

§ 1.1314(a)-2

rental income amounting to \$5,000 in the taxpayer's gross income for the year 1950 and asserted a deficiency for that year. As a result of a final decision of the Tax Court of the United States in 1955 sustaining the deficiency for 1950, an adjustment is authorized for the year 1949.

(2) The amount of the adjustment is computed as follows:

Tax previously determined for 1949	\$7,788
Net income for 1949 upon which tax previously determined was based	30,000
Less: Rents erroneously included	5,000
Balance	25,000
Adjustment for contributions (add 15 percent of \$5,000)	750
Net income as adjusted	25,750
Tax as recomputed	6,152
Tax previously determined	7,788
Difference	1,636
Amount of adjustment to be refunded or credited	1,636

(3) In accordance with the provisions of paragraph (c) of this section, the recomputation to determine the amount of the adjustment does not take into consideration the item of \$6,000 representing interest received, which was omitted from gross income, or the item of \$4,500 representing interest paid, for which no deduction was allowed.

[T.D. 6500, 25 FR 12038, Nov. 26, 1960]

§ 1.1314(a)-2 Adjustment to other barred taxable years.

(a) An adjustment is authorized under section 1311 with respect to a taxable year or years other than the year of the error, but only if all of the following requirements are met:

(1) The tax liability for such other year or years must be affected, or must have been treated as affected, by a net operating loss deduction (as defined in section 172) or by a capital loss carryback or carryover (as defined in section 1212).

(2) The net operating loss deduction or capital loss carryback or carryover must be determined with reference to the taxable year with respect to which the error was made.

(3) On the date of the determination the adjustment with respect to such other year or years must be prevented by some law or rule of law, other than sections 1311 through 1315 and section 7122 and the corresponding provisions of prior revenue laws.

(b) The amount of the adjustment for such other year or years shall be com-

puted in a manner similar to that provided in § 1.1314(a)-1. The tax previously determined for such other year or years shall be ascertained. A recomputation must then be made to ascertain the increase or decrease in tax, if any, resulting solely from the correction of the net operating loss deduction or capital loss carryback or carryover. The difference between the tax previously determined and the tax as recomputed is the amount of the adjustment. In the recomputation, no consideration shall be given to items other than the following:

(1) The items upon which the tax previously determined for such other year or years was based, and

(2) The net operating loss deduction or capital loss carryback or carryover as corrected.

In determining the correct net operating loss deduction or capital loss carryback or carryover, no changes shall be made in taxable income (net income in the case of taxable years subject to the provisions of the Internal Revenue Code of 1939 or prior revenue laws), net operating loss or capital loss, for any barred taxable year, except as provided in section 1314. Section 172 and the corresponding provisions of prior revenue laws, and the regulations promulgated thereunder, prescribe the methods of computing the net operating loss deduction. Section 1212 and the corresponding provisions of prior revenue laws, and the regulations promulgated thereunder, prescribe the methods for computing the capital loss carryback and carryover.

(c) A net operating loss deduction or a capital loss carryback or carryover determined with reference to the year of the error may affect, or may have been treated as affecting, a taxable year with respect to which an adjustment is not prevented by the operation of any law or rule of law. In such case, the appropriate adjustment shall be made with respect to such open taxable year. However, the redetermination of the tax for such open taxable year is not made pursuant to part II (section 1311 and following), subchapter Q, chapter 1 of the Code, and the adjustment for such open year and the method of

computation are not limited by the provisions of said sections.

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

Example: The taxpayer is a corporation which makes its income tax returns on a calendar year basis. Its net income in 1949, computed without any net operating loss deduction was \$10,000, but because of a net operating loss deduction in excess of that amount resulting from a carryback of a net operating loss claimed for 1950, it paid no income tax for 1949. On its return for 1950 it showed an excess of deductions over gross income of \$14,000, and it paid no income tax for 1950. For the year 1951 its net income, computed without any net operating loss deduction, was \$15,000, and a net operating loss deduction of \$13,000 was allowed (\$4,000 of which was attributable to the carryover from 1950 and \$9,000 of which was attributable to the carryback of a net operating loss of \$9,000 sustained in 1952). In 1957 the assessment of deficiencies or the allowance of refunds for all of said years are barred by the statute of limitations.

(i) A Tax Court decision entered in 1957 with respect to the taxable year 1953 constituted a determination under which an adjustment is authorized to the taxable year 1950, the year with respect to which the error was made. This adjustment increases income for said year by \$15,000, so that instead of a net operating loss of \$14,000, its corrected net income is \$1,000 for 1950, and the tax computed on that income will be assessed as a deficiency for 1950. An adjustment is authorized under this section with respect to each of the years 1949 and 1951, as the tax liability for each year was treated as affected by a net operating loss deduction which was determined by a computation in which reference was made to the year 1950. In the recomputation of the tax for 1949, the net operating loss carryback from 1950 will be eliminated, and in the recomputation of the tax for 1951 the net operating loss carryover from 1950 will be eliminated; for each of the years 1949 and 1951 there will be an adjustment which will be treated as a deficiency for said year.

(ii) Assuming the same facts, except that the correction with respect to the year 1950 increases the net operating loss for said year from \$14,000 to \$20,000. As a result of this correction, there will be no change in the tax due for 1949 and 1950. However, the net operating loss deduction for 1951 is recomputed to be \$19,000, the aggregate of the \$10,000 carryover from 1950 and the \$9,000 carryback from 1952 (the carryover from 1950 is the excess of the \$20,000 net operating loss for 1950 over the \$10,000 net income for 1949, such 1949 income being determined without any net operating loss deduction). As a result of the

correction of the net operating loss deduction for 1951, the tax recomputation will show no tax due for said year, and the adjustment for 1951 will result in a refund or credit of the tax previously paid. Moreover, computations resulting from this adjustment will disclose a net operating loss carryover from 1952 to 1953 of \$4,000, that is, the excess of the \$9,000 net operating loss for 1952 over the \$5,000 net income for 1951 (such net income for 1951 being computed as the \$15,000 reduced by the carryover of \$10,000 from 1950, the carryback from 1952 not being taken into account). A further adjustment is authorized under section 1311 with respect to any subsequent barred year in which the tax liability is affected by a carryover of the net operating loss from 1952, inasmuch as such carryover from 1952 has been determined by a computation in which reference was made to 1950, the taxable year of the error.

[T.D. 6500, 25 FR 12038, Nov. 26, 1960, as amended by T.D. 7301, 39 FR 972, Jan. 4, 1974]

§ 1.1314(b)-1 Method of adjustment.

(a) If the amount of the adjustment ascertained pursuant to § 1.1314(a)-1 or § 1.1314(a)-2 represents an increase in tax, it is to be treated as if it were a deficiency determined by the Commissioner with respect to the taxpayer as to whom the error was made and for the taxable year or years with respect to which such adjustment was made. The amount of such adjustment is thus to be assessed and collected under the law and regulations applicable to the assessment and collection of deficiencies, subject, however, to the limitations imposed by § 1.1314(c)-1. Notice of deficiency, unless waived, must be issued with respect to such amount or amounts, and the taxpayer may contest the deficiency before the Tax Court of the United States or, if he chooses, may pay the deficiency and later file claim for refund. If the amount of the adjustment ascertained pursuant to § 1.1314(a)-1 or § 1.1314(a)-2 represents a decrease in tax, it is to be treated as if it were an overpayment claimed by the taxpayer with respect to whom the error was made for the taxable year or years with respect to which such adjustment was made. Such amount may be recovered under the law and regulations applicable to overpayments of tax, subject, however, to the limitations imposed by § 1.1314(c)-1. The taxpayer must file a claim for refund thereof, unless the overpayment is