

1997

Instructions for Form 1045

Application for Tentative Refund

Section references are to the Internal Revenue Code, unless otherwise noted.

General Instructions

A Change To Note

For certain net operating losses (NOLs) arising in tax years beginning after August 5, 1997, the carryback and carryover periods have changed. Because these changes do not immediately affect taxpayers filing calendar-year returns for 1997, Form 1045 will cover the rules in 1998. If you need more details on these changes for 1997, see **Pub. 553**.

Purpose of Form

Form 1045 is used by an individual, estate, or trust, to apply for:

- A quick refund of taxes from the carryback of an NOL or an unused general business credit.
- A quick refund of taxes from an overpayment of tax due to a claim of right adjustment under section 1341(b)(1).

Note: An NOL arising in a tax year beginning before August 6, 1997, may be carried back 3 years and forward 15 years. However, you may elect to carry forward a 1997 NOL instead of first carrying it back by attaching a statement to that effect to your 1997 tax return filed on or before the due date (including extensions). Once you make the election, it is irrevocable and the carryforward is limited to 15 years.

When To File

File Form 1045 within 1 year after the end of the year in which the NOL, unused credit, or claim of right adjustment occurred, but only on or after the date you file your 1997 return.

When an NOL carryback eliminates or reduces a general business credit in an earlier year, you may be able to carry back the released credit 3 more years. See section 39 and the instructions for **Form 3800**, General Business Credit, for more details on credit carrybacks.

If you carry back the unused credit to tax years before the 3 years preceding the 1997 tax year, use a second Form 1045 for the earlier year(s). Also, file the second application within 1 year after the 1997 tax year. To expedite processing, file the two Forms 1045 together.

Where To File

File Form 1045 with the Internal Revenue Service Center for the place where you

live as shown in the instructions for your 1997 tax return.

Caution: Do not mail Form 1045 with your 1997 income tax return.

What To Attach

Attach **copies** of the following, if applicable, to Form 1045 for the year of the loss or credit:

- If you are an individual, pages 1 and 2 of your 1997 Form 1040, and Schedules A and D (Form 1040).
- All Schedules K-1 you received from partnerships, S corporations, estates, or trusts that contribute to the carryback.
- Any application for extension of time to file your 1997 income tax return.
- All **Forms 8271**, Investor Reporting of Tax Shelter Registration Number, attached to your 1997 return.
- Any other form or schedule from which the carryback results, such as Schedule C or F (Form 1040), or Form 3468, Form 3800, etc.
- All forms or schedules for items figured in the carryback years, such as Form 6251 or Form 3468.

Be sure to attach all required forms listed above, and complete all lines on Form 1045 that apply to you. Otherwise, your application may be disallowed.

Processing the Application

The IRS will process this application within 90 days from the later of:

- The date you file the complete application; or
- The last day of the month that includes the due date (including extensions) for filing your 1997 income tax return (or, for a claim of right adjustment, the date of the overpayment under section 1341(b)(1)).

Before processing certain cases involving abusive tax shelter promotions and before paying refunds, the IRS will reduce refunds of investors when appropriate, and will offset deficiencies assessed under provisions of section 6213(b)(3) against scheduled refunds resulting from tentative carryback adjustments under section 6411(b). See Rev. Proc. 84-84, 1984-2 C.B. 782 and Rev. Rul. 84-175, 1984-2 C.B. 296.

The processing of Form 1045 and the payment of the refund requested does not mean the IRS has accepted the items carried back to previous years as correct. If it is later determined from an

examination of the tax return for the year of the carryback that the claimed deductions or credits are due to an overstatement of the value of property, negligence, disregard of rules, or substantial understatement of income tax, you may have to pay penalties. Any additional tax will also generate interest compounded daily.

We may need to contact you or your authorized representative (for example, your accountant or tax return preparer) for more information so we can process your application. If you want to designate a representative for us to contact, attach a copy of your authorization to Form 1045. For this purpose, you may use **Form 2848**, Power of Attorney and Declaration of Representative.

Disallowance of the Application

This application for a tentative carryback adjustment is not a claim for credit or refund. Any application may be disallowed if it has material omissions or math errors that cannot be corrected within the 90-day period. If it is disallowed in whole or in part, no suit may be brought in any court for the recovery of that tax. But you may file a regular claim for credit or refund before the limitation period expires, as explained below under **Form 1040X or Other Amended Return**.

Excessive Allowances

Any amount applied, credited, or refunded based on this application that the IRS later determines to be excessive may be billed as if it were due to a math or clerical error on the return.

Form 1040X or Other Amended Return

Individuals can get a refund by filing **Form 1040X**, Amended U.S. Individual Income Tax Return, instead of Form 1045. An estate or trust may file an amended **Form 1041**, U.S. Income Tax Return for Estates and Trusts. Generally, you must file an amended return no later than 3 years after the due date of the return for the applicable tax year.

If you use Form 1040X or other amended return, follow the instructions for that return. Attach a computation of your NOL on Schedule A (Form 1045) and, if applicable, your NOL carryover on Schedule B (Form 1045). Complete a separate Form 1040X or other amended

return for each year for which you request an adjustment.

The procedures for Form 1040X differ from those for Form 1045. The IRS is not required to process your Form 1040X within 90 days. However, if we do not process it within 6 months from the date you file it, you may file suit in court. If we disallow your claim on Form 1040X, you must file suit no later than 2 years after the date we disallow it.

Additional Information

For more details on net operating losses, see **Pub. 536**, Net Operating Losses.

Specific Instructions

Address

P.O. box. If your post office does not deliver mail to your home or office and you have a P.O. box, show your box number instead of your home or office address.

Foreign address. If your address is outside the United States or its possessions or territories, enter the information on the line for "City, town or post office, state, and ZIP code" in the following order: city, province or state, and country. Follow the country's practice for entering the postal code. Please **do not** abbreviate the country name.

Line 1a—Net Operating Loss

Figure your net operating loss (NOL) on Schedule A, page 2.

You must carry the entire NOL back to the 3rd tax year before the loss. Any loss not used in the 3rd year is carried to the 2nd, and then the 1st preceding year. Any loss not applied in the 3 preceding years can be carried forward up to 15 years. Special rules apply to the part of an NOL related to any specified liability loss, including product liability losses. See section 172(b)(1)(C) for details.

If you filed a joint return (or a separate return) for some but not all of the tax years involved in figuring the NOL carryback, special rules apply in computing the NOL deduction. See **Pub. 536**. Attach a computation showing how you figured the carryback.

Line 1b—Carryback of Unused General Business Credit

If you claim a tentative refund based on the carryback of this credit, attach a detailed computation showing how you figured the credit carryback, and a recomputation of the credit after you apply the carryback. Make the recomputation on Form 3800 for the tax year of the tentative allowance.

If you filed a joint return (or separate return) for some but not all of the tax years involved in figuring the unused credit carryback, special rules apply in computing the carryback. See the Instructions for Form 3800. Attach a computation showing how you figured the carryback.

Line 2a—Tax Year

If the year of the loss, unused credit, or overpayment under section 1341(b)(1) is other than the calendar year 1997, enter the required information.

Line 9

If an NOL carryback eliminates or reduces a prior year foreign tax credit, you cannot use Form 1045 to carry the released foreign tax credits to earlier years. Also, if the released foreign tax credits cause the release of general business credits, you cannot use Form 1045 to carry the released general business credits to earlier years. Instead, file Form 1040X or other amended return to claim refunds for those years. For details, see **Rev. Rul. 82-154**, 1982-2 C.B. 394.

Lines 10 Through 28—Computation of Decrease in Tax

Enter in columns (a), (c), and (e) the amounts for the applicable carryback year as shown on your original or amended return. If the return was examined, enter the amounts determined as a result of the examination.

Computation of deductions, credits, and taxes when the NOL is fully absorbed. In refiguring your tax for the year to which the NOL is carried and fully absorbed, any income or other deduction based on, or limited to, a percentage of your adjusted gross income generally must be refigured on the basis of your adjusted gross income determined after you apply the NOL carryback.

This includes:

- The special allowance for passive activity losses from rental real estate activities.
- Taxable social security benefits.
- IRA deductions.
- Excludable savings bond interest.
- Medical expenses.
- Personal casualty and theft losses.
- Miscellaneous deductions subject to the 2% limit.
- Itemized deductions subject to the overall limit of section 68.
- The phaseout of the deduction for personal exemptions.

However, figure your charitable contributions deduction without regard to any NOL carryback.

Any credits based on or limited by the tax must be refigured using the tax liability as determined after you apply the NOL carryback.

See **Pub. 536** for more information and examples.

Line 11—Net Operating Loss Deduction After Carryback

In column (b), enter as a positive number the NOL from Schedule A, page 2, line 25. If the NOL is not fully absorbed in the 3rd preceding year, first complete Schedule B on page 3. Then, on line 11, column (d), enter the NOL deduction from Schedule B, line 1, column (b). In column (f), enter the NOL deduction from Schedule B, line 1, column (c).

Line 13—Deductions

Individuals. For columns (a), (c), and (e), enter the amount shown on, or as previously adjusted for, Form 1040, line 34. If you used Form 1040A, enter the amount from line 19. If you used Form 1040-T, enter the amount from line 20. If you used Form 1040EZ, enter the amount from line 5 (line 4 in 1994) if you checked the "Yes" box. If you checked the "No" box for 1994, enter \$3,800 if single (\$6,350 if married). If you checked "No" for 1995, enter \$3,900 if single (\$6,550 if married). If you checked "No" for 1996, enter \$4,000 if single (\$6,700 if married).

If you used TeleFile for your original return and someone else could claim you as a dependent on their return, first get Form 1040EZ for the year in question. Next, complete the worksheet on the back of that form. Then, enter the amount from the worksheet on Form 1045. If no one could claim you as a dependent, enter the amount listed above for that tax year.

Line 17—Income Tax

For columns (b), (d), and (f), refigure your tax after taking into account the NOL carryback. Include on this line any tax from Forms 4970 and 4972. Attach an explanation of the method used to figure your tax and, if necessary, a detailed computation. For example, write "Tax Rate Schedule—1994" if that is the method used for that year. You do not need to attach a detailed computation of the tax in this case.

Line 18—General Business Credit

In columns (b), (d), and (f), enter the total of the recomputed general business credits. Attach all Forms 3800 used to redetermine the amount of general business credit.

Line 19—Other Credits

See your tax return for the carryback year for any additional credits such as the earned income credit, credit for child and dependent care expenses, foreign tax credit, etc., that will apply in that year. If there is an entry on this line, identify the credit(s) claimed.

Line 22—Recapture Taxes

Enter the amount shown on your Form 1040, line 49 (included on line 51 in 1996).

Line 23—Alternative Minimum Tax

A carryback of an NOL may affect your alternative minimum tax. Individuals use Form 6251 to figure this tax, and attach a copy if there is any change to your alternative minimum tax liability. Estates and trusts use Schedule I (Form 1041) (Schedule H for 1994).

Line 24—Self-Employment Tax

Do not adjust the self-employment tax because of any carryback.

Line 25—Other Taxes

See your tax return for the carryback year for any other taxes not mentioned above, such as tax on an IRA, that will apply in that year. If there is an entry on this line, identify the taxes that apply.

Line 29—Overpayment of Tax Under Section 1341(b)(1)

If you apply for a tentative refund based on an overpayment of tax under section 1341(b)(1), enter it on this line. Also, attach a computation that shows the information required in Regulations section 5.6411-1(d).

Signature

Individuals. Sign and date Form 1045. If Form 1045 is filed jointly, both spouses must sign.

Estates. All executors or administrators must sign and date Form 1045.

Trusts. The fiduciary or an authorized representative must sign and date Form 1045.

Schedule A—Net Operating Loss (NOL)

Complete and file this schedule to determine the amount of your NOL that is available for carryback or carryover.

Line 9—Nonbusiness Deductions

These are deductions that are not connected with a trade or business. They include the following:

- IRA deduction.
- Deduction for payments on behalf of a self-employed individual to a Keogh retirement plan or a simplified employee pension (SEP) plan.
- Alimony.
- Itemized deductions are usually nonbusiness, except for casualty and theft losses, and any employee business expenses.
- Standard deduction.

Do not enter **business deductions** on line 9. These are deductions that are connected with a trade or business. They include the following:

- State income tax on business profits.
- Moving expenses.
- Deduction for one-half of self-employment tax.
- Rental losses.
- Loss on the sale or exchange of business real estate or depreciable property.
- Your share of a business loss from a partnership or an S corporation.
- Ordinary loss on the sale or exchange of section 1244 (small business) stock.
- Ordinary loss on the sale or exchange of stock in a small business investment company operating under the Small Business Investment Act of 1958.
- Loss from the sale of accounts receivable if such accounts arose under the accrual method of accounting.
- If you itemized your deductions, casualty and theft losses are business deductions even if they involve nonbusiness property. Employee business expenses such as union dues, uniforms, tools, and educational expenses are also business deductions.

Line 10—Nonbusiness Income Other Than Capital Gains

This is income that is not from a trade or business. Examples are dividends, annuities, and interest on investments.

Do not enter **business income** on line 10. This is income from a trade or business and includes the following:

- Salaries and wages.
- Rental income.
- Gain on the sale or exchange of business real estate or depreciable property.
- Your share of business income from a partnership or an S corporation.

For more details on business and nonbusiness income and deductions, see Pub. 536.

Schedule B—Net Operating Loss Carryover

Complete and file this schedule to determine your net operating loss deduction for each carryback year and the amount to be carried forward if not fully absorbed.

If your NOL is more than the taxable income of the earliest year to which it is carried, you must figure the amount of the NOL that is to be carried to the next tax year. The amount of the NOL you may carry to the next year, after applying it to an earlier year(s), is the excess, if any, of the NOL carryback over the **modified taxable income** of that earlier year. Modified taxable income is the amount figured on line 7 of Schedule B.

Note: *If you carry two or more NOLs to a tax year, you must deduct them, when figuring modified taxable income, in the*

order in which they were incurred. First, deduct the NOL from the earliest year, then the NOL from the next earliest year, and so on. After you deduct each NOL, there will be a new, lower total for modified taxable income to compare with any remaining NOL.

Line 2

The NOL carryback from the 1997 tax year or any later tax year is not allowed. However, net operating losses, otherwise allowable as carrybacks or carryforwards, occurring in tax years before 1997, are taken into account in figuring the modified taxable income for the earlier year.

Line 4—Adjustments to Adjusted Gross Income

If you entered an amount on line 3, you must refigure certain income and deductions based on adjusted gross income. These are:

- The special allowance for passive activity losses from rental real estate activities.
- Taxable social security benefits.
- IRA deductions.
- Excludable savings bond interest.

For purposes of figuring the adjustment to each of these items, your adjusted gross income is increased by the amount on line 3. Do not take into account your 1997 NOL carryback. Generally, figure the adjustment to each item of income or deduction in the order listed above and, when figuring the adjustment to each subsequent item, increase adjusted gross income by the total adjustments you figured for the previous items. However, a special rule applies if you received social security benefits AND deducted IRA contributions. Use the worksheets in **Pub. 590**, Individual Retirement Arrangements (IRAs), to refigure your taxable social security benefits and IRA deductions under the special rule.

Enter on line 4 the total adjustments made to the listed items. Attach a computation showing how the adjustments were figured.

Line 5—Adjustment to Itemized Deductions

Individuals. Skip this line if, for all 3 preceding years, you did not itemize deductions. Otherwise, complete lines 9 through 33 and enter the amount from line 33, or line 12 of the worksheet below, whichever applies, on line 5.

Estates and trusts. Recompute the miscellaneous itemized deductions deducted on Form 1041, line 15b, and any casualty or theft losses claimed on Form 4684, line 18, by substituting modified adjusted gross income (see below) for the adjusted gross income of the estate or trust. Subtract the recomputed deductions and losses from the deductions and losses previously claimed, and enter the difference on line 5, Schedule B of Form 1045.

Modified adjusted gross income. For purposes of figuring miscellaneous itemized deductions subject to the 2% limit, modified adjusted gross income is figured by adding the following amounts to the adjusted gross income previously used to figure these deductions:

- ÿ1. The amount from line 3, Schedule B of Form 1045, and
- ÿ2. The exemption amount from Form 1041, line 20.

For purposes of figuring casualty or theft losses, modified adjusted gross income is figured by adding the amount from line 3, Schedule B of Form 1045, to the adjusted gross income previously used to figure these losses.

Line 8—Net Operating Loss Carryover

Enter the amounts from line 8, columns (a) and (b), on line 1, columns (b) and (c), respectively. Carry forward to 1998 the amount on line 8, column (c).

Line 20

If, for any of the preceding years, you entered an amount other than zero on line 18 and you had any items of income or deductions based on adjusted gross income and listed in the instructions for line 4 of Schedule B, do not use the amount on line 19 as your adjusted gross income for refiguring charitable contributions. Instead, figure adjusted gross income as follows:

- ÿ1. Figure the adjustment to each item that affects and is based on adjusted gross income in the same manner as

explained in the instructions for line 4 of Schedule B, except do not take into account any NOL carrybacks when figuring adjusted gross income. Attach a computation showing how the adjustments were figured.

- ÿ2. Add lines 3, 9, and 18 of Schedule B to the total adjustments you figured in 1 above. Use the result as your adjusted gross income for refiguring charitable contributions.

For net operating loss carryover purposes, you must reduce any contributions carryover to the extent your net operating loss carryover on line 8 is increased by any adjustment made to charitable contributions.

Line 33

If Schedule B (Form 1045), line 11, is more than \$111,800 for 1994 (\$55,900 if married filing separately), more than \$114,700 for 1995 (\$57,350 if married filing separately), or more than \$117,950 for 1996 (\$58,975 if married filing separately), complete the worksheet below.

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You may use Form 1045 to apply under section 6411 for a quick refund of tax for a prior year affected by certain carrybacks. If you file Form 1045, you are required to give us the requested information. We need it to ensure that you

are complying with these laws and to allow us to figure and collect the right amount of tax.

Section 6109 requires that you disclose your taxpayer identification number (SSN or EIN). Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, and the District of Columbia for use in administering their tax laws.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: **Recordkeeping**, 26 min.; **Learning about the law or the form**, 31 min.; **Preparing the form**, 6 hr., 57 min.; and **Copying, assembling, and sending the form to the IRS**, 56 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001.

DO NOT send the form to this address. Instead, see **Where To File** on page 1.

Itemized Deductions Limitation Worksheet—See the Line 33 Instructions (keep for your records)

	1994	1995	1996
1. Add the amounts from Schedule B (Form 1045), lines 14, 20, 25, and 30, and the amounts from Schedule A (Form 1040), lines 9, 14, and 27* (lines 9, 14, 27, and 28 for 1994)			
2. Add Schedule B (Form 1045), lines 14 and 25; Schedule A (Form 1040), line 13;* and any gambling losses included on Schedule A (Form 1040), line 27* (line 28 for 1994).			
3. Subtract line 2 from line 1. If the result is zero or less, STOP HERE; enter the amount from line 33 of Schedule B (Form 1045) on line 5 of Schedule B (Form 1045)			
4. Multiply line 3 by 80% (.80)			
5. Enter the amount from Schedule B (Form 1045), line 11			
6. Enter \$111,800 for 1994 (\$55,900 if married filing separately); \$114,700 for 1995 (\$57,350 if married filing separately); \$117,950 for 1996 (\$58,975 if married filing separately).			
7. Subtract line 6 from line 5			
8. Multiply line 7 by 3% (.03)			
9. Enter the smaller of line 4 or line 8			
10. Subtract line 9 from line 1			
11. Total itemized deductions from Schedule A (Form 1040), line 28 (line 29 for 1994)*; (or as previously adjusted)			
12. Subtract line 10 from line 11. Enter difference here and on line 5 of Schedule B (Form 1045)			

* If you filed Form 1040-T in 1995, use the amounts from the appropriate lines.