

§ 1.1313(c)-1

26 CFR Ch. I (4-1-01 Edition)

and, where applicable, a statement as to the amount of the adjustment or adjustments ascertained pursuant to § 1.1314(a)-2 with respect to any other taxable year or years; and

(4) A waiver of restrictions on assessment and collection of any deficiencies set forth pursuant to subparagraph 3 of this paragraph.

(c) *Execution and effect of agreement.* An agreement made pursuant to this section shall be signed by the taxpayer with respect to whom the determination is made, or on the taxpayer's behalf by an agent or attorney acting pursuant to a power of attorney on file with the Internal Revenue Service. If an adjustment is to be made in a case of a related taxpayer, the agreement shall be signed also by the related taxpayer, or on the related taxpayer's behalf by an agent or attorney acting pursuant to a power of attorney on file with the Internal Revenue Service. It may be signed on behalf of the Commissioner by the district director, or such other person as is authorized by the Commissioner. When duly executed, such agreement will constitute the authority for an allowance of any refund or credit agreed to therein, and for the immediate assessment of any deficiency agreed to therein for the taxable year with respect to which the error was made, or any closed taxable year or years affected, or treated as affected, by a net operating loss deduction or capital loss carryover determined with reference to the taxable year with respect to which the error was made.

(d) *Finality of determination.* A determination made by an agreement pursuant to this section becomes final when the tax liability for the open taxable year to which the determination relates becomes final. During the period, if any, that a deficiency may be assessed or a refund or credit allowed with respect to such year, either the taxpayer or the Commissioner may properly pursue any of the procedures provided by law to secure a further modification of the tax liability for such year. For example, if the taxpayer subsequently files a claim for refund, or if the Commissioner subsequently issues a notice of deficiency with respect to such year, either may adopt a

position with respect to the item that was the subject of the adjustment that is at variance with the manner in which said item was treated in the agreement. Any assessment, refund, or credit that is subsequently made with respect to the tax liability for such open taxable year, to the extent that it is based upon a revision in the treatment of the item that was the subject of the adjustment, shall constitute an alteration or revocation of the determination for the purpose of a redetermination of the adjustment pursuant to paragraph (d) of § 1.1314(b)-1.

[T.D. 6500, 25 FR 12037, Nov. 26, 1960]

§ 1.1313(c)-1 Related taxpayer.

An adjustment in the case of the taxpayer with respect to whom the error was made may be authorized under section 1311 although the determination is made with respect to a different taxpayer, provided that such taxpayers stand in one of the relationships specified in section 1313(c). The concept of *related taxpayer* has application to all of the circumstances of adjustment specified in § 1.1312-1 through § 1.1312-5 if the related taxpayer is one described in section 1313(c); it has application to the circumstances of adjustment specified in § 1.1312-6 only if the related taxpayer is one described in section 1313(c)(7); it does not apply in the circumstances specified in § 1.1312-7. If such relationship exists, it is not essential that the error involve a transaction made possible only by reason of the existence of the relationship. For example, if the error with respect to which an adjustment is sought under section 1311 grew out of an assignment of rents between taxpayer A and taxpayer B, who are partners, and the determination is with respect to taxpayer A, an adjustment with respect to taxpayer B may be permissible despite the fact that the assignment had nothing to do with the business of the partnership. The relationship need not exist throughout the entire taxable year with respect to which the error was made, but only at some time during that taxable year. For example, if a taxpayer on February 15 assigns to his fiancée the net rents of a building which the taxpayer owns, and the two

are married before the end of the taxable year, an adjustment may be permissible if the determination relates to such rents despite the fact that they were not husband and wife at the time of the assignment. See §1.1311(b)-3 for the requirement in certain cases that the relationship exist at the time an inconsistent position is first maintained.

[T.D. 6617, 27 FR 10824, Nov. 7, 1962]

§ 1.1314(a)-1 Ascertainment of amount of adjustment in year of error.

(a) In computing the amount of the adjustment under sections 1311 to 1315, inclusive, there must first be ascertained the amount of the tax previously determined for the taxpayer as to whom the error was made for the taxable year with respect to which the error was made. The tax previously determined for any taxable year may be the amount of tax shown on the taxpayer's return, but if any changes in that amount have been made, they must be taken into account. In such cases, the tax previously determined will be the sum of the amount shown as the tax by the taxpayer upon his return and the amounts previously assessed (or collected without assessment) as deficiencies, reduced by the amount of any rebates made. The amount shown as the tax by the taxpayer upon his return and the amount of any rebates or deficiencies shall be determined in accordance with the provisions of section 6211 and the regulations thereunder.

(b)(1) The tax previously determined may consist of tax for any taxable year beginning after December 31, 1931, imposed by subtitle A of the Internal Revenue Code of 1954, by chapter 1 and subchapters A, B, D, and E of chapter 2 of the Internal Revenue Code of 1939, or by the corresponding provisions of prior internal revenue laws, or by any one or more of such provisions.

(2) After the tax previously determined has been ascertained, a recomputation must then be made under the laws applicable to said taxable year to ascertain the increase or decrease in tax, if any, resulting from the correction of the error. The difference between the tax previously determined and the tax as recomputed after correc-

tion of the error will be the amount of the adjustment.

(c) No change shall be made in the treatment given any item upon which the tax previously determined was based other than in the correction of the item or items with respect to which the error was made. However, due regard shall be given to the effect that such correction may have on the computation of gross income, taxable income, and other matters under chapter 1 of the Code. If the treatment of any item upon which the tax previously determined was based, or if the application of any provisions of the internal revenue laws with respect to such tax, depends upon the amount of income (e.g. charitable contributions, foreign tax credit, dividends received credit, medical expenses, and percentage depletion), readjustment in these particulars will be necessary as part of the recomputation in conformity with the change in the amount of the income which results from the correct treatment of the item or items in respect of which the error was made.

(d) Any interest or additions to the tax collected as a result of the error shall be taken into account in determining the amount of the adjustment.

(e) The application of this section may be illustrated by the following example:

Example: (1) For the taxable year 1949 a taxpayer with no dependents, who kept his books on the cash receipts and disbursements method, filed a joint return with his wife disclosing adjusted gross income of \$42,000 deductions amounting to \$12,000, and a net income of \$30,000. Included among other items in the gross income were salary in the amount of \$15,000 and rents accrued but not yet received in the amount of \$5,000. During the taxable year he donated \$10,000 to the American Red Cross and in his return claimed a deduction of \$6,300 on account thereof, representing the maximum deduction allowable under the 15-percent limitation imposed by section 23(o) of the Internal Revenue Code of 1939 as applicable to the year 1949. In computing his net income he omitted interest income amounting to \$6,000 and neglected to take a deduction for interest paid in the amount of \$4,500. The return disclosed a tax liability of \$7,788, which was assessed and paid. After the expiration of the period of limitations upon the assessment of a deficiency or the allowance of a refund for 1949, the Commissioner included the item of