

NOLs, Carryback Claims, and Amended Returns: Maximizing Benefits of the CARES Act

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NET OPERATING LOSS MODIFICATIONS



NOL Modifications: New 5-year NOL Carryback Regime

- The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) amended section 172(b)(1) to provide for a new 5-year net operating loss carryback regime.
 - Allows **5-year NOL carrybacks** from tax years 2018, 2019 and 2020.
- NOLs generated in taxable years beginning after December 31, 2017, and before January 1, 2021, may be carried back to each of the five taxable years preceding the taxable year in which the loss arises.
 - A calendar year 2018 NOL may be carried back to 2013-2017.
 - Short periods from M&A activity are treated as a full carryback year: carryback may not span 5 calendar years.
- Claiming a Refund:
 - Application for Tentative Refund on Form 1139 (corporations) or Form 1045 (noncorporations).
 - Notice 2020-26 provides a 6-month extension to file the application for NOLs arising in tax years beginning in calendar year 2018 and ending on or before June 30, 2019
 - Amended Prior-Year Tax Return to claim refund

Net Operating Losses - Pre/Post-TCJA, CARES

Year NOL Generated	Carryback Period	Carryforward Period	Taxable Income Limitation
Beginning on December 31, 2017, or earlier	2 taxable years	20 taxable years	No limitation
Beginning after December 31, 2017, and before January 1, 2021	5 taxable years	Indefinitely	No limitation prior to taxable years beginning in 2021, 80% of taxable income after
Beginning after December 31, 2020	No carryback	Indefinitely	80% of taxable income



NOL Modifications: Waiver of 5-year Carryback

- Taxpayers may elect under section 172(b)(3) to waive the carryback period for NOLs arising in the 2017 - 2021 tax years.
- Taxpayers must either carryback the entire NOL or elect to waive the entire 5-year carryback period for each year.
 - There is no option to carryback an NOL only to specific years.
 - Taxpayers may choose to waive the carryback period for 2018 but not for 2019 (or vice versa).
 - A special election under section 172(b)(1)(D)(v)(I) allows taxpayers to exclude a section 965 (transition tax) inclusion year without waiving the entire five-year carryback period.
- The deadline to waive the carryback period for tax years 2018 and 2019 NOLs is the due date (including extensions) of the tax return for the first taxable year ending after March 27, 2020.



5-year Carryback Considerations - Statute of Limitations

- Taxpayers are permitted to carry back an NOL to a taxable year closed by the statute of limitations (“SOL”) for credits or refunds
- The SOL is extended to any time before the expiration of the assessment period for the taxable year in which the NOL arose (generally three years from the extended due date of the return)
- Taxpayers generally are not exposed to liability for unrelated issues in the carryback year beyond the risk that the refund claimed will be offset by such issues.



5-year Carryback Considerations - Tax Rate Arbitrage

- Corporations: NOL carryback from a 21% federal rate back to a 35% federal rate year (pre-2018)
- Individuals: NOL carryback from a 37% federal rate back to a 39.6% federal rate year (pre-2018)
- Future Rates ???



5-year Carryback Considerations - Other Tax Provisions

- The interplay between the NOL and other tax provisions should be considered.
- A carryback can reduce other tax attributes: e.g., some tax attributes are calculated based upon (post-NOL deduction) taxable income.
- Provisions To Consider:
 - (former) Section 199 domestic production deduction (DPAD)
 - Section 250 deduction for FDII and GILTI
 - Foreign Tax Credits
 - Section 965 Inclusion Years
 - BEAT
 - Cancellation of Debt income



5-year Carryback Considerations - Section 965

- Section 965: One-Time mandatory repatriation tax on untaxed earnings of certain foreign corporations, generally effective for the 2017 tax year.
- Carryback cannot offset 965 income; Carryback to taxable year with 965 inclusion results in deemed section 965(n) election.
 - Revenue Procedure 2020-24: The deemed 965(n) election only applies for purposes of carrying back an NOL.



5-year Carryback Considerations - Section 965

- Taxpayers could elect, under section 965(h) of the Code, to pay the transition tax in installments over an eight-year period.
- Where a Taxpayer has elected to pay in installments, any refund will first be credited against the unpaid 965(h) liability.
- Carryback to section 965 inclusion year will not result in a refund unless the full section 965 tax liability is paid (including future installments)



5-year Carryback Considerations - Section 965

- Section 172(b)(1)(D)(v): Taxpayers can make a special election to waive the carryback only with respect to section 965 years.
 - IRS FAQ: If there are multiple section 965 inclusion years, the election applies to all such years.
- IRS FAQ: Carrybacks to pre-section 965 years can change tax attributes, necessitating the filing of an amended return for the section 965 inclusion year.
- The deadline to make the election for tax years 2018 and 2019 NOLs is the due date (including extensions) of the tax return for the first taxable year ending after March 27, 2020.
- Rev. Proc. 2020-24: The election is made by attaching an election statement to the earliest filed of:
 - 1. The federal income tax return for the tax year in which the NOL arises
 - 2. A claim for tentative carryback adjustment applying the NOL to a taxable year in the carryback period; or
 - 3. The amended federal income tax return applying the NOL to the earliest taxable year in the carryback period.

Consolidated NOLs



Consolidated NOLs and Split Waivers

- IRS issued proposed regulations (REG-125716-18) providing guidance on the implementation of statutory amendments to § 172 under both the TCJA and the CARES Act as they pertain to the absorption of consolidated net operating loss (“CNOL”) carryovers and carrybacks.
- In addition, the IRS has also released accompanying temporary regulations (T.D. 9900) allowing consolidated groups that acquire new members that were members of another consolidated group to elect to waive all or part of the pre-acquisition portion of an extended carryback period under section 172 for some loss attributable to the acquired members.

Background on Split Waivers

- A split-waiver election can be made pursuant to Treas. Reg. § 1.1502-21(b)(3)(ii)(B) to waive a portion of the CNOL carryback period associated with a consolidated return group member that was previously a member of another group within the carryback period.
- The election is irrevocable and has to be made with the consolidated return reflecting the acquisition of the target or target group members.
- Prior to the release of the temporary regulations, the only alternative mechanism to elect to forgo a carryback of a CNOL was the annual election to forgo the entire group's carryback pursuant to Treas. Reg. section 1.1502-21(b)(3)(i). Therefore, if the group failed to make a split-waiver election in the year of a stock acquisition, the group would be required to carry back the target's allocable portion of any CNOL to pre-acquisition periods unless the entire group elected to forgo its entire carryback.
- This could result in a portion of the tax benefit from the CNOL carryback of an acquiring group going to the consolidated group from which the target was acquired if the acquiring group was not willing to forgo its entire carryback.



Temporary Regs on Split Waivers

- The temporary regulations implement two alternative split-waiver elections aimed at providing additional flexibility: the amended statute split-waiver election, and the extended split-waiver election.
- Importantly, these elections are available even where the election under Treas. Reg. section 1.1502-21(b)(3)(ii)(B) was not timely made for the taxable year of acquisition.
- Using the amended statute split-waiver election, an acquiring consolidated group can make an election with respect to a CNOL for the consolidated return year in which an acquired member was included and to which amended carryback rules apply. By making the election, the acquiring group relinquishes the carryback of the acquired member's allocable portion of the CNOL to periods in which it was a member of another group. The election is made annually, and eliminates the carryback for the extended five-year carryback period, as well as the default carryback period under section 172.

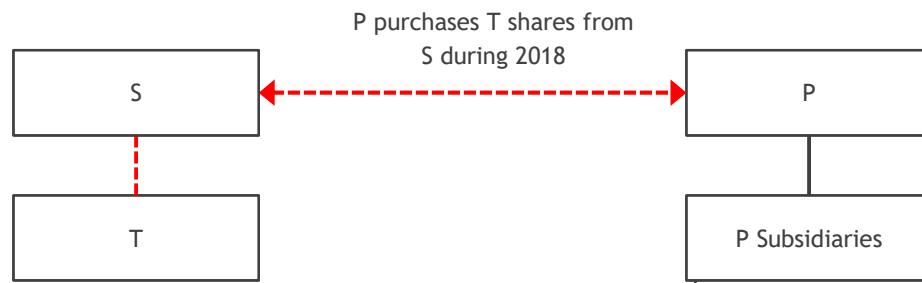


Amended Statute Split-Waiver

- Using the amended statute split-waiver election, an acquiring consolidated group can make an election with respect to a CNOL for the consolidated return year in which an acquired member was included and to which amended carryback rules apply.
- By making the election, the acquiring group relinquishes the carryback of the acquired member's allocable portion of the CNOL to periods in which it was a member of another group. The election is made annually, and eliminates the carryback for the extended five-year carryback period, as well as the default carryback period under § 172.

Example Amended Statute Split-Waiver

- *P Group acquired the stock of T from S during 2018. Prior to the acquisition, T was included in the S Group consolidated return, and following the P Group incurred CNOLs which were allocable in part to T.*
 - Amended statute split-waiver election would allow the P Group to waive any carryback of that portion of the CNOL to periods in which T was not a member of the P Group.
 - The P Group has the opportunity to make this election annually even though under preexisting regulations P would have had to make the election on the return reflecting the acquisition of T.





Extended Split-Waiver

- Largely the same as the amended statute waiver except that it only applies to forgo a carryback to the extended carryback period, meaning the default carryback period still applies.
- For NOLs generated during 2019 and 2020, this election may seem irrelevant as the default carryback period is now zero following the TCJA.
- However, as section 172 retained two-year carrybacks for certain farming and nonlife insurance companies, the extended split waiver election would waive the extended five-year carryback but not the default two-year carryback for eligible target entities.

Effectiveness and Stand-Alone Application

- The temporary regulations apply to CNOLs generated in taxable years ending after July 2, 2020, but may be applied retroactively to CNOLs generated for taxable years beginning after December 31, 2017.
- The regulations expire on July 3, 2023. Taxpayers have until November 30, 2020, to make the alternative split-waiver elections on an amended return.
- The temporary regulations only address CNOLs. No similar election is available if a corporation is currently filing a standalone return and that corporation was formerly a member of a consolidated group.
- *Suppose Partnership A acquires the stock of T from consolidated group S on January 1, 2018, and T files a standalone C corporation return with positive taxable income in 2018. In 2019 T generates an NOL.*
 - T must either carryback the NOL the full 5 years allowed under the CARES act, which would potentially result in part or all the carryback being absorbed by the S group or must elect to forgo the carryback entirely. No opportunity exists to carry back the 2019 loss only to 2018 since T is a standalone company.

Temporary Repeal of 80% Limitation



TEMPORARY REPEAL OF 80% LIMITATION

- Under TCJA, section 172(a) deduction for NOLs arising in taxable years beginning after December 31, 2017 limited to 80% of taxable income.
 - Pre-TCJA NOLs are still fully deductible.
- Under the CARES Act, The 80% limitation has been temporary repealed for tax years beginning before January 1, 2021.
 - NOLs generated 2018 through 2020 are subject to the limitation, but the limitation only comes into effect in 2021.
- Retroactive Effect: Refunds may be available for 2019 if a return has already been filed.



80% LIMITATION - Technical Corrections / Clarifications

- 80 percent application *after* the reduction for pre-2018 NOLs - clarifies ambiguity in TCJA text.
- Under section 172(a), taxable income is calculated *before* giving effect to deductions for section 199A qualified business income (QBI) or to section 250 deductions for FDII and GILTI.

Fiscal Year 2018 Technical Correction



NOL Changes - Fiscal Year 2018 Technical Correction

- The CARES Act allows 2-year carryback claims for fiscal year 2018 returns.
 - Applies to tax returns beginning before January 1, 2018 and ending after December 31, 2017.
 - This is a technical correction of a TCJA drafting error that unintentionally eliminated the 2-year carryback period for fiscal year 2018 returns.
 - NOLs are also subject to 20-year carryforward period.
- Refunds for fiscal year 2018 carryback claims may be made on amended tax returns.
 - Deadline to claim refunds via expedited procedures in an application for tentative refund was July 27, 2020.
 - Deadline to waive carryback period was July 27, 2020.

Qualified Improvement Property



Qualified Improvement Property (“QIP”)

- The CARES Act had a substantial impact on the treatment of qualified improvement property (“QIP”).
- QIP provisions in the CARES Act can reduce taxes, increase liquidity, and generate NOL carrybacks to tax years with higher tax rates.
- In addition, the “retail glitch” correction has been made to amend the snafu created by the TCJA.



Retail Glitch

- Due to a drafting error in the TCJA, QIP placed in service after Dec. 31, 2017, was not eligible for bonus depreciation – this was known as the “retail glitch.”
- Congress intended for QIP to be bonus-eligible; however, the TCJA did not specifically include a 15-year recovery period for QIP. Therefore, after the tax reform dust settled, QIP was nonresidential real property with a recovery period of 39 years, not eligible for bonus.
- CARES Act amended the retail glitch to define QIP as 15-year property. The Act also updated the alternative depreciation system (ADS) recovery period for QIP to 20 years.
- These changes are retroactive to 2018 – i.e., to the passage of TCJA.
- Procedure for Changing Depreciation of QIP - Rev. Proc. 2020-25:
 - Explains how to change depreciation of QIP currently being depreciated as 39-year property
 - Allows late election out of bonus depreciation for tax year ending in 2018, 2019, or 2020



What is QIP?

- Qualified improvement property is defined as any improvement to an interior portion of a building which is nonresidential real property if such improvement is placed in service after the date the building was first placed in service.
- Qualified improvement property specifically excludes expenditures attributable to the enlargement of the building, any elevator or escalator, or the internal structural framework of the building.
- Taxpayer must make the improvement following the CARES Act. Pre-CARES, a portion of a purchased building could be written off as QIP. Now the taxpayer must be



Bonus on Qualified Property

- Must be the one of the following types of property
 - MACRS property with recovery period of 20 years or less
 - Depreciable computer software
 - Water utility property
 - Qualified film production, qualified television production, or qualified live theatrical production
- Must not be excluded property (e.g., property owned and used in a regulated utility business, property used mainly outside the U.S., property required to be depreciated under ADS, etc.)
- Meet “original use” test or used property acquisition requirements
- Be placed-in-service by taxpayer before January 1, 2027 (January 1, 2028 for longer production period property and certain aircraft)



Bonus Depreciation

- QIP placed in service in 2018 and later generally qualifies for 100% bonus depreciation
- QIP acquired after September 27, 2017 and placed-in-service in 2017 qualifies for 100% bonus depreciation
- QIP acquired before September 28, 2017 does not qualify for the 100% rate even if it is placed in service after 2017, but
 - 50% bonus depreciation rate if placed in service in 2017, or
 - 40% bonus depreciation rate if placed in service in 2018, or
 - 30% bonus depreciation rate if placed in service in 2019



QIP Opportunities

- Amending 2018 return (or changing accounting method) to claim bonus depreciation for QIP placed in service in 2018 can be used to generate 2018 NOL
- An NOL that arose in 2018 can be carried back 5 tax years under CARES Act potentially generating huge refunds
- Amend 2018 return (or change accounting method) to claim bonus depreciation for QIP placed in service in 2018
- Lower 2018 taxable income to below zero
- Generate 2018 NOL
- Carry 2018 NOL back to tax years when corporate tax rate was 35%



Rev. Proc. 2020-23

- Allows eligible partnerships the option to file an amended return to make adjustments with respect to their returns, instead of filing an administrative adjustment request (AAR).
- Eligible partnerships can file amended Forms 1065 for tax years that begin in 2018 or 2019 but must do so before Sept. 30, 2020.

§ 163(j)



Pre- and Post- TCJA Section 163(j)

- The TCJA replaced the pre-2018 version of Section 163(j) with a new version
- The new Section 163(j) is significantly broader in its application, as it applies to all business related debts and all taxpayers regardless of the taxpayer's choice of entity (C corporation, partnership, S corporation, single-member LLC or sole proprietorship)
- The new Section 163(j) limit is calculated as the sum of a taxpayer's:
 - Business interest income
 - 30 percent of adjusted taxable income (ATI)
 - Floor plan financing interest
- ATI starts with taxable income but it excludes items not related to a trade or business, business interest income, any NOL or Section 199A deduction for non-corporate taxpayers, and deductions for depreciation, amortization and depletion through 2021



Section 163(j), CARES Act

- With the exception of partnerships, and solely for taxable years beginning in 2019 and 2020, taxpayers may deduct business interest expense up to 50% of ATI, an increase from 30% of ATI under the TCJA.
- Taxpayers may elect out the increased Section 163(j) limit, but the election may be revocable only with the consent of the Secretary.
- For any taxable year beginning in 2020, the taxpayer may elect to substitute the ATI for the last taxable year beginning in 2019 for the 2020 ATI. In the case of a partnership, the election shall be made by the partnership.
- If 2019 is a short taxable year, the taxpayer is allowed to annualize its 2019 ATI based on the number of months (as opposed to the number of days) of the short taxable year.



Section 163(j) Carryforwards

- Current year business interest expense must be deducted before any disallowed amount from prior years.
- To the extent allowable, carryforwards are deducted from oldest to newest.
- Disqualified interest under old § 163(j) is treated as a carryforward from the year in which it arose.
- Disallowance does not affect whether or when interest expense reduces earnings and profits.
- Additional limitations on the deductibility of the carryforward may apply where an acquiring corporation succeeds to the tax attributes of a transferor corporation, or where a loss corporation experiences a change in ownership (i.e., §§ 381 and 382).



Section 163(j) Regulations

- On November 26, 2018, Treasury and the IRS proposed regulations (REG-106089-18) addressing the §163(j) business interest expense limit as amended by the TCJA.
- On July 28, 2020, the IRS released final regulations (T.D. 9905), finalizing with modifications the 2018 proposed regulations, as well as new proposed regulations (REG-107911-18) and a safe harbor allowing a qualified residential living facility to be treated as an electing real property trade or business.

Section 163(j) Regulations - “Interest”

- Broad definition of “interest” for purposes of the business interest deduction limit caused consternation. Proposed definition included, for example:
 - Debt issuance costs, loan commitment fees, etc.
 - Interest associated with arrangements that create indebtedness in substance but not in form
 - Significant nonperiodic payments on swaps
 - Any other amounts predominantly associated with the time value of money (anti-avoidance rule)
- Final regulations significantly narrow the definition of interest:
 - Exceptions for swaps
 - Excludes commitment fees, debt issuance costs, and guaranteed payments for the use of capital, with certain caveats
 - Anti-avoidance rule much more limited in application



Section 163(j) Regulations - Manufacturing

- Proposed regulations were rough on manufacturers because depreciation and amortization swept into UNICAP/inventory calculation could not be included.
- Final regulations add back deductions for depreciation, amortization, and depletion - including amounts capitalized into inventory under UNICAP - when calculating ATI for that tax year, regardless of the period in which the capitalized amount is recovered through cost of goods sold.
- Final regulations give taxpayers (and their related parties) that have already committed to follow the 2018 proposed regulations in their entirety the option to calculate ATI using the final rule, rather than the proposed regulation.
- Manufacturers and other taxpayers subject to UNICAP won't face a potential reduction in their business interest deduction limit simply because they capitalize large amounts of depreciation to their inventory.



Section 163(j) Regulations - Additional Items

- Final regulations clarify that tentative taxable income is computed without regard to the § 163(j) limitation and
- Disallowed business interest expense carryforwards are not added to tentative taxable income in computing ATI.

Corporate AMT Credit Carryforward



Corporate AMT Credit Changes

The CARES Act accelerates the allowance of corporate alternative minimum tax (“AMT”) credit carryforwards from pre-TCJA tax years under section 53.

- The TCJA eliminated the corporate AMT, but provided that existing corporate AMT credit carryforwards can offset regular income tax liability during 2018 through 2021.

The AMT credit carryforward is now fully refundable in 2019.

- Full utilization of AMT credit carryforward accelerated from tax year 2021 to tax year 2019.

Corporations may elect, under section 53(e)(5), to recover 100% of the refundable credits in 2018.

- Expedited refunds on account of this election may be made on Form 1139 filed prior to December 31, 2020.

IRS FAQ: Post-2017 NOL Carrybacks do not carry any AMT NOL.

- However, any AMT liability resulting from a carryback releases a refundable AMT credit carryforward.

Temporary Repeal of Section 461(l)



Temporary Repeal of 461(l) Excess Business Loss Limitation

TCJA created Section 461(l), limiting "excess business losses."

- Under the TCJA, Individuals and trusts with flow-through business losses could only offset non-business income (e.g., wages and investment income) with business losses up to the threshold (\$500,000 for MFJ / \$250,000 for others).

CARES Act temporary repeals Section 461(l) for 2018, 2019, and 2020.

- Taxpayers that filed returns in 2018 or 2019 reflecting the limitation should strongly consider amending returns to claim a refund.

The repeal of Section 461(l) is not elective.



461(l) Excess Business Loss Limitation - Technical Corrections

CARES Act makes certain technical corrections to section 461(l) that apply upon its reintroduction in 2021:

- W-2 income will not be considered trade or business income for purposes of the excess loss limitation.
- Excess business losses are computed without regard to net operating loss deductions under section 172 and QBI under Section 199A.
- Losses from the sale of capital assets are excluded from the calculation.

Procedure and Administration

Options for Obtaining a Refund - 2019 Returns

- Original return yet to be filed: For 2019 tax returns which are still within the extended due date period, file the return as planned unless decision is to forgo the carryback period, in which case:
 - Stand-alone C corporation check box 11, Schedule K of Form 1120;
 - Consolidated C corporations make the election at the parent-level by checking the box and attaching a statement; and
 - Non-corporate taxpayers make election by filing a statement with the return.
- Original return already filed: For 2019 tax returns which have been filed but are still within the extended due date period, file a superseding return with election to forgo. If desire is to carry back and no original statement and/or election with filing, do nothing.



Forms 1139 and 1045 - “Quick” Refund

- Generally the faster option for obtaining a refund.
- Form must be filed within 12 months of the last day of the taxable year in which the NOL arises.
- Service must review request and issue tentative refund within 90 days.
- Not a final action of the Service - claims can still be audited, and claims in excess of \$5 million subject to Joint Committee review.
- Must be paper filed.



Forms 1120X, 1040X, Amended 1041

- Alternative where quick refund is unavailable.
- Takes longer to process but considered a final action by the Service.
- Must be filed by the later of three years of the due date for the year in which the NOL arose or the date the return for that year was filed.



CARES Act Quick Refunds

- Primary issue with carrybacks has been that the 12-month quick refund period for 2018 returns had expired by the time the CARES Act came into effect.
- Initially the Service stated there was some intent to extend the period without much guidance on how that would occur. Big issue with the process was Form 1139s have to be paper processed, and at the time most wanted to file them there was limited staff at the IRS processing centers.



Notice 2020-26

- 6-month extension of time to file Form 1045 and Form 1139 for taxpayers that have an NOL that arose in a taxable year that began during calendar year 2018 and ended on or before June 30, 2019.
- Extension only applies to NOL carrybacks, not to carry back any other item.
- Calendar year 2018 returns extension period expired June 30, 2020. Still some time for fiscal returns ending on or before June 30, 2019.



AMT NOLs

- The corporate AMT was eliminated by the TCJA. At the time, carrybacks were also eliminated, so the crossover of non-ATNOLs into a period where ATNOLs might be utilized was a point of confusion.
- Most firms were providing guidance that taxpayers should take the unadjusted regular NOL and carry it back, make the AMT adjustments in the year of the carryback, and then apply it as an ATNOL.
- IRS later answered as part of their FAQ on carrybacks:
 - For Forms 1120X, Amended U.S. Corporation Income Tax Return, or 1139, Corporation Application for Tentative Refund, filed on or after June 1, 2020, treat the ATNOL amount arising in a post-2017 year as zero. The processing of the C corporation's refund may be delayed if it uses a different method to determine the amount of its ATNOL.
 - Service advised that filer does not need to take any action, or refile a Form 1120X or Form 1139 that was filed before June 1, 2020, unless contacted by the IRS. This is the case even if the ATNOL was not treated as zero.



AMT Credit Refunds

- Immediately the filing of carrybacks became an issue because the benefit typically freed up AMT tax credits from prior years which ultimately became refundable in 2018 and 2019.
- Under the TCJA, AMT credits were refundable over a period from 2018 through 2021.
- Under the CARES Act, entire remaining AMT credit became fully refundable in 2019. Alternatively, the taxpayer could elect to make the full credit refundable for taxable years beginning in 2018.
- CARES Act directed Treasury to provide guidance and procedures for how to file for this refund under the “quick refund” provisions.
- For tax practitioners, this immediately became a confusing issue because the Form 1139 itself does not appear to have any space for the refundable credit.



IRS FAQ (1/2)

- Taxpayer: The C corporation made an election under § 53(e)(5) to recover 100% of its MTCs as refundable credits in its first taxable year beginning in 2018. May the C corporation claim both the NOL carryback and MTC refund for 2018 on the same Form 1139?
 - IRS: Yes, the C corporation may file a single Form 1139, following the instructions in questions 11 and 12 of the temporary procedures to fax certain Forms 1139 and 1045 due to COVID-19.
- Taxpayer: What about in situations where the MTC can be used in another year within the 5-year carryback period, but not 2018. May the C corporation claim both the NOL carryback and the decrease in tax liability from the MTC on Form 1139?
 - IRS: Yes, 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.



IRS FAQ (2/2)

- Taxpayer: How is the election to claim 100% of the refundable MTC in its first taxable year beginning in 2018 made?
 - IRS: The election under § 53(e)(5) to claim 100% of a C corporation's refundable MTC in its first taxable year beginning in 2018 may be made by either filing a Form 1120X or a Form 1139. For either form used, the C corporation must include at the top of the form, "Electing to Take 100% Refundable Credit Amount in 2018 - per CARES Act Section 2305(b)". Instructions for completing the Form 1139 are available in questions 10, 11, and 12 of the temporary procedures to fax certain Forms 1139 and 1045 due to COVID-19.
- Taxpayer: When is the election due?
 - IRS: An 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 taxable year that began during 2018 and ended on or before June 30, 2019, the Form 1139 must be filed by the earlier of the extended due date provided under Notice 2020-26, or 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 taxable year beginning in 2018.