

TITLE 26 - INTERNAL REVENUE CODE

Subtitle A - Income Taxes

CHAPTER 1 - NORMAL TAXES AND SURTAXES

Subchapter Q - Readjustment of Tax Between Years and Special Limitations

PART V - CLAIM OF RIGHT

§ 1341. Computation of tax where taxpayer restores substantial amount held under claim of right

(a) General rule

If—

- (1) an item was included in gross income for a prior taxable year (or years) because it appeared that the taxpayer had an unrestricted right to such item;
- (2) a deduction is allowable for the taxable year because it was established after the close of such prior taxable year (or years) that the taxpayer did not have an unrestricted right to such item or to a portion of such item; and
- (3) the amount of such deduction exceeds \$3,000,

then the tax imposed by this chapter for the taxable year shall be the lesser of the following:

- (4) the tax for the taxable year computed with such deduction; or
- (5) an amount equal to—
 - (A) the tax for the taxable year computed without such deduction, minus
 - (B) the decrease in tax under this chapter (or the corresponding provisions of prior revenue laws) for the prior taxable year (or years) which would result solely from the exclusion of such item (or portion thereof) from gross income for such prior taxable year (or years).

For purposes of paragraph (5)(B), the corresponding provisions of the Internal Revenue Code of 1939 shall be chapter 1 of such code (other than subchapter E, relating to self-employment income) and subchapter E of chapter 2 of such code.

(b) Special rules

- (1) If the decrease in tax ascertained under subsection (a)(5)(B) exceeds the tax imposed by this chapter for the taxable year (computed without the deduction) such excess shall be considered to be a payment of tax on the last day prescribed by law for the payment of tax for the taxable year, and shall be refunded or credited in the same manner as if it were an overpayment for such taxable year.
- (2) Subsection (a) does not apply to any deduction allowable with respect to an item which was included in gross income by reason of the sale or other disposition of stock in trade of the taxpayer (or other property of a kind which would properly have been included in the inventory of the taxpayer if on hand at the close of the prior taxable year) or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business. This paragraph shall not apply if the deduction arises out of refunds or repayments with respect to rates made by a regulated public utility (as defined in section 7701 (a)(33) without regard to the limitation contained in the last two sentences thereof) if such refunds or repayments are required to be made by the Government, political subdivision, agency, or instrumentality referred to in such section, or by an order of a court, or are made in settlement of litigation or under threat or imminence of litigation.
- (3) If the tax imposed by this chapter for the taxable year is the amount determined under subsection (a)(5), then the deduction referred to in subsection (a)(2) shall not be taken into account for any purpose of this subtitle other than this section.
- (4) For purposes of determining whether paragraph (4) or paragraph (5) of subsection (a) applies—
 - (A) in any case where the deduction referred to in paragraph (4) of subsection (a) results in a net operating loss, such loss shall, for purposes of computing the tax for the taxable year

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2010 (see <http://www.law.cornell.edu/uscode/uscp.html>).

under such paragraph (4), be carried back to the same extent and in the same manner as is provided under section 172; and

(B) in any case where the exclusion referred to in paragraph (5)(B) of subsection (a) results in a net operating loss or capital loss for the prior taxable year (or years), such loss shall, for purposes of computing the decrease in tax for the prior taxable year (or years) under such paragraph (5) (B), be carried back and carried over to the same extent and in the same manner as is provided under section 172 or section 1212, except that no carryover beyond the taxable year shall be taken into account.

(5) For purposes of this chapter, the net operating loss described in paragraph (4)(A) of this subsection, or the net operating loss or capital loss described in paragraph (4)(B) of this subsection, as the case may be, shall (after the application of paragraph (4) or (5)(B) of subsection (a) for the taxable year) be taken into account under section 172 or 1212 for taxable years after the taxable year to the same extent and in the same manner as—

(A) a net operating loss sustained for the taxable year, if paragraph (4) of subsection (a) applied, or

(B) a net operating loss or capital loss sustained for the prior taxable year (or years), if paragraph (5)(B) of subsection (a) applied.

(Aug. 16, 1954, ch. 736, 68A Stat. 348; Pub. L. 85–866, title I, § 60(a)–(d), Sept. 2, 1958, 72 Stat. 1647; Pub. L. 87–863, § 5(a), Oct. 23, 1962, 76 Stat. 1142; Pub. L. 88–272, title II, § 234(b)(7), Feb. 26, 1964, 78 Stat. 116; Pub. L. 94–455, title XIX, § 1901(a)(146), Oct. 4, 1976, 90 Stat. 1788.)

References in Text

Chapter 1 of the Internal Revenue Code of 1939, referred to in subsec. (a), was comprised of sections 1 to 482 of former Title 26, Internal Revenue Code. Chapter 1 was repealed by section 7851 (a)(1)(A) of this title. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See also section 7851 (e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

Subchapter E of chapter 2 of the Internal Revenue Code of 1939, referred to in subsec. (a), was comprised of sections 710 to 784 of former Title 26, Internal Revenue Code. Sections 710 to 736, 740, 742 to 744, 750, 751, 760, 761, and 780 to 784 were repealed by act Nov. 8, 1945, ch. 453, title I, § 122(a), 59 Stat. 568. Section 741 was repealed by act Oct. 21, 1942, ch. 619, title II, §§ 224(b), 228 (b), 56 Stat. 920, 925. Section 752 was repealed by act Oct. 21, 1942, ch. 619, title II, § 229(a)(1), 56 Stat. 931, eff. as of Oct. 8, 1940.

Amendments

1976—Subsec. (b)(2). Pub. L. 94–455 struck out provision relating to the applicability of this paragraph where deduction arises out of payments or repayments made pursuant to a price redetermination provision in a subcontract entered into before Jan. 1, 1958.

1964—Subsec. (b)(2). Pub. L. 88–272 substituted “7701(a)(33) without regard to the limitation continued in the last two sentences thereof” for “1503(c) without regard to paragraph (2) thereof”.

1962—Subsec. (b)(4), (5). Pub. L. 87–863 added pars. (4) and (5).

1958—Subsec. (a). Pub. L. 85–866, § 60(a), inserted “and subchapter E of chapter 2 of such code” in last sentence.

Subsec. (b)(2). Pub. L. 85–866, § 60(b), (c), in second sentence inserted “with respect to rates” and inserted “, or by an order of a court, or are made in settlement of litigation or under threat or imminence of litigation” and inserted last sentence.

Subsec. (b)(3). Pub. L. 85–866, § 60(d), added par. (3).

Effective Date of 1976 Amendment

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Effective Date of 1964 Amendment

Amendment by Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, see section 234(c) of Pub. L. 88-272, set out as a note under section 1503 of this title.

Effective Date of 1962 Amendment

Section 5(b) of Pub. L. 87-863 provided that: "The amendment made by subsection (a) [amending this section] shall be effective with respect to taxable years beginning on or after January 1, 1962."

Effective Date of 1958 Amendment

Amendment by section 60(a), (c), (d) of Pub. L. 85-866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85-866, set out as a note under section 165 of this title.

Section 60(e) of Pub. L. 85-866 provided that: "The amendment made by subsection (b) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957. No interest shall be allowed or paid on any overpayment resulting from the application of the amendment made by subsection (c) [amending this section]."