

IRM PROCEDURAL UPDATE

DATE: 10/21/2024

NUMBER: ts-21-1024-1055

SUBJECT: Carryback Claim Due Date Guidance; Excess Business Loss Limitation Legislative Extensions; Alternative Minimum Tax Credit Interest Computation Date Clarification; Tent Statute Consideration Updates

AFFECTED IRM(s)/SUBSECTION(s): 21.5.9

CHANGE(s):

IRM 21.5.9.4.1 Added new paragraph 2 containing a table that provides carryback claim due date guidance.

(1) If taxpayer files a carryback application/claim, follow these research procedures:

- a. Verify the forms are complete and, contain all necessary information needed to process.
- b. Verify the carryback has been applied to the earliest available gain year.
- c. Review CFOL (Corporate Files Online)/IDRS to validate data on the form.
- d. Math verify the carryback amount (Net Operating Loss, Net Capital Loss, Unused Credits, Claim of Right).
- e. Determine if the statute for credit or refund is open. The adjusting year (gain year) does not necessarily have to be within the normal statute of limitations period. The statute for carryback purposes is generally determined by the loss or unused credit year return. For example, a claim for credit or refund based on the carryback of a Net Operating Loss or a Capital Loss may be filed within the three-year period from the due date of the loss year return plus the period granted for any extension of time to file. The three-year period runs from the extended return due date regardless of when the return is actually filed. Use the table in paragraph 2 below to determine if a carryback claim was timely filed. For more information on researching carryback statute processing, see IRM 25.6.1.10.3.4.1, *Net Operating Loss (NOL) Carryback or Capital Loss Carryback*, IRM 25.6.1.10.3.4.2, *Business Credit Carryback*, and IRM 25.6.1.10.3.4.3, *Bad Debts and Worthless Securities*.

Reminder: For purposes of determining the availability of an NOL carryover for a taxable year, NOL carryovers that were required to be carried to a preceding taxable year are deemed to have been allowed in such year to the extent that they would have been allowed if a claim had been timely filed, regardless of whether such a claim was in fact timely filed. Accordingly, an NOL carryover is allowed for a year only to the extent of the amount of the

NOL reduced by amounts required to be carried to preceding taxable years, whether or not claimed.

Note: The Refund Statute Expiration Date (RSED) does not necessarily need to be open on the loss year in order for a claim for refund or credit based on an NOL carryback to be timely filed. The claim may also be considered timely filed if the RSED is open on the adjusting year (gain year). See IRM 25.6.1.10.3.4.1, *Net Operating Loss (NOL) Carryback or Capital Loss Carryback*, for additional information.

- f. When working a carryback case via the Correspondence Imaging Inventory (CII), search prior claims, applications, or responses.

Note: Refer to IDRS Command Code Job Aid, Job Aid for IRM Part 21, Document 6209, IRM 2.3, *IDRS Terminal Responses*, or IRM 2.4, *IDRS Terminal Input*, for additional information.

(2) Follow the guidance below to determine if a carryback claim was timely filed.

If the loss year return was	And	Then the last day to file a carryback claim is	Example
Timely filed or filed after the return due date	The loss year contains an extension of time to file (TC 460)	3 years from the extended return due date (regardless of when the loss year return was originally filed)	Loss year: 202012 TC 460 extended due date: 10/15/2021 Carryback claim due date: 10/15/2024
Timely filed or filed after the return due date	The loss year does not contain an extension of time to file (TC 460)	3 years from the return due date	Loss year: 202012 Received: 10/17/2021 No TC 460 is posted on the loss year Carryback claim due date: 4/15/2024
Timely filed or filed after the return due date	The refund statute expiration date (RSED) on IDRS is postponed due to a federal disaster declaration	3 years from the return due date (loss year does not contain a TC 460 extension of time to file) or	Loss year: 202012 Received: 2/15/2022 (the postponed due date of the disaster declaration) TC 460 extended due date: 10/15/2021

		3 years from the extended return due date (loss year return contains a TC 460 extension of time to file)	<p>Carryback claim due date if no TC 460 is posted on the loss year: 4/15/2024</p> <p>Carryback claim due date if loss year contains a TC 460 extension of time to file: 10/15/2024</p> <p>Reminder: The disaster declaration postponement period does not change the due date of a carryback claim. Refer to Treasury Regulation 301.7508A-1(b)(4).</p>
Timely filed or filed after the return due date	The IRS and the taxpayer sign a Form 872, <i>Consent to Extend the Time to Assess Tax</i> , on or before the Assessment Statute Expiration Date (ASED). See IRC 6511(c).	6 months after the expiration of the consent	<p>Loss year: 202012</p> <p>TC 560 extended assessment date: 1/15/2025</p> <p>Carryback claim due date: 7/15/2025</p>
Timely filed or filed after the return due date	The claim for credit or refund was not filed within the 3-year period for filing a claim.	Claim is limited to the amount paid on the gain year within the 2-year period immediately preceding the filing of the claim	<p>Loss year: 202012</p> <p>Date of subsequent payment to gain year 2015: 6/30/2023</p> <p>Carryback claim filed on: 10/31/2024</p> <p>The 2-year look back period would cover payments dated on or after 10/31/2022.</p> <p>Cycle of TC 706 offset to gain year 2015: 202405</p> <p>Carryback claim filed on: 10/31/2024</p> <p>The 2-year look back period would cover payments dated on or</p>

			<p>after 10/31/2022.</p> <p>Reminder: The claim is limited to the amount paid on the gain year within the 2-year period immediately preceding the filing of the claim. Refer to Rev. Rul. 65-281.</p>
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IRM 21.5.9.5.10.3.7 Moved the excess business loss limitation extension added by the American Rescue Plan of 2021 section 9041 to new paragraph 2 and included the excess business loss limitation extension added by the Inflation Reduction Act of 2022 section 13903(b)(1).

(1) The excess business losses limitation for non-corporate entities is effective for tax years beginning after 2020 and before 2029.

Section 11012 of the Tax Cuts and Jobs Act of 2017 prohibits taxpayers other than corporations (i.e., Form 1040, Form 1040-NR, Form 1041, Form 1041-QFT, Form 1041-N and Form 990-T filers) from claiming excess business losses beginning with tax periods after December 31, 2017 and ending before January 1, 2026.

The Coronavirus Aid, Relief, and Economic Security Act of 2020 suspended the requirement for non-corporate taxpayers to apply the excess business loss limitations for tax years beginning in 2018, 2019, and 2020.

For taxable years beginning on or after January 1, 2026, the American Rescue Plan Act of 2021 (ARP) section 9041 and the Inflation Reduction Act of 2022 section 13903(b)(1), extends the requirement to apply the excess business losses limitation for non-corporate taxpayers to taxable years beginning before January 1, 2029.

(2) Losses disallowed under this section are treated as an NOL carryforward in the subsequent year and added to any other NOL carryforwards previously reported. Taxpayers with a farming business must apply the excess business loss limitation before carrying any net operating loss back two years.

(3) An excess business loss exists when the aggregate deductions attributable to the taxpayer's trade(s) or business(es) exceeds the sum of:

- a. the aggregate gross income or gain from those trades or business(es) and
- b. the applicable threshold amount

(4) Total income/loss items for purposes of calculating an excess business loss include the following:

- a. Wages and salaries

- b. Business income or loss
- c. Business Capital gain or loss
- d. Other gains or losses from Form 4797, *Sale of Business Property*
- e. Rental real estate, royalties, partnerships, S corporations, trusts
- f. Farm income or losses
- g. Any other business income or deductions not previously listed

Note: Taxpayers use the new Form 461, *Limitation on Business Losses*, to compute the carryforward amount of excess business losses.

(5) If a taxpayer files an amended return to report or increase an excess business loss and likewise reports or increases a net operating loss carryforward, ensure a new Form 461, *Limitation on Business Losses*, is attached. If not attached reject the application/claim advising the taxpayer of the missing information utilizing guidance in IRM 21.5.9.4.3, *Rejecting Unprocessable Carryback Applications/Claims*.

(6) Taxpayers with losses from a farming business must apply the excess business loss limitation **before** carrying any NOL back two years. If both farming and non-farming business losses are incurred that are more than the threshold amount, first allocate the threshold amount to the farming losses.

(7) If the application/claim is processable and includes all required documentation, process the request. For IMF use Reason Code 159 when processing a carryforward claim reporting or increasing the excess business losses.

Reminder: Once an excess business loss is calculated and a net operating loss is determined, see IRM 21.5.9.5.10.3.8, *Net Operating Loss Calculator - 80 Percent Taxable Income Limitation Calculation for Net Operating Loss for Tax Years Beginning 2018 and Subsequent*, for additional guidance regarding the NOL Calculators and determining the 80 percent limitation on NOLs.

IRM 21.5.9.5.10.8.7 Removed the reference to signature date in paragraph 4 Caution.

(4) Refer to the following table for determining TENTs timely filed under the CARES Act.

If	And	Then
Form 1139 or Form 1045 for tax year 2019 is filed	Includes all types of carryback requests (i.e., NOL, NCL (corporations only), unused general business credits)	Considered timely if filed by the last day of tax year 2020 (December 31, 2020, in the case of a calendar year taxpayer)
Form 1139 or Form 1045 for fiscal year 2019 is filed	Includes an NOL arising in taxable years beginning in 2019 and ending on 6/30/2019 only	Fiscal year 2019 ending on 6/30/2019 is considered timely if filed by December 30, 2020.

	(does not include the carryback of any other item)	Caution: A Form 1139 or Form 1045 filed on a fiscal year ending after 6/30/2019 is not provided an extension of time to file. See Notice 2020-26, Extension of Time to File Application for Tentative Carryback Adjustment, for additional information.
Form 1139 or Form 1045 for tax year 2018 is filed	Includes an NOL arising in taxable years beginning in 2018 and ending on or before 6/30/2019 only (does not include the carryback of any other item)	<p>Considered timely if filed within 18 months from the close of the tax year (by June 30, 2020, in the case of a calendar year taxpayer)</p> <p>Note: Notice 2020-23, <i>Update to notice 2020-18, Additional Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic</i>, postpones the due date for tax year 2018 TENTs to July 15, 2020. Additionally, question 20 of the Temporary procedures to fax certain Forms 1139 and 1045 due to COVID-19, specifically provides guidance regarding Notice 2020-23 for the extended due dates applicable to TENTs with due dates on or after April 1, 2020 and before July 15, 2020.</p>
Form 1139 for tax year 2018 is filed	Includes the accelerated refund of 100 percent corporate MTC under section 2305(b) of the CARES Act only	Considered timely if filed by December 30, 2020 (special rule under CARES Act 2305(d)).
Form 1139 is filed for both an applicable 2018 NOL and 100 percent refundable corporate MTC in 2018	Includes both an NOL carryback for a loss arising in a taxable year beginning in 2018 and ending on or before 6/30/2019, and the special election for the 100 percent corporate MTC for taxable years beginning in 2018	Form 1139 filed for both an applicable loss carryback, plus the 2018 MTC must be filed by the earlier of within 18 months from the close of the taxable year or December 30, 2020. Notice 2020-23, <i>Update to Notice 2020-18, Additional Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic</i> , provides an additional time to file until July

		<p>15, 2020 for any Form 1139 that would otherwise be due between April 1, 2020 and July 14, 2020.</p> <p>Example: A Form 1139 for taxable year ending June 30, 2019 is timely if filed by December 30, 2020.</p> <p>Example: A Form 1139 for taxable year ending December 31, 2018 is timely if filed by July 15, 2020.</p>
Form 1139 for 2018 fiscal year (tax years beginning before January 1, 2018 and ending after December 31, 2017) is filed	Includes only NOLs arising in a 2018 fiscal year (only applicable to taxpayers previously prohibited a carryback under TCJA). See IRM 21.5.9.5.10.3.1, <i>TCJA - NOL Carryback and Carryforward Periods</i> , for additional information)	Considered timely if filed by July 27, 2020 under Rev. Proc. 2020-24.

Caution: When determining if an application is timely received verify the postmark date prior to rejecting the case.

IRM 21.5.9.5.10.8.9 Added interest computation date (INT-CMP-DT) clarification to paragraph 4 when the availability of the refundable credit is the result of a carryback from a subsequent tax year. Included an example to demonstrate the carryback is the triggering event.

(4) Taxpayers who file a Form 1139 to request a 100 percent refundable corporate MTC are instructed to include "Electing to Take 100% Refundable Credit Amount in 2018 - per CARES Act Section 2305(b)" at the top of the Form 1139 and Form 8827. The submission of the corrected Form 8827 is the supporting documentation for the refund of the prior year minimum tax credit. Take the following actions to adjust the prior year minimum tax credit reported on Form 1139:

- Math verify Form 8827. The original 2018 Form 8827 Line 9 should match the Form 1139, Line 1(d). The tentative refund amount on Form 1139, Line 29 should be the difference between the original Form 8827, Line 8(c) and the revised Form 8827, Line 8(c).
- Input TC 298 for zero (.00) and CRN 793 for the amount reported on Line 29 of Form 1139 as a positive amount.
- Input an amended claims date (AMD-CLMS-DT).
- If the refundable MTC was available when the taxpayer filed the original 2018 tax return, input the INT-CMP-DT using the return due date of the 2018 tax

period without considering any extensions.

If the refundable MTC becomes available because of a carryback from a subsequent tax year, input the INT-CMP-DT using the return due date of the tax period where the carryback originated.

Example: The taxpayer carries back a 202012 NOL to tax period 201512. The decrease in tax in 201512 triggers an Alternative Minimum Tax liability for 201512. The taxpayer did not have an Alternative Minimum Tax liability for 201512 prior to the 202012 NOL carryback. The taxpayer has no Alternative Minimum Tax Liability in 201612 and 201712, so the credit for the 201512 Alternative Minimum Tax liability (after the 2020 NOL carryback) carried over to 201812 where a refund is requested based on the CARES Act legislative changes.

Because the triggering event that created the availability of the MTC available for refund in 201812 was the 202012 NOL carryback to 201512, the interest computation date for the MTC adjustment on tax period 201812 is the loss year return due date, 4/15/2021.

Note: Although Form 1139 is utilized to request a refundable corporate MTC in 2018 as per section 2305(d) of the CARES Act, it is not a carryback adjustment. Therefore, carryback transaction codes and carryback interest considerations are not applicable to the MTC adjustment.

Note: Include priority code 6 on CII for the corporate refundable MTC refund requests received on Form 1139. If corporate refundable MTC is combined with an NOL, do not include priority code 6.

IRM 21.5.9.5.16.6 Added links to IRM 21.5.9.4.1(2) which provides guidance for determining the carryback claim due date. Removed references to the Assessment Statute Expiration Date (ASED) and carryback claim extended due date. Updated the guidance in paragraph 6 first If/And/Then Step 1 when an amended return is located on a closed CII case.

(1) Follow the instructions in this subsection to resolve tentative refund applications where the period of limitation for credit or refund based on the loss year is imminent (180 days or less) or expired.

(2) An application for tentative refund filed on Form 1045 and Form 1139 is **not** treated as a claim for credit or refund. It may be rejected, in whole or in part, if there are any material omissions, math errors that cannot be corrected within the 90-day period, or the application includes a released credit required to be filed on Form 1040-X or Form 1120-X. If the application is rejected in whole or in part, no suit challenging the rejection may be brought in any court. The taxpayer does not have appeal rights under law for any rejected or unprocessed tentative refund application.

(3) If the taxpayer timely files a Form 1045 or Form 1139 tentative refund application and the application is rejected or the tentative refund is not processed for any

reason, the taxpayer must file a claim for credit or refund using Form 1040-X, Form 1041, or Form 1120-X on or before the period of limitations for credit or refund expires. The tentative refund application **cannot** be processed after the period of limitation for credit or refund has expired.

Note: A claim for credit or refund based on the carryback of an NOL or a Capital Loss must be filed within the three-year period from the due date of the loss year return plus the period granted for any extension of time to file. The three-year period runs from the extended return due date regardless of when the return is actually filed. Refer to IRM 21.5.9.4.1 (2), **Carryback Research**, to determine if a carryback claim was timely filed. See IRM 25.6.1.10.3.4.1, *Net Operating Loss (NOL) Carryback or Capital Loss Carryback*, for additional information.

(4) If the tentative refund application was timely filed, processable, and the period of limitations for credit or refund for the loss year is **not expired**, process the application following normal procedures. If the timely filed application is not processable and the period of limitation for credit or refund is **imminent or expired**, continue processing per paragraph 6 below.

(5) Research the current open TENT case and prior closed TENT cases in CII to determine if the taxpayer submitted amended returns for the carryback gain years.

If	And	Then
<p>Amended returns for some or all of the carryback gain years are part of the documentation scanned with the current active TENT case or a prior closed TENT case in CII</p>	<ul style="list-style-type: none"> • The tentative refund application was not timely filed or is not processable, and • The amended returns were received on or before the carryback claim due date. <p>Reminder: Refer to IRM 21.5.9.4.1 (2), Carryback Research, to determine if the carryback claim was timely filed.</p>	<ol style="list-style-type: none"> 1. Print the amended return for the carryback gain year to PDF. 2. Create a new CII case for each carryback gain year using category code RINT. 3. Link each new CII RINT case to the TENT case. 4. Send Letter 216C rejecting the tentative refund application and advise the taxpayer we will consider their carryback request for tax years (specify the tax years) using the amended returns filed. 5. Attach a PDF copy of the 216C letter to the case in CII. 6. Close the TENT case to the linked RINT cases. 7. Review each carryback gain year amended return

		<p>and supporting documentation.</p> <ol style="list-style-type: none"> 8. If required information is missing, determine if the additional information was provided with the documentation attached to the current or a prior case in CII. 9. If the supporting documentation was provided and the claim is complete, process the claim. 10. If additional information is needed to process the amended return(s): <ul style="list-style-type: none"> ○ Make two telephone attempts to reach the taxpayer or authorized representative. ○ Document all phone attempts fully on CII. ○ If contact is unsuccessful, follow the guidelines in IRM 21.5.3.4.3, <i>Tax Decrease and Statute Consideration</i>, paragraphs 3 through 6.
<p>Amended returns for some or all of the carryback gain years are not part of the documentation scanned with the current active TENT case or a prior closed TENT case in CII</p>	<ul style="list-style-type: none"> • The tentative refund application was not timely filed or is not processable. 	<ol style="list-style-type: none"> 1. Continue processing per paragraph 6 below.

(6) Thoroughly research **all** CII images, EUP, and IDRS to determine if the taxpayer previously filed an amended return for each carryback gain year, then follow the guidance in the table below.

If	And	Then
<p>Amended returns for some or all of the carryback gain years were previously filed</p>	<ul style="list-style-type: none"> • The tentative refund application was not timely filed or is not processable, and • The amended return was received before the carryback claim due date, and • The amended return was not processed, and • The carryback claim due date for the loss year is 180 days or less (but not expired), and • A Letter 105C disallowance letter for the carryback gain year amended return has not been issued. <p>Reminder: Refer to IRM 21.5.9.4.1 (2), Carryback Research, to determine the carryback claim due date.</p>	<ol style="list-style-type: none"> 1. If the amended return is located on a closed RINT/IRNT case in CII: <ul style="list-style-type: none"> ○ Update the current TENT case to RINT/IRNT in CII. Use the tax period of the earliest gain year containing an amended return. ○ Link the closed case(s) containing the amended return to the open RINT/IRNT case, or <p>If the amended return is located on an open case in CII:</p> <ul style="list-style-type: none"> ○ Link the open RINT case to the TENT case. 2. Send Letter 216C rejecting the tentative refund application and advise the taxpayer we will consider their carryback request for tax years (specify the tax years) using the amended returns filed. <p>Note: For any tax year where an amended return was not located, follow the guidance in the section below.</p> <ol style="list-style-type: none"> 3. Attach a PDF copy of the 216C letter to the case in CII. 4. Close the TENT case to the linked RINT case(s).

		<ol style="list-style-type: none"> 5. Review each carryback gain year amended return and supporting documentation. 6. If required information is missing, determine if the additional information was provided with the documentation attached to the current or a prior case in CII. 7. If the supporting documentation was provided and the claim is complete, process the claim. 8. If additional information is needed to process the amended return(s): <ul style="list-style-type: none"> o Make two telephone attempts to reach the taxpayer or authorized representative. o Document all phone attempts fully on CII. o If contact is unsuccessful, follow the guidelines in IRM 21.5.3.4.3, <i>Tax Decrease and Statute Consideration</i>, paragraphs 3 through 6.
<p>Amended returns for some or all of the carryback gain years were not located through CII/EUP/IDRS research</p>	<ul style="list-style-type: none"> • The tentative refund application was not timely filed or is not processable, and • The carryback claim due date for the loss year is 180 days or less (but not expired) 	<ol style="list-style-type: none"> 1. Send Letter 216C rejecting the tentative refund application and advise the taxpayer an amended return for tax year(s) (specify the tax year(s)) is required to claim the carryback. 2. Provide the due date for filing the amended return(s) (carryback claim due date). Reminder: Refer to IRM 21.5.9.4.1 (2), Carryback Research, to determine the carryback claim due date.

		<p>3. Attach a PDF copy of the 216C letter to the TENT case in CII.</p> <p>4. Close the TENT case.</p>
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(7) If the ASED or extended carryback claim due date is **expired** and an amended return was **not** previously **filed** or was **not located** through CII/EUP/IDRS research for any carryback gain year, issue Letter 216C, *Tentative Carryback Application Adjustment Request*, with opening paragraph "B" and the three open paragraphs below:

Paragraph 1: Form (insert 1045 or 1139) is valid for 12 months from the end of the loss year. An application for tentative refund is not treated as claim for credit or refund. A claim for credit or refund must be filed on an amended return before the period of limitations for credit or refund expires. The period of limitations to file a claim for credit or refund for loss year (insert loss year) expired on (insert ASED or extended carryback claim due date for the loss year).

Paragraph 2: If a tentative refund application is rejected in whole or in part or is not processed by the IRS for any reason, no suit challenging the rejection may be brought in any court and you do not have appeal rights under law.

Paragraph 3: Net Operating Losses (NOLs) that were required to be carried back are deemed to have been carried back, regardless of whether such a claim was in fact timely filed. An NOL carryforward is allowed only to the extent of the amount of the NOL reduced by amounts required to be carried back to preceding taxable years.

(8) Employees should **not** be using the procedures in IRM 21.5.3.4.3, *Tax Decrease and Statute Consideration*, paragraphs 3 through 6, to disallow tentative refund applications (TENTs). If a Letter 105C, *Claim Disallowed*, was issued **for a tentative refund application**, send Letter 216C following paragraph 7 above and issue a Letter 544C *Apology for IRS Error*, with the open paragraph below:

We incorrectly sent you Letter 105C, Claim Disallowed, for your Form (insert 1045 or 1139) filed for loss year (insert loss year). Please disregard the letter you received. We'll mail you a Letter 216C, Tentative Carryback Application Adjustment Request.

(9) If the taxpayer included a **copy** of a **previously filed** tentative refund application with a request to appeal a Letter 105C and research shows the Letter 105C was issued **based on an amended return** (e.g., Form 1040-X or Form 1120-X), follow the procedures in IRM 21.5.3.4.6.2, *Appeals and Responses to Letter 105C and Letter 106C*.

IRM 21.5.9 Reviewed and updated IRM references as necessary. Made editorial-type changes where needed.