release of the foreign tax credit. For details, see Rev. Rul. 82-154, 1982-2 C.B. 394.

#### Filing Form 1120X

Form 1120X may be filed instead of Form 1139. 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 credit or the date the corporation filed its income tax return for that year.

#### When To File Form 1139

Generally, the corporation must file Form 1139 within 1 year of the end of the tax year in which the NOL, net capital loss, credit, or claim of right adjustment arose.

**Exception.** For a suspended research credit allowed for the current year or any carryback of a suspended research credit, the corporation **must** file Form 1139:

- **After** the end of the suspension period to which the credit relates (e.g., after September 30, 2001, for a credit attributable to the second suspension period) and
- **Before** the date that is 1 year after the end of that suspension period.



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

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.

#### Where To File Form 1139

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.**

#### 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 **Forms 8271**, Investor Reporting of Tax Shelter Registration Number, attached to the corporation's tax return.
- Any **Form 6765**, Credit for Increasing Research Activities, or Form 3800 used to figure any suspended research credit allowed for the current year.
- All other forms and schedules from which a carryback results (e.g., Schedule D (Form 1120), Form 3800, etc.).
- All other forms and schedules for items refigured in the carryback years.

#### 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 may file a regular claim for credit or refund. See **Filing Form 1120X** on page 1.

### 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.

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## 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

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

- The NOL deduction 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).

### 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 an NOL or a net capital loss on Form 1139. See **Released Foreign Tax Credits** on page 1.

### Line 5

If the corporation files Form 1139 to carry back a loss or credit to a year in which it 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 11 through 25—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 amounts from an 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.

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 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). (See example below).

**Example.** The tax period is the 2000 calendar year and the loss is carried back 2 years. Enter "2nd" and "12/31/98" in the spaces provided above columns (a) and (b). After making the entries, it reads "2nd preceding tax year ended 12/31/98."

**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 Form(s) 1139, complete lines 11 through 27 for each additional preceding tax year as necessary. Skip lines 1 through 10 and do not sign the additional Form(s) 1139.*

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 2000, if Form 1120, Schedule J, line 11, was increased by interest on deferred tax attributable to an installment sale of a timeshare or residential lot, include that amount on line 25.

### 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 may be used in the later year(s) by the amount of the net capital loss deductions used in the earlier year(s). For details, see section 1212(a)(1).

## Line 14—NOL Deduction

A corporation generally must carry back the entire NOL to the 2nd tax year before the loss year. Any NOL not used in the 2nd preceding year is carried back to the 1st preceding year. Reduce the amount of the NOL carried to the 1st preceding year by the amount of the NOL deduction used in the 2nd preceding year. See section 172(b)(2) for details. Any NOL not used in the two preceding years is carried forward to each of the 20 years following the loss year. Attach a statement showing all adjustments required to figure an NOL that may be carried back to any tax year.

### Exceptions

**Specified liability loss.** Any portion of an NOL that is a specified liability loss is first carried back to the 10th tax year before the year of the loss. A **specified liability loss** is a loss arising from:

- Product liability **or**
- An act (or failure to act) that occurred at least 3 years before the beginning of the loss year and that resulted in a liability under a Federal or state law requiring:
  1. Reclamation of land,
  2. Decommissioning of a nuclear power plant (or any unit thereof),
  3. Dismantling of a drilling platform,
  4. Remediation of environmental contamination, or
  5. Payment under any workers compensation act.

Any loss from a liability arising from 1 through 5 above may 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).

However, a corporation may elect to treat a specified liability loss as if it were not a specified liability loss. If the corporation makes this election, the loss carryback period will be 2, 3, or 5 years (see below). Make this election by attaching a statement to a timely filed return (including extensions) for the tax year of the NOL indicating that the corporation is electing to treat any specified liability losses under section 172(b)(1)(C) for that tax year as if they were not

specified liability losses. Also, if the corporation timely filed its return for the loss year without making the election, the corporation may make the election by filing an amended return within six 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. File the amended return at the same address the original return was filed. Once made, the election is irrevocable.

**Farming loss.** Any portion of an NOL that is a farming loss is first carried back to the 5th tax year before the year of the loss. A **farming loss** is the **smaller** of:

- The amount that would be the NOL for the tax year if **only** income and deductions attributable to farming businesses were taken into account **or**
- The NOL for the tax year (reduced by any specified liability loss).

However, a corporation may elect to treat a farming loss as if it were not a farming loss. If the corporation makes this election, the loss carryback period will be 2 or 3 years (see below). Make this election by attaching a statement to a timely filed return (including extensions) for the tax year of the NOL indicating that the corporation is electing to treat any farming losses under section 172(i) for that tax year as if they were not farming losses. Also, if the corporation timely filed its return for the loss year without making the election, the corporation may still make the election by filing an amended return within six 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. File the amended return at the same address the original return was filed. Once made, the election is irrevocable.

**Eligible loss.** Any portion of an NOL attributable to an eligible loss is first carried back to the 3rd tax year before the year of the loss. An **eligible loss** is an NOL attributable to a Presidentially declared disaster if the corporation was engaged in the trade or business of farming or the corporation is a small business that

meets the gross receipts test of section 448(c) for the tax year in which the NOL arose. An eligible loss does not include any farming loss or specified liability loss described above.

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

## 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.

## Line 19—General Business Credit

In columns (b), (d), and (f), enter the total of the corrected general business credits. Attach all Forms 3800 and 8844 used to redetermine the general business credit.

## Line 24—Recapture Tax and Environmental Tax

For columns (b), (d), and (f), refigure any environmental tax (attach Form 4626 for the appropriate year) and include any recapture taxes.

## Line 26—Recomputed Tax Liability

In columns (a), (c), and (e), enter the amount from line 25, columns (b), (d), and (f), respectively.

## Line 28—Overpayment of Tax Due to a Claim of Right Adjustment 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 Temporary Regulations section 5.6411-1(d).

**Line 29—Suspended Research Credit Allowed for Current Year**

Enter the suspended research credit allowed for the current year that is attributable to the suspension period for which this Form 1139 is being filed. See the instructions for line 57 of the 1999 Form 6765; line 58 of the 2000 Form 6765; or the equivalent line of the 2001 Form 6765. If the corporation's tax year includes more than one suspension period, the corporation **must** file a separate Form 1139 for each suspension period.

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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** ..... 26 hr., 33 min.

**Learning about the law or the form** ..... 3 hr., 37 min.

**Preparing the form** 8 hr., 52 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 **Where To File Form 1139** on page 1.