

(B) Taxpayers with respect to whom the erroneous treatment occurred

The taxpayer with respect to whom the erroneous treatment occurred must be—

- (i) the taxpayer with respect to whom the determination is made,
- (ii) a taxpayer who acquired title to the property in the transaction and from whom, mediately or immediately, the taxpayer with respect to whom the determination is made derived title, or
- (iii) a taxpayer who had title to the property at the time of the transaction and from whom, mediately or immediately, the taxpayer with respect to whom the determination is made derived title, if the basis of the property in the hands of the taxpayer with respect to whom the determination is made is determined under section 1015(a) (relating to the basis of property acquired by gift).

(C) Prior erroneous treatment

With respect to a taxpayer described in subparagraph (B) of this paragraph—

- (i) there was an erroneous inclusion in, or omission from, gross income,
- (ii) there was an erroneous recognition, or nonrecognition, of gain or loss, or
- (iii) there was an erroneous deduction of an item properly chargeable to capital account or an erroneous charge to capital account of an item properly deductible.

(Aug. 16, 1954, ch. 736, 68A Stat. 338; Pub. L. 85-866, title I, § 59(a), Sept. 2, 1958, 72 Stat. 1647.)

AMENDMENTS

1958—Pars. (6), (7). Pub. L. 85-866 added par. (6) and redesignated former par. (6) as (7).

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85-866, title I, § 59(c), Sept. 2, 1958, 72 Stat. 1647, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 1314 of this title] shall apply to determinations (as defined in section 1313(a)) made after November 14, 1954."

§ 1313. Definitions**(a) Determination**

For purposes of this part, the term "determination" means—

- (1) a decision by the Tax Court or a judgment, decree, or other order by any court of competent jurisdiction, which has become final;
- (2) a closing agreement made under section 7121;
- (3) a final disposition by the Secretary of a claim for refund. For purposes of this part, a claim for refund shall be deemed finally disposed of by the Secretary—

(A) as to items with respect to which the claim was allowed, on the date of allowance of refund or credit or on the date of mailing notice of disallowance (by reason of offsetting items) of the claim for refund, and

(B) as to items with respect to which the claim was disallowed, in whole or in part, or as to items applied by the Secretary in reduction of the refund or credit, on expiration of the time for instituting suit with respect

thereto (unless suit is instituted before the expiration of such time); or

- (4) under regulations prescribed by the Secretary, an agreement for purposes of this part, signed by the Secretary and by any person, relating to the liability of such person (or the person for whom he acts) in respect of a tax under this subtitle for any taxable period.

(b) Taxpayer

Notwithstanding section 7701(a)(14), the term "taxpayer" means any person subject to a tax under the applicable revenue law.

(c) Related taxpayer

For purposes of this part, the term "related taxpayer" means a taxpayer who, with the taxpayer with respect to whom a determination is made, stood, in the taxable year with respect to which the erroneous inclusion, exclusion, omission, allowance, or disallowance was made, in one of the following relationships:

- (1) husband and wife,
- (2) grantor and fiduciary,
- (3) grantor and beneficiary,
- (4) fiduciary and beneficiary, legatee, or heir,
- (5) decedent and decedent's estate,
- (6) partner, or
- (7) member of an affiliated group of corporations (as defined in section 1504).

(Aug. 16, 1954, ch. 736, 68A Stat. 339; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (a)(3), (4). Pub. L. 94-455 struck out "or his delegate" after "Secretary" wherever appearing.

§ 1314. Amount and method of adjustment**(a) Ascertainment of amount of adjustment**

In computing the amount of an adjustment under this part there shall first be ascertained the tax previously determined for the taxable year with respect to which the error was made. The amount of the tax previously determined shall be the excess of—

- (1) the sum of—
 - (A) the amount shown as the tax by the taxpayer on his return (determined as provided in section 6211(b)(1), (3), and (4), relating to the definition of deficiency), if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus
 - (B) the amounts previously assessed (or collected without assessment) as a deficiency, over—
- (2) the amount of rebates, as defined in section 6211(b)(2), made.

There shall then be ascertained the increase or decrease in tax previously determined which results solely from the correct treatment of the item which was the subject of the error (with due regard given to the effect of the item in the computation of gross income, taxable income, and other matters under this subtitle). A similar computation shall be made for any other taxable year affected, or treated as affected, by a net op-