

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 from disallowance of the deduction or portion thereof, even though the statutory period for the assessment of any such deficiency may have expired before the filing of such consent.

(2) The term *recovery*, as used in this section, includes not only refund or credit of taxes previously paid, but also the cancellation of a purported tax liability which was accrued and deducted for a prior taxable year but never actually paid.

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

§ 1.1347-1 Tax on certain amounts received from the United States.

(a) In the case of an amount (other than interest) received from the United States by an individual under a claim involving acquisition of property and remaining unpaid for more than 15 years, the tax (or, in the case of taxable years beginning before January 1, 1971, the surtax) imposed by section 1 attributable to such amount shall not exceed 33 percent of the amount (other than interest) so received (30 percent for taxable years beginning before January 1, 1971). For the purpose of section 1347 and this section, such amount shall not include any amount received from the United States which constitutes interest, whether such interest was included in the claim or in any

judgment thereon or has accrued on such judgment. Section 1347 and this section shall only apply with respect to amounts received under a claim filed with the United States before January 1, 1958.

(b) To determine the application of section 1347 and this section to a particular amount, the taxpayer shall first compute the tax (or, in the case of taxable years beginning before January 1, 1971, the surtax) imposed by section 1 upon his entire taxable income, including the amount specified in paragraph (a) of this section, without regard to the limitation on tax provided in section 1347. The proportion of the tax (or surtax), so computed, indicated by the ratio which the taxpayer's taxable income attributable to the amount specified in paragraph (a) of this section, computed as prescribed in paragraph (c) of this section, bears to his total taxable income, is the portion of the tax (or surtax) attributable to such amount. If this portion of the tax (or surtax) exceeds 33 percent (30 percent for taxable years beginning before January 1, 1971) of the amount specified in paragraph (a) of this section, that portion of the tax (or surtax) shall be reduced to 33 percent (or 30 percent) of such amount.

(c) In determining the portion of the taxable income attributable to any amount specified in paragraph (a) of this section, the taxpayer shall allocate to such amount received and to the gross income derived from all other sources, the expenses, losses, and other deductions properly attributable thereto, and shall apply any general expenses, losses, and other deductions (which cannot be properly apportioned otherwise) ratably to the gross income from all sources. The amount specified in paragraph (a) of this section, less the deductions properly attributable thereto and less its proportion of any general deductions, shall be the taxable income attributable to such amount. The taxpayer shall submit with his return a statement fully explaining the manner in which such expenses, losses, and deductions are allocated or apportioned.

[T.D. 6500, 25 FR 12052, Nov. 26, 1960, as amended by T.D. 7117, 36 FR 9422, May 25, 1971; 36 FR 11434, June 12, 1971]