

## Part III – Administrative, Procedural, and Miscellaneous

### Extension of Time to File Application for Tentative Carryback Adjustment

#### Notice 2020-26

#### SECTION 1. PURPOSE

This notice provides relief for certain taxpayers to allow them to take advantage of amendments made to the net operating loss (NOL) provisions set forth in § 172 of the Internal Revenue Code (Code) by section 2303 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, 134 Stat. 281 (March 27, 2020). Specifically, this notice extends the deadline for filing an application for a tentative carryback adjustment under § 6411 of the Code with respect to the carryback of an NOL that arose in any taxable year that began during calendar year 2018 and that ended on or before June 30, 2019.

#### SECTION 2. BACKGROUND

Section 2303(b) of the CARES Act amends § 172(b)(1) to carry back any NOL arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, to each of the five taxable years preceding the taxable year in which the NOL arises (carryback period). **As a result of that amendment, taxpayers take into account such NOLs in the earliest taxable year in the carryback period, carrying forward unused amounts to each succeeding taxable year.** Section 2303(a) of the CARES Act amends

§ 172(a) to allow a deduction for a taxable year beginning before January 1, 2021, in an amount equal to the aggregate of the NOL carryovers and carrybacks to such year.

Section 2305(a) of the CARES Act amended § 53(e) of the Code to accelerate the recovery of 100 percent of any remaining minimum tax credits of a corporation in its taxable year beginning in 2019, as opposed to its taxable year beginning in 2021.

Section 2305(b) of the CARES Act added § 53(e)(5) to the Code to permit a corporation to elect instead to recover 100 percent of any of its remaining minimum tax credits in its taxable year beginning in 2018.

Section 6411 allows a taxpayer to file an application for a tentative carryback adjustment of the tax liability for a prior taxable year that is affected by a NOL carryback provided in § 172(b) or by carrybacks provided for in other Code sections. Under § 1.6411-1(b)(1) of the Income Tax Regulations, taxpayers that are corporations must make the application on Form 1139, *Corporation Application for Tentative Refund*, and taxpayers other than corporations must make the application on Form 1045, *Application for Tentative Refund*. The Code and regulations require that an application must be filed within 12 months of the close of the taxable year in which the NOL arose.

Section 6411(a); § 1.6411-1(c). The tentative carryback adjustment procedure allows a taxpayer to obtain a quick tentative tax refund based on an NOL carryback. Under § 6411(b), the Internal Revenue Service (IRS) conducts a limited examination of the application and makes the resulting credit or refund within 90 days of the filing of the application.

Section 2305(d) of the CARES Act permits a corporation to file an application for a tentative refund of any amount for which a refund with respect to its taxable year

beginning in 2018 is due by reason of an election under § 53(e)(5), and provides generally that such application is to be treated and processed as an application made under § 6411 of the Code, provided the application is filed prior to December 31, 2020.

The CARES Act did not provide additional time to file tentative carryback adjustment applications with respect to NOLs arising in a taxable year beginning on or after January 1, 2018, and ending before March 27, 2019, even though the time to file those applications had expired as of the date of enactment. Taxpayers whose losses in these taxable years may now be carried back to an earlier taxable year due to application of section 2303 of the CARES Act will generally be able to file amended returns to claim refunds or credits resulting from the change in the law. These taxpayers, however, would not be able to take advantage of the expedited § 6411 tentative carryback adjustment procedure without an extension of time to file Form 1139 or Form 1045.

Section 6081 of the Code provides that the Secretary of the Treasury or his delegate may grant a reasonable extension of time (generally not to exceed six months) for filing any return, declaration, statement, or other document required by the Code or by regulations thereunder.

### **SECTION 3. EXTENSION OF TIME TO FILE**

**The Department of the Treasury and the IRS grant a six-month extension of time to file Form 1045 or Form 1139, as applicable, to taxpayers that have an NOL that arose in a taxable year that began during calendar year 2018 and that ended on or before June 30, 2019. This extension of time is limited to requesting a tentative refund to carry back an NOL and does not extend the time to carry back any other item.**

For example, in the case of an NOL that arose in a taxable year ending on December 31, 2018, a taxpayer normally would have until December 31, 2019, to file the Form 1045 or Form 1139, as applicable, but due to this relief, will now have until June 30, 2020, to file the Form 1045 or Form 1139, as applicable. For this same taxpayer, if the taxpayer is a corporation, the deadline to claim a minimum tax credit described in § 53(e)(5) is December 30, 2020, but in order to file one application for a tentative refund and claim both the NOL carryback and the minimum tax credit at the same time, the taxpayer must do so by the earlier of the two deadlines.

To take advantage of the extension of time for requesting a tentative refund based on an NOL carryback, the taxpayer must perform the following actions:

- (a) File the applicable form no later than 18 months after the close of the taxable year in which the NOL arose (that is, no later than June 30, 2020, for a taxable year ending December 31, 2018); and
- (b) Include on the top of the applicable form “Notice 2020-26, Extension of Time to File Application for Tentative Carryback Adjustment.”

For instructions and additional information, visit [IRS.gov/Form1045](https://www.irs.gov/Form1045) or [IRS.gov/Form1139](https://www.irs.gov/Form1139), as applicable.

#### **SECTION 4. CONTACT INFORMATION**

The principal author of this notice is Alexander Wu of the Office of the Associate Chief Counsel (Procedure and Administration). For further information, please contact Mr. Wu at (202) 317-5436 (not a toll-free call).