



March 3, 2021

Mr. John Moriarty
Associate Chief Counsel
Income Tax & Accounting
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

Re: Request for Guidance Related to Alternative Minimum Tax (AMT) Issues under the Coronavirus Aid, Relief, and Economic Security (CARES) Act

Dear Mr. Moriarty:

The American Institute of CPAs (AICPA) thanks you for your efforts to provide relief to individuals and businesses affected by the Coronavirus disease 2019 (COVID-19) Pandemic.

The AICPA appreciates the efforts of the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) in providing guidance issued thus far to implement the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or “the Act”).¹ However, additional guidance is necessary to address issues related to making claims for refunds as a result of modifications made to Internal Revenue Code (IRC or “Code”) sections 172(b)(1)² and 53(e)(5) by the CARES Act.

Specifically, the AICPA recommends that Treasury and the IRS provide guidance on the issues related to whether C corporations should compute alternative tax net operating losses (ATNOLs) for post-2017 tax years as well as extend the time to file Form 1139, *Corporation Application for Tentative Refund*, as follows:

- I. Modify FAQ 1 to state that for post-2017 tax years taxpayers should compute an ATNOL
- II. Extend the time for which taxpayers may file a Form 1139 to claim the refundable alternative minimum tax credit that expired on December 30, 2020 to December 31, 2022

¹ Pub. L. No. 116-136 (2020).

² Unless otherwise indicated, hereinafter, all section references are to the Internal Revenue Code of 1986, as amended, or to the Treasury Regulations promulgated thereunder.

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We appreciate your consideration of our recommendations and welcome the opportunity to further discuss our comments. If you have any questions, please contact Connie Cunningham, Chair, AICPA Tax Methods and Periods Technical Resource Panel, at (310) 557-8544, or CCCunningham@bdo.com; Elizabeth Young, Senior Manager – AICPA Tax Policy & Advocacy, at (202) 434-9247, or elizabeth.young@aicpa-cima.com; or me at (612) 397-3071 or chris.hesse@CLAconnect.com.

Sincerely,



Christopher W. Hesse, CPA
Chair, AICPA Tax Executive Committee

cc: The Honorable Charles P. Rettig, Commissioner, Internal Revenue Service
Mr. Mark Mazur, Acting Assistant Secretary for Tax Policy, Department of the Treasury
Mr. William Paul, Acting Chief Counsel, Internal Revenue Service
Ms. Wendy Friese, Tax Policy Advisor, Office of Tax Legislative Counsel, Department of the Treasury
Mr. Timothy Powell, Tax Policy Advisor, Office of Tax Legislative Counsel, Department of the Treasury
Mr. William A. Jackson, Office of the Associate Chief Counsel, Income Tax & Accounting, Internal Revenue Service

AMERICAN INSTITUTE OF CPAs

Request for Guidance Related to Alternative Minimum Tax (AMT) Issues under the Coronavirus Aid, Relief, and Economic Security (CARES) Act

March 1, 2021

BACKGROUND

Section 2303 of the CARES Act amended section 172(b)(1) to allow for a carryback of any net operating loss (NOL) arising in a tax year beginning in 2018, 2019, and 2020 to each of the five tax years preceding the tax year in which the loss arises. Section 12001(a) of the Tax Cuts and Jobs Act (the TCJA or “the Act”)³ amended section 55(a) to exclude corporations from the imposition of the alternative minimum tax (AMT) for tax years beginning after December 31, 2017. There is confusion among corporate taxpayers as to whether they should compute an ATNOL and carry it back five tax years along with a regular tax NOL arising in tax years beginning in 2018, 2019, and 2020.

On May 27, 2020, in an effort to clear up any confusion for taxpayers carrying back an NOL arising in a tax year beginning after December 31, 2017 (post-2017 year), the IRS posted to its Coronavirus Tax Relief and Economic Impact Payments frequently asked questions (FAQs) webpage guidance for C corporations carrying back NOLs to taxable years in which the AMT applies. FAQ 1 (the FAQ)⁴ addresses a situation where a C corporation with an NOL arising in a post-2017 year carries back all or a portion of the NOL to a tax year beginning before January 1, 2018 (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 the ATNOL arising in the post 2017-year should be zero.

In order to claim a refund resulting from a carryback of an NOL arising in a post-2017 tax year, taxpayers may file a Form 1139, *Corporation Application for Tentative Refund*, within twelve months of the end of the tax year in which the NOL arose. However, in Notice 2020-26, *Extension of time to File Application for Tentative Carryback Adjustment*, the IRS extended this deadline by six months for taxpayers whose tax year began in 2018 and ended before June 30, 2019. Further, in recognizing that an ATNOL of zero could create an AMT liability or release previously used minimum tax credits (MTCs) in the tax year(s) to which the NOL was carried back, the CARES Act also allowed for inclusion on Form 1139 a claim for a 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 section 53(e)(5).⁵ The claim for a refund of MTCs as a result of an NOL carryback and election under section 53(e)(5) had to be made by filing a Form 1139 by December 30, 2020, pursuant to section 2305(d)(2) of the CARES Act.

³ Pub. L. No. 115-97, 131 Stat. 2054.

⁴ <https://www.irs.gov/newsroom/questions-and-answers-about-nol-carrybacks-of-c-corporations-to-taxable-years-in-which-the-alternative-minimum-tax-applies>.

⁵ Section 2305(b)(1) of the CARES act added section 53(e)(5) to the Code, which provides that taxpayers may elect to claim any remaining MTCs in their first taxable year beginning in 2018.

SPECIFIC COMMENTS

I. Modify FAQ 1 to state that for post-2017 tax years taxpayers should compute an ATNOL

Overview

As discussed above, when carrying back an NOL to a pre-2018 year and recomputing its regular tax liability, a C corporation must also recompute its AMTI and AMT. The taxpayer's NOL that is carried back offsets regular taxable income but, according to the FAQ, the taxpayer cannot compute an ATNOL to offset AMTI, which has often resulted in the creation of, or increase to, the taxpayer's AMT liability. The effect of the FAQ not permitting an ATNOL has resulted in additional MTCs that may not be able to be refunded on Form 1139. In addition, the FAQ has resulted in the disallowance of general business credits (GBCs) that otherwise would have been available in the carryback year if an ATNOL were computed, which could result in the GBCs not being utilized until years later, if at all. As a result, the FAQ results in many taxpayers not being able to immediately monetize MTCs and GBCs, which serves to stifle Congressional intent of providing taxpayers with much-needed cash flow via the 5-year NOL carryback.

Recommendation

We recommend that Treasury and the IRS modify the FAQ and require taxpayers to compute and carryback an ATNOL when carrying back an NOL. Alternatively, Treasury and the IRS should provide an optional safe harbor allowing for an ATNOL of zero for those taxpayers that have already filed the requisite forms following the FAQ and prefer not to revise and resubmit the forms.

Analysis

The FAQ stating that an ATNOL should not be computed for post-2017 tax years is inconsistent with the Code. Section 55(a), as amended by the TCJA, clearly states that AMT is not imposed on corporations. However, much of the remainder of section 55 and section 56, which provide rules on how taxpayers should compute AMTI, were left intact when comparing these provisions after the enactment of the TCJA. Additionally, it does not appear that section 55(a) as modified by the TCJA should be read to make section 56 through section 59 inapplicable to corporations. Section 56(a) continues to provide a list of adjustments applicable to "all taxpayers" indicating that while a minimum tax is not imposed on corporations, computing AMTI is still applicable.

Further, section 56(d)(1), defining an ATNOL deduction, provides that the starting point in computing an ATNOL deduction in a given tax year is the NOL deduction allowable under section 172, the regular tax NOL, adjusted for AMT adjustments and preferences under section 56(d)(2). The NOL deduction is the amount that reduces taxable income in the taxable year in which it is carried to (i.e., not the actual NOL arising in post-2017 tax years). Thus, for regular NOLs generated in 2018, 2019, and 2020 and carried back, the regular tax NOL deduction is computed and taken into account under section 172 in 2013-2019. Under section 56(d), the starting point of the ATNOL deduction is the regular NOL deduction under 172; therefore, there is no need for a separate ATNOL carryback provision, which is consistent with the 5-year carryback provision

under the Worker, Homeownership, and Business Assistance Act of 2009. The only modification to section 56(d)(1) at that time was to remove the 90% limit for ATNOL deductions for certain carryback of regular tax NOLs.⁶

Lastly, section 56(d)(2)(A) provides that in the case of a loss year beginning after December 31, 1986, the NOL for such year under section 172(c) shall (1) be determined with the adjustments provided in section 56 and 58, and (2) be reduced by the items of tax preference determined under section 57 for such year. Thus, an ATNOL appears to exist for post-2017 tax years that needs to be computed on an AMT basis. There is nothing in the statute after the enactment of the TCJA that suggests a corporation no longer computes AMT adjustments and preferences. Even though the imposition of the AMT was repealed under the TCJA, a corporate taxpayer should still compute its AMT adjustments and preferences to compute AMTI. However, this AMTI would not have an associated AMT tax liability.

Based on the foregoing, if a taxpayer that generates a regular tax NOL in a post-2017 tax year also generates an ATNOL in the same tax year(s), the taxpayer should also carryback the ATNOL.

II. Extend the time for which taxpayers may file a Form 1139 to claim the refundable AMT credit that expired on December 30, 2020 to December 31, 2022.

Overview

Taxpayers cannot claim refundable MTCs on Form 1139 after December 30, 2020. However, the CARES Act modified section 172(b)(1) to allow for NOLs arising in tax years beginning in 2018, 2019, and 2020 to allow for carryback to each of the five years preceding the year in which the loss arose. The carryback of an NOL generated in 2020 to a pre-2018 year could affect the amount of MTCs available on a Form 1139 and therefore significantly delay the refund of these credits now claimed instead on a Form 1120X, *Amended U.S. Corporation Income Tax Return*.

Recommendation

We recommend that Treasury and the IRS extend the deadline to claim the refundable MTCs on Form 1139 to December 31, 2022.

Analysis

The CARES Act, which was meant to help taxpayers affected by the COVID-19 pandemic access much-needed cash, allowed for NOLs arising in tax years beginning in 2018, 2019, and 2020 to be carried back to each of the five years preceding the year in which the NOL arose. However, for most taxpayers, the largest NOLs will be incurred in their tax year beginning in 2020. Therefore, a Form 1139 cannot be filed to carryback that loss to an earlier year and claim a refund until 2021, which is after the December 30, 2020 date in which the taxpayer can include a claim for a refund for an MTC on Form 1139. This result will require taxpayers to file both a Form 1139 and a Form 1120X. Refunds requested through Forms 1120X take significantly longer to process;

⁶ Section 13 of the Worker, Homeownership, and Business Assistance Act of 2009, Pub. L. No. 111-92, 123 Stat. 2984 (November 6, 2009)

much-needed refunds will become delayed for taxpayers intended to benefit from the enactment of the CARES Act. If the deadline to claim refundable MTCs on Form 1139 is extended to December 31, 2022, taxpayers with a year beginning in 2020 could claim and receive refunds for their largest NOL year much sooner than they can currently when MTCs are generated or where previously utilized MTCs are released due to the carryback of the post-2017 NOL.