

§ 1301. Averaging of farm income**(a) In general**

At the election of an individual engaged in a farming business or fishing business, the tax imposed by section 1 for such taxable year shall be equal to the sum of—

(1) a tax computed under such section on taxable income reduced by elected farm income, plus

(2) the increase in tax imposed by section 1 which would result if taxable income for each of the 3 prior taxable years were increased by an amount equal to one-third of the elected farm income.

Any adjustment under this section for any taxable year shall be taken into account in applying this section for any subsequent taxable year.

(b) Definitions

In this section—

(1) Elected farm income**(A) In general**

The term “elected farm income” means so much of the taxable income for the taxable year—

(i) which is attributable to any farming business or fishing business; and

(ii) which is specified in the election under subsection (a).

(B) Treatment of gains

For purposes of subparagraph (A), gain from the sale or other disposition of property (other than land) regularly used by the taxpayer in such a farming business or fishing business for a substantial period shall be treated as attributable to such a farming business or fishing business.

(2) Individual

The term “individual” shall not include any estate or trust.

(3) Farming business

The term “farming business” has the meaning given such term by section 263A(e)(4).

(4) Fishing business

The term “fishing business” means the conduct of commercial fishing as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).

(c) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations regarding—

(1) the order and manner in which items of income, gain, deduction, or loss, or limitations on tax, shall be taken into account in computing the tax imposed by this chapter on the income of any taxpayer to whom this section applies for any taxable year, and

(2) the treatment of any short taxable year.

(Added Pub. L. 105-34, title IX, §933(a), Aug. 5, 1997, 111 Stat. 881; amended Pub. L. 108-357, title III, §314(b), Oct. 22, 2004, 118 Stat. 1468.)

PRIOR PROVISIONS

A prior section 1301, added Pub. L. 88-272, title II, §232(a), Feb. 26, 1964, 78 Stat. 106; amended Pub. L.

91-172, title III, §311(a), Dec. 30, 1969, 83 Stat. 586; Pub. L. 98-369, div. A, title I, §173(b), (c)(1), July 18, 1984, 98 Stat. 704, placed a limit on the tax attributable to averagable income, prior to repeal by Pub. L. 99-514, title I, §§141(a), 151(a), Oct. 22, 1986, 100 Stat. 2117, 2121, effective Dec. 31, 1986.

Another prior section 1301, act Aug. 16, 1954, ch. 736, 68A Stat. 334, related to compensation from an employment, defined “an employment”, and stated the rule with respect to partners, prior to the general revision of this part by Pub. L. 88-272.

A prior section 1302, added Pub. L. 88-272, title II, §232(a), Feb. 26, 1964, 78 Stat. 106; amended Pub. L. 91-172, title III, §311(b), Dec. 30, 1969, 83 Stat. 586; Pub. L. 94-455, title VII, §701(f)(1), Oct. 4, 1976, 90 Stat. 1580; Pub. L. 95-30, title I, §102(b)(15), May 23, 1977, 91 Stat. 138; Pub. L. 95-600, title I, §101(d)(2), Nov. 6, 1978, 92 Stat. 2770; Pub. L. 95-615, §202(g)(5), formerly §202(f)(5), Nov. 8, 1978, 92 Stat. 3100, renumbered Pub. L. 96-222, title I, §108(a)(1)(A), Apr. 1, 1980, 94 Stat. 223; Pub. L. 97-34, title I, §111(b)(3), Aug. 13, 1981, 95 Stat. 194; Pub. L. 97-248, title II, §265(b)(2)(B), Sept. 3, 1982, 96 Stat. 547; Pub. L. 98-369, div. A, title I, §173(a), (c)(2)-(4), July 18, 1984, 98 Stat. 703, 704, defined “averagable income” and other terms related to income averaging, prior to repeal by Pub. L. 99-514, title I, §§141(a), 151(a), Oct. 22, 1986, 100 Stat. 2117, 2121, effective Dec. 31, 1986.

Another prior section 1302, act Aug. 16, 1964, ch. 736, 68A Stat. 335, related to income from an invention or artistic work, prior to the general revision of this part by Pub. L. 88-272.

A prior section 1303, added Pub. L. 88-272, title II, §232(a), Feb. 26, 1964, 78 Stat. 107; amended Pub. L. 91-172, title III, §311(d)(1), Dec. 30, 1969, 83 Stat. 587; Pub. L. 94-455, title XIX, §1901(b)(8)(G), Oct. 4, 1976, 90 Stat. 1795; Pub. L. 97-34, title I, §111(b)(4), Aug. 13, 1981, 95 Stat. 194; Pub. L. 99-272, title XIII, §13206(a), (b), Apr. 7, 1986, 100 Stat. 318, 319, related to individuals eligible for income averaging, prior to repeal by Pub. L. 99-514, title I, §§141(a), 151(a), Oct. 22, 1986, 100 Stat. 2117, 2121, effective Dec. 31, 1986.

Another prior section 1303, acts Aug. 16, 1954, ch. 736, 68A Stat. 335, Sept. 22, 1961, Pub. L. 87-293, title II, §201(b), 75 Stat. 625, related to income from back pay, prior to the general revision of this part by Pub. L. 88-272.

A prior section 1304, added Pub. L. 88-272, title II, §232(a), Feb. 26, 1964, 78 Stat. 108; amended Pub. L. 91-172, title III, §311(c), (d)(2), title V, §515(c)(4), title VIII, §§802(c)(5), 803(d)(8), Dec. 30, 1969, 83 Stat. 587, 646, 678, 684; Pub. L. 93-406, title II, §2005(c)(6), Sept. 2, 1974, 88 Stat. 991; Pub. L. 94-455, title III, §302(c), title V, §501(b)(7), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1555, 1559, 1834; Pub. L. 95-600, title IV, §401(b)(5), Nov. 6, 1978, 92 Stat. 2867; Pub. L. 95-615, §202(g)(5), formerly §202(f)(5), Nov. 8, 1978, 92 Stat. 3100, renumbered Pub. L. 96-222, title I, §108(a)(1)(A), Apr. 1, 1980, 94 Stat. 223; Pub. L. 97-34, title I, §§101(c)(2)(B), 111(b)(3), (4), Aug. 13, 1981, 95 Stat. 183, 194; Pub. L. 97-248, title II, §265(b)(2)(C), Sept. 3, 1982, 96 Stat. 547, set out special rules for income averaging, prior to repeal by Pub. L. 99-514, title I, §§141(a), 151(a), Oct. 22, 1986, 100 Stat. 2117, 2121, effective Dec. 31, 1986.

Another prior section 1304, act Aug. 11, 1955, ch. 804, §1(a), 69 Stat. 688, related to compensatory damages for patent infringement, prior to the general revision of this part by Pub. L. 88-272.

A prior section 1305, added Pub. L. 88-272, title II, §232(a), Feb. 26, 1964, 78 Stat. 110; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, provided for promulgation of regulations for income averaging, prior to repeal by Pub. L. 99-514, title I, §§141(a), 151(a), Oct. 22, 1986, 100 Stat. 2117, 2121, effective Dec. 31, 1986.

Another prior section 1305, act Aug. 26, 1957, Pub. L. 85-165, §1, 71 Stat. 413, related to damages for breach of contract or fiduciary duty, prior to the general revision of this part by Pub. L. 88-272.

A prior section 1306, Pub. L. 85-866, title I, §58(a), Sept. 2, 1958, 72 Stat. 1646, related to damages received

for injuries under the antitrust laws, prior to the general revision of this part by Pub. L. 88-272.

A prior section 1307, act Aug. 16, 1954, ch. 736, 68A Stat. 336, §1307, formerly §1304; renumbered §1305, Aug. 11, 1955, ch. 804, §1(a), 69 Stat. 688; renumbered §1306, Aug. 26, 1957, Pub. L. 85-165, §1, 71 Stat. 413; renumbered §1307, Sept. 2, 1958, Pub. L. 85-866, title I, §58(a), 72 Stat. 1646; amended Oct. 16, 1962, Pub. L. 87-834, §22(a), 76 Stat. 1064, provided rules applicable to this part, prior to the general revision of this part by Pub. L. 88-272.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-357, §314(b)(1), substituted “farming business or fishing business” for “farming business” in introductory provisions.

Subsec. (b)(1)(A)(i), (B). Pub. L. 108-357, §314(b)(2), inserted “or fishing business” after “farming business” wherever appearing.

Subsec. (b)(4). Pub. L. 108-357, §314(b)(3), added par. (4).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to taxable years beginning after Dec. 31, 2003, see section 314(c) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments note under section 55 of this title.

EFFECTIVE DATE

Pub. L. 105-34, title IX, §933(c), Aug. 5, 1997, 111 Stat. 882, as amended by Pub. L. 105-277, div. J, title II, §2011, Oct. 21, 1998, 112 Stat. 2681-902, provided that: “The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1997.”

PART II—MITIGATION OF EFFECT OF LIMITATIONS AND OTHER PROVISIONS

Sec.

1311.	Correction of error.
1312.	Circumstances of adjustment.
1313.	Definitions.
1314.	Amount and method of adjustment.
[1315.	Repealed.]

AMENDMENTS

1976—Pub. L. 94-455, title XIX, §1901(b)(35), Oct. 4, 1976, 90 Stat. 1802, struck out item 1315 “Effective date”.

§ 1311. Correction of error

(a) General rule

If a determination (as defined in section 1313) is described in one or more of the paragraphs of section 1312 and, on the date of the determination, correction of the effect of the error referred to in the applicable paragraph of section 1312 is prevented by the operation of any law or rule of law, other than this part and other than section 7122 (relating to compromises), then the effect of the error shall be corrected by an adjustment made in the amount and in the manner specified in section 1314.

(b) Conditions necessary for adjustment

(1) Maintenance of an inconsistent position

Except in cases described in paragraphs (3) (B) and (4) of section 1312, an adjustment shall be made under this part only if—

(A) in case the amount of the adjustment would be credited or refunded in the same manner as an overpayment under section 1314, there is adopted in the determination a position maintained by the Secretary, or

(B) in case the amount of the adjustment would be assessed and collected in the same manner as a deficiency under section 1314, there is adopted in the determination a position maintained by the taxpayer with respect to whom the determination is made,

and the position maintained by the Secretary in the case described in subparagraph (A) or maintained by the taxpayer in the case described in subparagraph (B) is inconsistent with the erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be.

(2) Correction not barred at time of erroneous action

(A) Determination described in section 1312(3)(B)

In the case of a determination described in section 1312(3)(B) (relating to certain exclusions from income), adjustment shall be made under this part only if assessment of a deficiency for the taxable year in which the item is includible or against the related taxpayer was not barred, by any law or rule of law, at the time the Secretary first maintained, in a notice of deficiency sent pursuant to section 6212 or before the Tax Court, that the item described in section 1312(3)(B) should be included in the gross income of the taxpayer for the taxable year to which the determination relates.

(B) Determination described in section 1312(4)

In the case of a determination described in section 1312(4) (relating to disallowance of certain deductions and credits), adjustment shall be made under this part only if credit or refund of the overpayment attributable to the deduction or credit described in such section which should have been allowed to the taxpayer or related taxpayer was not barred, by any law or rule of law, at the time the taxpayer first maintained before the Secretary or before the Tax Court, in writing, that he was entitled to such deduction or credit for the taxable year to which the determination relates.

(3) Existence of relationship

In case the amount of the adjustment would be assessed and collected in the same manner as a deficiency (except for cases described in section 1312(3)(B)), the adjustment shall not be made with respect to a related taxpayer unless he stands in such relationship to the taxpayer at the time the latter first maintains the inconsistent position in a return, claim for refund, or petition (or amended petition) to the Tax Court for the taxable year with respect to which the determination is made, or if such position is not so maintained, then at the time of the determination.

(Aug. 16, 1954, ch. 736, 68A Stat. 337; Pub. L. 94-455, title XIX, §§1901(a)(142), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1788, 1834.)

AMENDMENTS

1976—Subsec. (b)(2). Pub. L. 94-455, §§1901(a)(142), 1906(b)(13)(A), struck out “or his delegate” after “Sec-