

CORONAVIRUS INFORMATION & UPDATES

July 9, 2020

UPDATED 7/9/20 -- How a Corporation Can Request a Federal Income Tax Refund

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), commonly referred to as Phase 3 of the federal government’s response to the coronavirus outbreak, was enacted on March 27, 2020. See Ropes & Gray Alerts on [CARES Act](#), and [certain key tax provisions of CARES Act](#). The CARES Act created opportunities for corporations to receive tax refunds that otherwise may not have been available, and the chart below describes certain procedures by which corporations can request such refunds (subject to the notes below).

NOTE: The IRS recommended on April 8 that taxpayers await further instruction from the IRS before utilizing traditional processes to claim refunds under the CARES Act. Additional information will be posted to irs.gov in the coming days.

Updated 4/13/20 -- The IRS announced temporary procedures to accept **FAX** transmissions of tentative refund claims (Form 1139), but at this time the IRS has not identified any other corporate forms. <https://www.irs.gov/newsroom/temporary-procedures-to-fax-certain-forms-1139-and-1045-due-to-covid-19>

Updated 4/21/20 -- The IRS issued guidance setting forth the methods to obtain refunds or credits for a taxpayer that placed “qualified improvement property” into service after Dec 31, 2017. (Rev. Proc. 2020-25)

Updated 4/30/20 – The IRS confirmed in a webinar that Notice 2020-26 applies to consolidated corporations in addition to stand-alone corporations.

Updated 6/18/20 – Clarifying Form 1139 due dates regarding groups of consolidated corporations.

Updated 7/9/20 – The IRS released temporary regulations providing flexibility for waiving carryback periods for consolidated NOLs.

<p>How can a corporation get a refund for the 2018 or 2019 tax year (i.e., paid more tax than was due)?</p>	<p>Not yet filed federal income tax return:</p> <ul style="list-style-type: none"> • Quick refund (Form 4466) <ul style="list-style-type: none"> ○ Generally, available to taxpayers who have overpaid estimated taxes in the current year by at least 10% of the expected liability, and at least \$500. ○ Generally, due after the end of the corporation’s tax year, and not later than the due date for filing the corporation’s tax return (not including extensions). ○ Notice 2020-23 extends the filing deadline to July 15, 2020 for a Form 4466 that would otherwise have to be filed on or after April 1, 2020, such as for calendar year 2019. ○ Must be filed before the corporation files its federal income tax return for the year.
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	<ul style="list-style-type: none"> ○ IRS will make a determination within 45 days from the date application is filed. <p>Already filed federal income tax return:</p> <ul style="list-style-type: none"> • Amended Return (Form 1120X) <ul style="list-style-type: none"> ○ Must be filed within three years after the date the corporation filed its original return, or within two years after the date the corporation paid the tax (if filing a claim for a refund), whichever is later. ○ Prior to the COVID-19 pandemic, it would typically take three to four months for the IRS to process Form 1120X. ○ The IRS has clarified in Rev. Proc. 2020-25 that an amended return is one of two available avenues for a taxpayer to retroactively obtain the benefit of immediate expensing of “qualified improvement property.” • Form 3115 (Change in accounting method) <ul style="list-style-type: none"> ○ Generally, under Rev. Proc. 2020-25, a taxpayer that placed “qualified improvement property” (QIP) into service during prior years may file for an accounting method change to obtain the benefit of a corresponding section 481(a) adjustment during the current taxable year, rather than in the applicable prior year(s). ○ A corporation may use this approach to capture the prior-year benefit of treating the QIP as 15-year depreciable property that qualifies for 100% bonus depreciation rather than 39-year property. ○ Under Rev. Proc. 2020-25, Form 3115 would be automatically accepted by the IRS. ○ During a webcast on 4/27/20, the IRS said taxpayers who already filed 2019 tax returns could amend the 2019 return with an accounting method change, rather than wait for a 2020 tax return or amend two tax returns. This option would have to be executed within six months of the 2019 return filing.
<p>How does a calendar-year corporation carry back NOLs under the CARES Act?</p>	<ul style="list-style-type: none"> • First, file a corporate tax return (Form 1120) for the year from which NOLs are to be carried back. • Second, file one of the following: <ul style="list-style-type: none"> ○ Tentative Refund (Form 1139) <ul style="list-style-type: none"> ▪ Notice 2020-26 granted an additional 6 months to file Form 1139 making the new deadline no later than 18 months after the close of the taxable year in which an NOL arose for years beginning during

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the 2018 calendar year and ending on or before June 30, 2019. The IRS has confirmed that the Notice 2020-26 time extension also applies to consolidated corporations. For years ending after June 30, 2019, the form is due 12 months after the close of the year.

- When a corporation joins a group of consolidated corporations, the 12 month (or 18 month as applicable) deadline to file begins at the end of the full tax year of the acquiring group of consolidated corporations (not from the end of the short year triggered by joining the group).
- New regulations make it easier for a consolidated group of corporations that acquire a corporation from another consolidated group to waive carrying back NOLs to years of the acquired corporation prior to the acquisition. Whereas a split-waiver election of this type previously had to be filed with the return for the year the corporation joined the consolidated group, the election can now be filed with the return for the year in which the NOL arises. See Section 1.1502-21T as revised.
- IRS is required, to the extent practicable, to make a limited examination of the refund claim within 90 days of filing the application, but IRS has expressed doubt about whether 90 days will be practicable under current circumstances.
- IRS retains the right to subsequently conduct a full audit, which means the taxpayer could have to return the refund.
- IRS announced that it will accept **FAXED** applications of Form 1139 beginning on 4/17/20.
 - Amended Return (Form 1120X) (described above).
- Special rules apply to certain non-calendar year taxpayers and taxpayers with foreign subsidiaries that have income inclusions resulting from the Section 965 toll charge imposed by the 2017 TCJA. These rules are not discussed here.

What if a corporation desires not to carry back NOLs?

- Taxpayers can elect not to carry back NOLs.
 - Rev. Proc. 2020-24 describes the irrevocable election made by attaching a separate statement for each year being waived (2018, 2019, or both) to the taxpayer's federal income tax return for the first taxable year ending after 3/27/2020.

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- The statement must say that the taxpayer is electing to apply Section 172(b)(3) under Rev. Proc. 2020-24 and the taxable year for which the statement applies.
- A separate decision on whether to waive the carryback can be made for each year in which NOLs arise.