

## Mitigation of the Effect of Statute of Limitations

Sometimes an error is discovered or a prior transaction reported and taxed in a year that is now viewed to be an error, but the presumption is that the prior return is correct, but subsequent facts now determine to be incorrect. Unfortunately, the statute of limitations has expired and the matter cannot be corrected by filing an amended return

The IRS explained in ILM 1996-1” “Under limited circumstances, the mitigation provisions in sections 1311-1314 of the Internal Revenue Code permits a taxpayer (or the government) to correct an error made in a year closed by the statute of limitations. The circumstances under which an adjustment is authorized are spelled out in section 1312. ILM 1996-1. For instance, that provision authorizes a refund for income reported in a closed year only if there has been a determination that the income should have been reported in an open year. In this circumstance, without the application of the mitigation provisions, an item of income could be taxed twice. Section 1312 does not lift the bar for filing a claim for refund for any one taxable year. Accordingly, the mitigation provisions do not authorize a veteran to claim a refund for taxes paid in a closed taxable year for disability severance payments that were incorrectly included in gross income

There are only some transactions that qualify for this treatment and are set forth for this treatment. But first that has to be some sort of “Determination” or a final action on the matter. This is defined in §1313 Definitions, such as: (1) a decision by the tax court or a judgment, decree or other order by any court of competent jurisdiction, which has become final (2) a closing agreement; (3) a final disposition by the Sec. of claim for refund; (4) an agreement relating to the liability of the taxpayer.

The circumstances of adjustment are listed in §1312. Some in the list are as follows: (1) a double inclusion of an item of gross income wherein the determination requires the inclusion in gross income of an item that was erroneously included in the gross income for another year or the related taxpayer; (2) a double allowance of a deduction or credit; (3) a double exclusion of an item of gross income; (4) double disallowance of a deduction or credit. There are other items in listed §1312.