

payment of tax for the taxable year and shall be refunded or credited in the same manner as if it were an overpayment of tax for such taxable year. However, no interest shall be allowed or paid if such an excess results from the application of section 1341(a)(5)(B) in the case of a deduction described in paragraph (f)(3) of this section (relating to payments or repayments pursuant to price redetermination). If the tax for the taxable year of restoration is computed under section 1341(a)(4) and results in a decrease in tax for the taxable year (or years) to which a net operating loss described in section 1341(b)(4)(A) is carried back, see paragraph (b)(1)(iii) of this section.

[T.D. 6500, 25 FR 12049, Nov. 26, 1960, as amended by T.D. 6617, 27 FR 10824, Nov. 7, 1962; T.D. 6747, 29 FR 9790, July 21, 1964; T.D. 7244, 37 FR 28897, Dec. 30, 1972; T.D. 7564, 43 FR 40496, Sept. 12, 1978; T.D. 8677, 61 FR 33323, June 27, 1996]

**§ 1.1342-1 Computation of tax where taxpayer recovers substantial amount held by another under claim of right; effective date.**

Section 1342 shall apply with respect to taxable years beginning after December 31, 1954.

[T.D. 6500, 25 FR 12052, Nov. 26, 1960]

OTHER LIMITATIONS

**§ 1.1346-1 Recovery of unconstitutional taxes.**

(a) *In general.* (1) A taxpayer who recovers unconstitutional Federal taxes which were paid or accrued and for which a deduction was allowed in a prior taxable year may elect, as provided in paragraph (b) of this section, to exclude the income (exclusive of interest) attributable to such recovery from his gross income in the taxable year of recovery. Any such exclusion of income is subject to the requirements of section 1346 and this section.

(2) If a taxpayer elects to receive the benefits of section 1346, the income (exclusive of interest) attributable to the recovery of the unconstitutional Federal tax will be treated as an offset to the deduction allowed therefor in a prior taxable year (or years). The taxpayer's return for the prior taxable year (or years) with respect to which

the statutory period for the assessment of a deficiency has expired will be opened only for the purpose of reducing the deduction allowed for the unconstitutional Federal tax and assessing the resulting deficiency or deficiencies, if any. (An election under section 1346 may be made only if the taxpayer consents in writing to such assessment. See paragraph (b) of this section.) No other adjustment will be allowed.

(3) If the disallowance of the deduction allowed in respect of a prior taxable year results in a deficiency for that year, the deficiency will be assessed against the taxpayer within the period agreed upon between the taxpayer and the district director with respect to the taxable year of the prior deduction, even though the statutory period for the assessment may have expired prior to the filing of the consent.

(4) If a taxpayer does not elect under the provisions of section 1346 and this section to exclude the tax recovered from gross income in the taxable year of recovery, the tax recovered shall, from the standpoint of its inclusion in or exclusion from gross income, be governed by the provisions of section 111.

(b) *Manner of making election.* (1) The election provided for in paragraph (a) of this section shall be made by the taxpayer filing a statement in writing that he elects to treat the deduction allowed in a prior taxable year for the unconstitutional tax as not having been allowable for such taxable year. Such a statement must be filed with the taxpayer's return for the taxable year in which the recovery of the unconstitutional tax or taxes occurs. No other method of making the election is permitted. The statement of election must contain a description of the tax recovered, the date of recovery, the taxable year in which paid or accrued, and the taxable year for which the deduction was allowed. The statement of election must also contain a statement signifying the taxpayer's consent (i) to treat the deduction or portion thereof allowed in a prior year with respect to the unconstitutional tax as not allowable for that year and (ii) to the assessment, in respect of the taxable year for which the deduction was allowed, of any deficiency, together with interest thereon as provided by law, resulting