

IRS FAQs address NOL carrybacks to AMT tax years

May 29, 2020

In brief

The IRS on May 27 posted to its Coronavirus Tax Relief and Economic Impact Payments website [frequently asked questions](#) (FAQs) providing guidance for C corporations planning to file Form 1120X, *Amended U.S. Corporation Income Tax Return*, or Form 1139, *Corporation Application for Tentative Refund*, **on or after June 1, 2020**, to carry back net operating losses (NOLs) to years in which the alternative minimum tax (AMT) applies.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act provides for a carryback of any NOL arising in a tax year beginning after December 31, 2017, and before January 1, 2021, to each of the five tax years preceding the tax year in which the loss arises.

Analyzing this provision of the CARES Act has been a source of confusion for taxpayers since the AMT no longer is imposed on C corporations in tax years beginning after December 31, 2017 (post-2017 years), but does apply to such taxpayers in tax years beginning before January 1, 2018 (pre-2018 years).

Taxpayers that file Forms 1120X or Form 1139 **before June 1** to carry back NOLs to years in which the AMT applies do not need to take action to comply with the guidance in the FAQs. However, taxpayers that file such Forms 1120X or 1139 **on or after June 1** should follow the guidance set forth in the FAQs or risk the possibility that the processing of their refund claims may be delayed.

In detail

Amount of ATNOL arising in post-2017 year should be zero

FAQ 1 addresses a situation where a C corporation with an NOL arising in a post-2017 year is carrying back all or a portion of that NOL to a pre-2018 year. The guidance provides that, for purposes of determining the C corporation's alternative minimum taxable income (AMTI) in the pre-2018 year, the amount of alternative tax net operating loss (ATNOL) arising in the post-2017 year should be zero. Thus, taxpayers filing Form 1120X or Form 1139 on or after June 1, 2020, should treat the ATNOL amount arising in a post-2017 year as zero or risk the possibility that the processing of its refund may be delayed.

Observation: The 2017 tax reform legislation repealed the imposition of AMT for C corporations for post-2017 years by amending Section 55(a), but left other AMT provisions intact. Therefore, Section 55(b)(2),

defining AMTI, and Section 56(d), providing the rules for computing ATNOLs, appear to continue to apply to C corporations in post-2017 years. If so, then FAQ 1 arguably may be deemed to be in conflict with the statute. Regardless, taxpayers seeking a proper and quick refund are encouraged to follow the FAQ and not compute an ATNOL for any Form 1120X or Form 1139 filed on or after June 1, 2020.

Observation: For most taxpayers, the effect of this guidance not permitting an ATNOL will be the creation of minimum tax credits (MTCs) that will be refunded in 2018 and 2019. However, in some circumstances, taxpayers could be adversely affected. For example, taxpayers could permanently lose their MTCs. In other instances, this rule may no longer allow for the usage of general business credits (GBCs) that otherwise would have been available in the carryback year(s) if an ATNOL were computed. This could result in the GBCs not being utilized until years later, if at all. The results of such potential adverse consequences would appear to be contrary to the policy intent of quickly monetizing tax attributes such as NOLs and unused credits.

No action required for Form 1120X or Form 1139 filed before June 1

FAQ 2 provides that a C corporation that filed Form 1120X or Form 1139 before June 1, 2020, carrying back an NOL from a post-2017 year to pre-2018 years, but that did not treat the ATNOL for the post-2017 year as zero, does not need to take any action, or refile Form 1120X or Form 1139, unless contacted by the IRS.

Observation: If a C corporation carried back an NOL from a post-2017 year to pre-2018 years and computed an ATNOL on its Form 1120X or Form 1139 filed before June 1, 2020, then it is unclear whether the IRS will respect the computation of the ATNOL for the post-2017 year or whether the IRS will automatically adjust the Form 1120X or Form 1139 to treat the ATNOL for the post-2017 year as zero.

Claiming MTC refunds on Form 1139

FAQ 3 and FAQ 4 address situations where, as a result of an NOL carryback, a C corporation either has an AMT liability in a pre-2018 carryback year or has released MTCs under Section 53 in a pre-2018 carryback year because it no longer has enough regular tax liability to use them.

In FAQ 3, the C corporation is not able to use the MTC generated or released by the NOL carryback in any tax year prior to 2018. The C corporation made an election under Section 53(e)(5) to recover 100% of its MTCs as refundable credits in its first tax year beginning in 2018. The guidance provides that the C corporation may claim both the NOL carryback and MTC refund for 2018 on the same Form 1139, following the instructions in questions 11 and 12 of the [temporary procedures](#) for faxing certain Forms 1139 and 1045 to the IRS.

In FAQ 4, the C corporation is able to use the MTC generated or released by the NOL carryback in a subsequent year that is part of the five-year carryback period preceding the year in which the NOL arose (the carryback period). The guidance provides that, if the MTC generated or released by the NOL carryback in one year in the carryback period is used in a subsequent year in the carryback period to reduce the C corporation's tax liability (as opposed to resulting in a refundable MTC), the C corporation may claim a refund for any decrease in tax resulting from that use of the MTC on Form 1139, noting the change in the MTC in the appropriate column of line 21 for the year in which the MTC is used.

The IRS cautions that Form 1139 cannot be used to claim the refundable portion of the MTC (as opposed to a refund resulting from a reduction of the C corporation's tax liability due to the use of the MTC), except in the case of a Section 53(e)(5) election. A C corporation entitled to a refundable MTC for a year in the carryback period for any reason other than a Section 53(e)(5) election must separately file a Form 1120X to claim a refund of that portion of the MTC.

Election to claim refundable MTCs

FAQ 5 addresses a situation where a C corporation has refundable MTCs and wants to make a Section 53(e)(5) election to claim 100% of its refundable MTCs in its first tax year beginning in 2018. The guidance provides that a C corporation may make such an election by (1) filing either a Form 1120X or a Form 1139, (2) including "Electing to Take 100% Refundable Credit Amount in 2018 – per CARES Act Section 2305(b)" at the top of the form, and (3) following the instructions in questions 10, 11, and 12 of the [temporary procedures](#) for faxing certain Forms 1139 and 1045 to the IRS.

Due date for making Section 53(e)(5) election

FAQ 6 provides that a Section 53(e)(5) election on Form 1139 must be filed no later than December 30, 2020. If the Form 1139 includes both a claim for refundable MTC and an NOL carryback that arose in a tax year that began during 2018 and ended on or before June 30, 2019, the Form 1139 must be filed by the earlier of (1) the extended due date provided under Notice 2020-26 (which grants a six-month extension of time to file a Form 1139) or (2) December 30, 2020. An election on Form 1120X must be filed within the period described under Section 6511(a) that applies to the C corporation's first tax year beginning in 2018.

The takeaway

IRS guidance related to CARES Act policy and procedures continues to evolve and can have implications on NOL and AMT refund claims. Taxpayers that file Form 1120X or Form 1139 to carry back net NOLs to years in which the AMT applies **before June 1** do not need to take action to comply with the guidance in the new FAQs. However, taxpayers that file such Forms 1120X or 1139 **on or after June 1, 2020**, should follow the guidance set forth in the FAQs.

Let's talk

For a deeper discussion of how this guidance may affect you, please contact:

Tax Controversy and Regulatory Services

Kevin Brown
+1 703-795-9469
kevin.brown@pwc.com

Ruth Perez
+1 703-963-5641
ruth.perez@pwc.com

Beth Tucker
+1 469-660-8456
elizabeth.tucker@pwc.com

Federal Tax Services

Christine Turgeon
+1 973-202-6615
christine.turgeon@pwc.com

George Manousos
+1 202-302-0942
george.manousos@pwc.com

Jason Black
+1 954-895-8200
jason.m.black@pwc.com

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