

**§ 1.1334-1**

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recomputed by redetermining such net operating loss deduction and such unused excess profits credit carryover or carryback. In the redetermination of such net operating loss deduction the net operating loss carryover or carryback shall be recomputed by disregarding such allowable war loss deduction (to the extent that such deduction does not exceed the sum of the amount of such recovery not included in gross income for the taxable year of such recovery, plus the aggregate amount of any recoveries in intervening taxable years in respect of the same property) and by disregarding any other deductions allowable on account of other war losses or any other losses, expenditures, or accruals in the taxable year in respect of which, and to the extent that, recoveries in intervening taxable years have been excluded from gross income under section 127(c)(3) or 22(b)(12) of the Internal Revenue Code of 1939, or section 1333 or 111 of the Internal Revenue Code of 1954, or otherwise. The unused excess profits credit carryover or carryback shall then be recomputed to conform to the redetermination of the net operating loss deduction for the taxable year from which the unused credit is carried over or carried back. The difference between the tax previously determined and the tax as recomputed shall be the amount of the increase which shall be added to the tax for the taxable year of the recovery. In case there is an increase in the excess profits tax under chapter 2E of the Internal Revenue Code of 1939 for the taxable year in which an unused excess profits credit was availed of in computing the unused excess profits credit adjustment, and a decrease in the income tax under chapter 1 of the Internal Revenue Code of 1939 for such taxable year, the increase which shall be added to the tax for the taxable year of the recovery shall be considered to be an amount equal to the excess of the increase in the excess profits tax over the decrease in the income tax.

[T.D. 6500, 25 FR 12045, Nov. 26, 1960]

**§ 1.1334-1 Restoration of value of investments.**

If any interest of the taxpayer in or with respect to property was deter-

mined to be worthless and was treated as a war loss under section 127(a)(3) of the Internal Revenue Code of 1939 (see 26 CFR (1939) 29.127(a)-4) (Regulations 111), or if the taxpayer retained an interest in a corporation with respect to which he sustained a war loss under section 127(e) of the Internal Revenue Code of 1939, and if the interest in the hands of the taxpayer is restored in value, in whole or in part, by reason of a recovery with respect to the underlying assets treated as war loss property, then such restoration in value is a recovery by the taxpayer for the purposes of section 1331. In the application of section 1333, such restoration shall be treated as a recovery of the same interest considered as destroyed or seized. War loss property is considered as not being in existence from the date of the loss to the date of its recovery.

[T.D. 6500, 25 FR 12046, Nov. 26, 1960]

**§ 1.1335-1 Elective method; time and manner of making election and effect thereof.**

(a) *In general.* If the taxpayer elects to have the provisions of section 1333 applicable to any taxable year in which any money or property is recovered in respect of war loss property, section 1333 will be applicable by virtue of that election to all taxable years of the taxpayer beginning after December 31, 1941. Thus, the taxpayer need not make an election with respect to each separate taxable year in which he had a recovery. An election for any taxable year in which the taxpayer had a recovery in respect of a prior war loss is sufficient to make the provisions of section 1333 applicable not only to war loss recoveries received by the taxpayer in any past taxable year beginning after December 31, 1941, but to any recoveries which may be received by the taxpayer in any future taxable year. Such election once made shall be irrevocable. The election to have the provisions of section 1333 applicable to any taxable year cannot be made unless the taxpayer recovers money or property (in respect of a prior war loss) during the taxable year for which such election is made.

(b) *Manner of election.* In all cases the election to have the provisions of section 1333 apply must be made by the

taxpayer not later than six months from the last day prescribed by law for the filing of his income tax return for any taxable year in which a recovery of war loss property has occurred. The election shall be evidenced by a written statement, made within such 6-month period, that the taxpayer elects to have the provisions of section 1333 apply to any taxable year in which any money or property is recovered in respect of war loss property. The statement may be made in (or attached to):

(1) The return or amended return filed for such taxable year;

(2) A claim for refund or credit filed for such taxable year for an overpayment resulting from application of such provisions;

(3) A timely petition or amended petition to The Tax Court of the United States for a redetermination of any deficiency for any taxable year in which a recovery of war loss property occurred; or

(4) A letter addressed to the district director for the district in which the return for such taxable year was required to be filed.

If the written statement of election is made in a letter, it shall be signed by the taxpayer making the election if an individual or, if the taxpayer is not an individual, the letter must be executed in the same manner as required in the case of the income tax return of such taxpayer. The date of the making of the election shall be the date the return, amended return, claim for refund or credit, or letter is filed in the office of the district director, or the date the petition or amended petition is filed with The Tax Court of the United States. In case the election is made in a return filed before the last day prescribed by law for the filing thereof (including any extension of time for such filing), such election shall not be considered made until such last day. See section 7502 and the regulations thereunder with respect to the timeliness of filing an election where filing is done by mail and section 7503 and the regulations thereunder with respect to the timeliness of filing where the last day for filing falls on a Saturday, Sunday, or legal holiday.

(c) *Effect of election.* (1) If the provisions of section 1333 are applicable to

any taxable year pursuant to an election made by the taxpayer in accordance with the provisions of paragraph (a) of this section, the period of limitations provided in chapter 66 of the Code on the making of assessments and the beginning of distraint or a proceeding in court for collection with respect to (i) the amount to be added to the tax for such taxable year under the provisions of section 1333 and (ii) any deficiency for such taxable year or for any other taxable year to the extent attributable to the basis of the recovered property being determined under the provisions of section 1336(b), shall not expire prior to the expiration of two years following the date of the making of such election. Such amount or such deficiency may be assessed at any time prior to the expiration of such period, notwithstanding any law or rule of law which would otherwise prevent such assessment and collection.

(2) If the provisions of section 1333 are applicable to any taxable year pursuant to an election made by the taxpayer in accordance with the provisions of paragraph (a) of this section, and refund or credit of any overpayment resulting from the application of such provisions to such taxable year is prevented on the date of the making of such election, or within one year from such date, by the operation of any law or rule of law (other than section 7122 relating to compromises), refund or credit of such overpayment may nevertheless be made or allowed, provided claim therefor is filed within one year from such date. Thus, the amount of such overpayment which may be refunded or credited is not subject to the limitations contained in section 6511 or 6512(b).

(3) In the case of any taxable year ending before the date of the making by the taxpayer of an election under section 1335, no interest shall be paid on any overpayment specified in subparagraph (2) of this paragraph for any period before the expiration of six months following the date of the making of such election by the taxpayer, and no interest shall be assessed or collected with respect to any amount or any deficiency specified in subparagraph (1) of this paragraph for any period before the expiration of six

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months following the date of the making of such election by the taxpayer.

[T.D. 6500, 25 FR 12047, Nov. 26, 1960]

### § 1.1336-1 Basis of recovered property.

(a) *General rule.* (1) Under section 1336(a), the unadjusted basis of any war loss property which is recovered and the unadjusted basis of any property which is recovered in lieu of or on account of any such war loss property is considered the fair market value of such recovered property upon the date of its recovery with the following adjustments:

(i) If the sum of the recoveries for the day such property is recovered and of all previous recoveries exceeds the aggregate of the allowable deductions for prior taxable years on account of war losses, so that a portion of the recoveries for such day is treated as gain on the involuntary conversion of property, such fair market value of the property is reduced by the total gain, if any, for such day derived from such recovered property as determined under paragraph (b) of § 1.1332-1.

(ii) Such fair market value, as reduced under subdivision (i) of this subparagraph, is increased by the portion, if any, of the recognized gain resulting from the recoveries for such day which is allocable to such recovered property, as determined under paragraph (b) of § 1.1332-1.

In effect, the unadjusted basis of such property is its fair market value upon the date of its recovery, reduced by the amount of nonrecognized gain attributable to such recovery under the provisions of paragraph (b) of § 1.1332-1.

(2) If the respective bases of several properties of a taxpayer determined under section 1336(a) are greatly disproportionate to their adjusted bases immediately before their treatment as war loss properties, the taxpayer may apply to the Commissioner for the allocation of the aggregate of the bases of such properties among them in the proportion of their adjusted bases immediately before the destruction or seizure of such properties determined under section 127(a) of the Internal Revenue Code of 1939. The amount so allocated to any such property, in an application approved by the Commis-

sioner, shall be the unadjusted basis of such property in lieu of the amount determined under subparagraph (1) of this paragraph.

(3) The application to the Commissioner shall set forth a list of all the properties of the taxpayer having an unadjusted basis determined under this section, a description of each such property together with a statement as to the amount of its adjusted basis immediately before the destruction or seizure of such property determined under section 127(a) of the Internal Revenue Code of 1939, and a statement as to whether there has been any substantial change in the use or nature of the property chosen for the allocation from its nature or use immediately before the time it was treated as destroyed or seized. Such application will be allowed unless there has been such a substantial change in the nature or use of such property that the allocation of the bases would produce an arbitrary result, or unless the taxpayer has obtained such tax benefits by reason of the basis determined under subparagraph (1) of this paragraph, that it would be inequitable to change his basis. Thus, the allocation will not be allowed if it would give the taxpayer an unadjusted basis with respect to any property which is less than the amount of the adjustments in reduction of the basis of such property which are allowable after its recovery. For example, when property A is recovered it has an unadjusted basis of \$100. After \$70 depreciation has been allowed on A, an allocation is sought which would give A an unadjusted basis of \$60. Since this is less than the depreciation which is an adjustment against such basis, the allocation will not be permitted.

(4) The amount of any adjustments to the unadjusted basis determined under subparagraph (1) of this paragraph shall, upon the allocation of the bases, be taken as an adjustment to the allocated unadjusted basis. Thus, if \$30 depreciation was allowed upon a \$100 basis determined under subparagraph (1) of this paragraph and if the unadjusted basis upon allocation is \$75, such \$30 depreciation is allowed against such allocated unadjusted basis, so that the adjusted basis of the property is then \$45.