

# How to make the U.S. Treasury work for you Up close

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## Using administrative opportunities for relief in a down economy

Many contractors have experienced an unexpected downturn in business because of the deepening economic crisis. Corporations suffering in today's difficult business environment have an immediate need for funds for various purposes, including continued operations, meeting payroll or complying with credit covenants. Even contractors on solid ground need funds to take advantage of business opportunities or solidify their base.

The business community has looked increasingly to the government for help. While Treasury and Congress have provided relief in the form of new stimulus legislation, contractors should also be aware of procedures already available under the Internal Revenue Code (IRC) that may allow corporations to receive refunds quickly or defer payment of tax. These procedures are described below.

If a corporation qualifies for one of these procedures, there is no reason to wait to get cash in hand or defer payment. Taking advantage of the administrative relief provided by the IRC help liquidity.

Form 4466: Corporate Application for Quick Refund of Overpayment of Estimated Tax

As a result of the unanticipated downturn in the economy during 2008, many companies are finding they have overpaid their estimated taxes substantially. Fortunately, as provided for in IRC Section 6425, a corporation that has overpaid its estimated tax throughout the year does not have to wait until they file their income tax return to get back the overpayment. Rather, a corporation can file Form 4466 and receive a "quick refund" of overpaid estimated tax. Although the IRS calls this procedure a quick refund, the Form 4466 is not actually a formal refund for purposes of the statute of limitations for filing claims for refund or credit.

The rules covering Form 4466 filings are very specific. To take advantage of Form 4466, the overpayment must be at least \$500 and greater than 10 percent of the revised expected liability on the income tax return. Also, Form 4466 must be filed before the sixteenth day of the third month after the end of the tax year, but before the corporation files its income tax return. However, Form 4466 cannot be filed before the close of the tax year to which

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the overpayment relates. An extension of time to file the corporation's income tax return (i.e., Form 7004) will not extend the time for filing Form 4466.

Unless there are errors or omissions on Form 4466, the IRS must act on the application within 45 days of filing. If the IRS denies the application because of errors or omissions, a taxpayer can still request a refund on the original return or on an amended return.

If granted, the IRS considers the quick refund an adjustment to the estimated tax payments on the day the quick refund is made. Note: If a refund of the estimated tax payment is excessive, there may be a penalty assessment under IRC Section 6655 without any possibility of reasonable cause relief. Taxpayers should also be aware that if any outstanding tax liabilities exist, the IRS will offset the amount to be refunded against the liabilities.

Form 1139: Corporate Application for a Tentative Refund  
Corporations can file Form 1139 to receive a quick tentative refund if they have net operating losses (NOLs), net capital losses or business credit carrybacks. The rules governing Form 1139 can be found in IRC Section 6411 and related regulations. Like Form 4466, the advantage of Form 1139 is that the taxpayer receives the "tentative" refund before the IRS audits the return. In contrast, a refund request on Form 1120X may be subject to an IRS examination before it is paid. Also, refund requests on Form 1120X in excess of \$2 million are subject to review by the Joint Committee on Taxation. No matter the amount, Forms 1139 are not subject to pre-refund review. However, amounts on Form 1139 in excess of \$2 million will be subject to post-refund review.

Under IRC Section 6411, Form 1139 must be filed within 12 months after the end of the tax year in which the loss or unused business credit was generated. However, Form 1139 must not be filed before Form 1120 for the year of the loss or credit is filed. Importantly, the IRS must act on Form 1139 within 90 days of the later of the filing of the form or from the last day of the month that the return for the loss or credit year is due (including extensions).

Once Form 1139 is received by the IRS, a limited review is performed to determine if there are any errors or omissions. Form 1139 can be rejected if the IRS determines there are material omissions or errors that cannot be corrected within 90 days. A rejection cannot be challenged, so a taxpayer's only administrative recourse is filing Form 1120X.

If there are no material errors or omissions on Form 1139, the IRS generally will pay a refund within 45 days to avoid paying interest to the taxpayer. Before a check is issued, the IRS will offset the refund against any outstanding tax liability, including unassessed liabilities shown in a statutory notice of deficiency or in a proof of claim filed in a bankruptcy proceeding. However, the fact that a carryback year is under examination will not prevent the IRS from issuing a tentative refund.

Remember that Form 1139 is a tentative adjustment of the taxpayer's tax liability. It is not a settlement of liability for the year and is not a formal claim for refund on Form 1120X. It is granted based on preliminary findings that the information on the return is correct. It is also important to remember Form 1139 could lead to a post-refund examination or reexamination of returns for all open years. A subsequent audit that determines the quick refund was excessive could result in a taxpayer having

to repay all or part of the amount refunded with interest and possibly penalties.

Form 1138: Extension of Time for Payment of Taxes by a Corporation Expecting an NOL Carryback  
Under IRC Section 6164, a corporation anticipating a current-year NOL can file Form 1138 to postpone the payment of all or some of its income tax from the immediately preceding year. This includes extending the time for payment of an income tax deficiency.

This form provides an excellent tool for corporations to keep much-needed cash in their coffers based on anticipated NOLs in a current year. Normally, to take advantage of NOLs, taxpayers would have to wait for the conclusion of the tax year, file a claim for refund and wait for IRS processing and possible examination. Even a tentative refund claim under Form 1139 cannot be filed until after the tax year is over.

Form 1138 must be filed within the tax year the corporation expects the loss. The deadline for payment of prior-year tax is generally extended to the last day of the month of the current year filing deadline, including extensions. However, if Form 1139 is filed on or before termination of the extension granted under Form 1138, then the payment period is further postponed to the date that the IRS notifies the taxpayer that Form 1139 had been allowed or disallowed.

Corporations must estimate the amount of the expected NOL, the facts and circumstances involved, the amount of tax due and how much of the payment will be extended. Form 1138 must be filed before the unextended due date of the payment being postponed. For example, a calendar-year corporation seeking to postpone paying income tax liability for Year 1 due

to an anticipated NOL in Year 2 must file Form 1138 by March 15 of Year 2. More than one statement can be filed if more accurate information is received on their expected losses, but each is considered a new statement, not a revised statement.

Note: the IRS will charge interest on the postponed amounts from the date that the payment would normally be due until the due date of the loss year return.

Form 1127: Application for Extension of Time for Payment of Tax

Extensions of time to file tax returns are quite common, but an extension request for filing (i.e., Form 7004) does not extend the due date for actually paying the tax. However, a little known (but onerous) procedure may be available to a corporation to extend the time to pay its income tax liability. Under IRC Section 6161(a), the IRS has authority to grant a reasonable extension up to six months for payment of tax shown on a return. For certain deficiencies, IRC Section 6161(b) authorizes the IRS to grant an extension of up to 18 months.

Form 1127 is used to request an extension of time to pay tax. The only criterion that the IRS uses to determine whether to grant an extension of time to pay is "undue hardship." Under IRS procedures an extension will not be granted upon a general statement of hardship. The term hardship means more than an inconvenience to the taxpayer. It must appear that substantial financial loss will result to the taxpayer from making payment on the due date. The taxpayer must demonstrate that they do not have enough cash, above necessary working capital, to pay the tax. In determining cash available, the taxpayer is required to

consider anything that can be converted into cash at the current market price. The taxpayer is also required to show whether they can borrow funds to pay the tax.

To assist the IRS in determining whether undue hardship exists, Form 1127 requires that the taxpayer submit a complete statement of assets and liabilities showing the book and market value of assets and an itemized list of money received and spent for the immediately preceding three months. It is worth noting that the IRS can ask for security as a condition of granting an extension, and that interest will continue to accrue during the extension.

Forms 4466 and 1139 and Expedite Possibilities

Sometimes, due to business emergencies, the IRS's normal 45-day period for processing Forms 4466 and 1139 is too long to wait. In such cases, if a client can document the business urgency, we have been successful in significantly reducing the processing time. Also, if the amount of the refund is for \$1 million or more, we recommend including a Form 8302, Application for Electronic Funds Transfer.

When Form 1139 is processed by the IRS, the taxable income and tax shown as "before carryback" must match the IRS records. If an amended return has been filed, the adjusted amount should only be included on Form 1139 if the IRS has processed such tax adjustments. If the previous taxable income and tax does not match the IRS records, the refund of the tentative allowance may be delayed. We have been successful in avoiding these delays with a review of the IRS records prior to the filing of the Form 1139.

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