



Instructions for Form 1139

(Rev. June 2002)

Corporation Application for Tentative Refund

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

Changes To Note

- The Job Creation and Worker Assistance Act of 2002 changed the carryback period from 2 years to 5 years for most net operating losses (NOLs) arising in tax years ending in 2001 or 2002. However, corporations may elect to waive the 5-year carryback period and use the applicable carryback period under prior law. See **NOLs arising in a tax year ending in 2001 or 2002** on page 3 for details.
- The time for filing Form 1139 for the separate return year of a qualified new member of a consolidated group may be extended. See **Exception for qualified new members of a consolidated group** below.
- The line for claiming a suspended research credit has been removed from this revision of Form 1139. Corporations claiming a suspended research credit should use the September 2000 revision of Form 1139 (and its instructions) or **Form 1120X**, Corporation Amended Income Tax Return (or other amended return).

General Instructions

Purpose of Form

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

- The carryback of a net operating loss, net capital loss, or unused general business credit (GBC) or
- An overpayment of tax due to a claim of right adjustment under section 1341(b)(1).

Waiving the NOL 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 tax 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 (except as described below).

Revoking an election to waive the carryback period. If the corporation previously made an election under section 172(b)(3) to waive the carryback period for an NOL arising in a tax year ending in 2001 or 2002 and now wants to use the new 5-year carryback period, it may revoke the election by filing Form 1139 or Form 1120X (or other amended return). The Form 1139 or amended return must be filed by October 31, 2002. Enter "Revocation of NOL carryback waiver pursuant to Rev. Proc. 2002-40" across the top of the Form 1139 or amended return. If the corporation files an amended return using Form 1120X (or other amended return), see **Filing Form 1120X or Other Amended Return** on page 2.

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. For an exception that applies to carrybacks of NOLs arising in a tax year ending in 2001 or 2002, see the instructions for line 1a on page 2.



*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.

Exception for 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 beginning after 2000 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, the qualified new member must answer "Yes" on line 5a and enter the tax year ending date, name, and EIN of its new common parent on line 5b. See Regulations section 1.1502-78(e)(2) for more information. 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 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.
- All other forms and schedules from which a carryback results (e.g., Schedule D (Form 1120), Form 3800, etc.).

Also attach to Form 1139:

- All carryback year forms and schedules for which items were refigured.
- **Form 8302**, Direct Deposit of Tax Refund of \$1 Million or More. A direct

deposit 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 may 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

Corporations may file 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 the NOL, net capital loss, or unused credit arose (or, if later, the date the return for that year was filed).

The corporations **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 or
- A prior year general business credit released because of the release of the foreign tax credit.

For details, see Rev. Rul. 82-154, 1982-2 C.B. 394.

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 we do not process it within 6 months from the date you file it, the corporation may file suit in court. If we disallow 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 we disallow it.

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—Net Operating Loss

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).

Use the following rules to determine the applicable carryback period for an NOL (or portion thereof). NOLs are first applied to the earliest

year in the carryback period. Any unused amount is carried to the next preceding tax year in the carryback period (see section 172(b)(2) for details). Any amount not used during the carryback period is carried forward up to 20 years. For details, see section 172.

Specified liability losses. To the extent an NOL is a specified liability loss, the carryback period for that part of the NOL is 10 years. The carryback period for any part of the NOL that is not a specified liability loss is figured using the rules below. However, the corporation may make an irrevocable election to treat a specified liability loss as if it were not a specified liability loss. 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 treat any specified liability losses under section 172(b)(1)(C) as if they were not specified liability losses. If the corporation timely filed its tax return without making the election, it may make the election on an amended return filed within 6 months of the due date of the return (excluding extensions). Write "Filed pursuant to section 301.9100-2" on the election statement and file the amended return at the same address used for the original return.

Generally, 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 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).

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

NOLs arising in a tax year ending in 2001 or 2002. The carryback period is generally 5 years (except for any specified liability losses).

However, the corporation may make an irrevocable election to waive the 5-year carryback period and determine the carryback period using the rules below under **NOLs arising in a tax year ending before 2001 or after 2002.** The corporation may make this election by attaching to its timely filed tax return a statement that it is electing to disregard the 5-year carryback period for certain NOLs. If the corporation timely filed its return without making the election, it may 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. File the amended return at the same address the corporation used for the corporation's original return.

Deemed election. If the corporation previously filed Form 1139 or an amended return by the due date (including extensions) of the loss year using a 2-year or 3-year carryback period, and it wants to continue to use the same carryback period, no action is required. The corporation will be deemed to have made the election to waive the 5-year carryback period.

Changing the carryback period. If the corporation previously filed Form 1139 or an amended return for an NOL and now wants to use the new 5-year carryback period, it must file an amended Form 1139 or Form 1120X (or other amended return). The amended Form 1139 or amended return must be filed by October 31, 2002. Enter "Amended refund claim pursuant to Rev. Proc. 2002-40" across the top of the amended Form 1139 or amended return. If the corporation files an amended return using Form 1120X (or other amended return), see **Form 1120X or Other Amended Return** on page 2.

NOLs arising in a tax year ending before 2001 or after 2002. The carryback period is generally 2 years (except for any specified liability losses). However, the carryback period is 5 years to the extent the NOL is a farming loss, and 3 years to the extent the NOL is an eligible loss (see below). These rules also apply to tax years ending in 2001 or 2002 if the corporation makes (or is deemed

to make) the election to waive the 5-year carryback period (see above).

Farming loss. To the extent the NOL is a farming loss, the carryback period is 5 years. However, the corporation may make an irrevocable election to treat farming losses as if they were not farming losses. 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 treat any farming losses under section 172(i) as if they were not farming losses. If the corporation timely filed its tax return without making the election, it may make the election on an amended return filed within 6 months of the due date of the return (excluding extensions). Write "Filed pursuant to section 301.9100-2" on the election statement and file the amended return at the same address used for the original return.

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 (as defined in section 263A(e)(4)) were taken into account or
- The NOL for the tax year reduced (but not below zero) by any specified liability losses.

Eligible loss. To the extent the NOL is an eligible loss, the carryback period is 3 years, but only if the corporation meets the gross receipts test of section 448(c) or is engaged in farming (as defined in section 263A(e)(4)) for the loss year. Farming losses are **not** eligible losses. An eligible loss is the **smaller** of:

- Any loss attributable to a Presidentially declared disaster or
- The NOL for the tax year, reduced (but not below zero) by any specified liability losses and farming losses.

Line 1b—Net Capital Loss

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—Unused General Business Credit

If a tentative refund is claimed based on a carryback of a 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), a GBC may be carried back 1 year (3 years if the GBC arose in a tax year beginning before 1998). Refigure the credit for the carryback year on **Form 3800**, General Business Credit, **Form 8844**, Empowerment Zone and Renewal Community Employment Credit, or **Form 8884**, New York Liberty Zone Business Employee Credit, 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 **Filing Form 1120X** above.

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).

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 **Exception for qualified new members of a consolidated group** on page 1), 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. If the IRS has not acted on an amended return use the amounts from it and attach a copy of it with "Attachment to Form 1139" written 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 loss year is the 2001 calendar year and the loss is carried back 5 years. Enter “5th” and “12/31/96” in the spaces provided above columns (a) and (b). After making the entries, it reads “5th preceding tax year ended 12/31/96.”

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 2001, if Form 1120, Schedule J, line 3, was increased by deferred tax under section 129, 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 may 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 the instructions for line 1a on page 2 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 (see section 172(b)(2) for details). Any amount not used during the carryback period is carried forward up to 20 years. For details, see section 172.

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 GBCs. Attach all Forms 3800, 8844, and 8884 used to redetermine the GBC.

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 may be carried back 1 year (3 years if the GBC arose in a tax year beginning before 1998). See section 39 and the Instructions for Form 3800 (or Form 8844 or 8884) for more details on GBC carrybacks.

Line 20—Other Credits

See the corporation’s tax return for the carryback year for any additional credits such as the nonconventional source fuel credit, the possessions tax credit, etc., 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 this line, 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., 1 min.
Learning about the law or the form	3 hr., 43 min.
Preparing the form	8 hr., 59 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** on page 1.