

WHEREAS I find and declare that the entry during the period ending March 31, 1974, of an additional quantity of 100,000,000 pounds of the cheese provided for in item 950.08A of the TSUS will not render or tend to render ineffective, or materially interfere with, the price support program which is being undertaken by the Department of Agriculture for milk and will not reduce substantially the amount of products processed in the United States from domestic milk; and that a condition exists which requires emergency treatment and that the quantitative limitation imposed on such cheese should be increased during such period without awaiting the recommendations of the United States Tariff Commission with respect to such action;

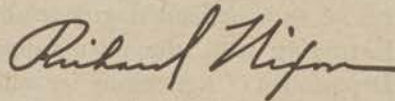
NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, acting under and by virtue of the authority vested in me as President, and in conformity with the provisions of section 22 of the Agricultural Adjustment Act, as amended, and the Tariff Classification Act of 1962, do hereby proclaim that subdivision (vii) of headnote 3(a) of part 3 of the Appendix to the Tariff Schedules of the United States is amended to read as follows:

(vii) Notwithstanding any other provision of this part, 100,000,000 pounds of the articles described in item 950.08A may be entered during the period beginning January 3, 1974, and ending March 31, 1974, in addition to the annual quota quantity specified for such articles under item 950.08A, and import licenses shall not be required for entering such additional quantity. No individual, partnership, firm, corporation, association, or other legal entity (including its affiliates or subsidiaries) may during such period enter pursuant to this provision an aggregate quantity of such articles in excess of 2,500,000 pounds. The 100,000,000 pound additional quota quantity authorized to be entered during the period ending March 31, 1974, shall be allocated among supplying countries as follows:

<i>Supplying Country</i>	<i>Quantity in pounds</i>
New Zealand	55,000,000
Australia	12,000,000
Other Countries	33,000,000

The additional quota quantity provided for herein shall continue in effect pending Presidential action upon receipt of the report and recommendations of the Tariff Commission with respect thereto.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of January in the year of our Lord nineteen hundred and seventy-four, and of the Independence of the United States of America the one hundred and ninety-eighth.



[FR Doc. 74-511 Filed 1-2-74; 4:09 pm]

Rules and Regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 5—Administrative Personnel CHAPTER I—CIVIL SERVICE COMMISSION PART 213—EXCEPTED SERVICE

Executive Office of the President—Special Action Office for Drug Abuse Prevention

Section 213.3103 is amended to show that after December 1, 1973, all positions on the staff of the Special Action Office for Drug Abuse Prevention not filled in the competitive service or under another authority are excepted under Schedule A. No one may serve under this authority after June 30, 1975.

Effective January 4, 1974, § 213.3103(f) is added as set out below.

§ 213.3103 Executive Office of the President.

(f) *Special Action Office for Drug Abuse Prevention.* (1) After December 1, 1973, all positions on the staff of the Special Action Office for Drug Abuse Prevention not filled in the competitive service or under another authority. No one may serve under this authority after June 30, 1975.

(5 U.S.C. secs. 3301, 3302; E.O. 10577, 3 CFR 1954-58, Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] JAMES C. SPRY,
Executive Assistant to
the Commissioners.

[FR Doc.74-314 Filed 1-3-74; 8:45 am]

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

Appointment of Former Peace Corps and Vista Volunteers, and Conversion to Career Employment From Indefinite or Temporary Employment

The authority citation and §§ 315.605 and 315.801 are amended to implement Pub. L. 93-113, which gives certain former VISTA volunteers the same privilege of noncompetitive entry into the competitive civil service that former Peace Corps volunteers now have under conditions spelled out in E.O. 11103 and Civil Service Commission regulations. Section 315.703a is amended to delete obsolete references to the postal field service and to delete a provision already executed.

1. Effective on January 4, 1974, the Authority and §§ 315.605 and 315.806 are amended as set forth below.

Authority: 5 U.S.C. 1302, 3301, 3302, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218, unless otherwise noted. §§ 315.605 and 315.801(a) (6) also issued under Pub.

L. 93-113 and E.O. 11103; 3 CFR, 1959-1963 Comp., p. 762, §§ 315.201(c) (3), 315.601 and 315.801(a) (3) interpret and apply 76 A Stat. 18; 2 C.Z.C. 149(c) (2), E.O. 9830; 3 CFR, 1943-1948 Comp., p. 606.

§ 315.605 Appointment of former Peace Corps and VISTA volunteers.

(a) *Agency authority.* Subject to the prior approval of the Commission, an agency in the executive branch may appoint non-competitively, for other than temporary employment, a person whom the Director of ACTION certifies as having served satisfactorily as a volunteer or volunteer leader under the Peace Corps Act (22 U.S.C. 2051 et seq.), or as a VISTA volunteer under the Economic Opportunity Act of 1964 (42 U.S.C. 2991 et seq.) or the Domestic Volunteer Service Act of 1973 (P.L. 93-113). To be qualifying under this section, VISTA service must total at least 1 year.

(b) *Time limit.* An agency in the executive branch may make an appointment under this section only within 1 year after the person completes the qualifying service. However, an agency may extend the period for 2 more years to a total of 3 years if the person, after the qualifying service, is:

- (1) In the military service;
- (2) Studying at a recognized institution of higher learning; or
- (3) In another activity which, in the agency's view, warrants extension.

(c) *Conditions.* Any law, Executive order, or regulation that disqualifies an applicant for appointment also disqualifies an applicant for appointment under this section.

(d) *Tenure on appointment.* (1) Except as provided in subparagraph (2) of this paragraph, a person appointed under paragraph (a) of this section becomes a career-conditional employee.

(2) A person appointed under paragraph (a) or this section becomes a career employee if excepted from the service requirement for career tenure by section 315.201(c).

(e) *Acquisition of competitive status.* A person appointed under paragraph (a) of this section acquires a competitive status automatically on completion of probation.

2. Effective on January 4, 1974: § 315.703a is amended as follows: Paragraph (b) is deleted; paragraph (c) is redesignated (b) and amended as set forth below; paragraph (d) is redesignated (c); and paragraph (e) is redesignated (d) and amended as set forth below.

§ 315.703a Conversion to career employment from indefinite or temporary employment.

(a) *General.* An employee serving after February 7, 1968, in a competitive position under an indefinite appointment or a temporary appointment pending establishment of a register or as a status quo employee acquires competitive status and is entitled to have his employment converted to career employment when:

(1) He completes a total of at least three years of service in such a position under one or more such appointments without a break in service of more than 30 calendar days or without an interruption by nonqualifying service of more than 30 calendar days;

(2) The appointing authority (i) recommends to the Commission that his employment be converted to career employment and (ii) certifies to the Commission that his work performance for the past 12 months has been satisfactory;

(3) He passes a suitable noncompetitive examination; and

(4) He meets Commission qualification requirements for the position and is otherwise eligible for career employment.

This paragraph does not apply to an employee serving under an overseas limited appointment or above GS-15.

(b) *Creditable service.* (1) In computing creditable service under paragraph (a) of this section for an employee who left a competitive position in which he was serving under a qualifying appointment covered in paragraph (a) of this section to enter the armed forces and who is reemployed in such a position within 120 calendar days after separation under honorable conditions, the period from the date he left his position to the date he is reemployed is creditable.

(2) The Commission shall publish in the Federal Personnel Manual the conditions under which full-time, part-time, and intermittent employment is creditable in meeting the service requirement under paragraph (a) of this section.

(c) *Termination after failure to meet conversion requirements.* An employing agency shall terminate an employee covered by paragraph (a) of this section not later than 90 days after he completes the 3-year service requirement referred to in paragraph (a) (1) of this section, if he has not met the requirements and conditions of paragraph (a) (2) through (4) of this section before the end of the 90-day period. For an employee who is reemployed after intervening service in the armed forces, the 90-day period begins on the date of reemployment if his combined civilian and military service

satisfies the 3-year service requirement on that date.

(d) **Administrative error.** When an employee has met the service requirement under paragraph (a)(1) of this section but a timely recommendation has not been made for conversion of his appointment under this section, the Commission may, within its discretion, on a showing that the employing agency failed to recommend him because of administrative error or oversight, authorize the employing agency to recommend him for conversion as of the date on which he met the service requirement.

(5 U.S.C. 3304a)

3. Effective on January 4, 1974, § 315.801 is amended as set forth below.

§ 315.801 Probationary period; when required.

(a) The first year of service of an employee who is given a career or career-conditional appointment under this part is a probationary period when the employee:

(6) Was appointed under section 315.605 as a former Peace Corps volunteer or volunteer leader or as a VISTA volunteer.

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] JAMES C. SPRY,

Executive Assistant
to the Commissioners.

[FR Doc.74-313 Filed 1-3-74;8:45 am]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER C—DRUGS

PART 135e—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Buquinolate and Bacitracin Methylene Disalicylate

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (35-329V) filed by Norwich Agricultural Products, Division of Morton-Norwich Products, Inc., Norwich, NY 13815, proposing an amendment to the regulations to provide for use of buquinolate and bacitracin methylene disalicylate in broiler chicken feed for prevention of coccidiosis and for increased rate of weight gain. The supplemental application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 112(i), 82 Stat. 347 (21 U.S.C. 360b(i))); and under authority delegated to the Commissioner (21 CFR 2.120), § 135e.34 is amended in the table in paragraph (f) by adding a new item 7 as follows:

§ 135e.34 Buquinolate.

(f) **Conditions of use.** . . .

Principal ingredient	Grams per ton	Combined with—	Grams per ton	Limitations	Indications for use
7. Buquinolate.	100 (0.011%)	Bacitracin...	4-15.....	For broiler or fryer chickens; feed continuously as the sole ration; as bacitracin methylene disalicylate as provided by sponsor No. 028, see § 135.501(c) of this chapter.	An aid in the prevention of coccidiosis caused by <i>E. tenella</i> , <i>E. maxima</i> , <i>E. necatrix</i> , <i>E. brunetti</i> , and <i>E. acervulina</i> ; increased rate of weight gain.

Effective date. This order shall be effective January 4, 1974.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: December 21, 1973.

C. D. VAN HOUWELING,
Director, Bureau of
Veterinary Medicine.

[FR Doc.74-142 Filed 1-3-74;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7301]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

PART 301—PROCEDURE AND ADMINISTRATION

Capital Losses

By notice of proposed rulemaking appearing in the FEDERAL REGISTER for October 23 and November 17, 1971 (36 F.R. 20517, 21894), amendments to the Income Tax Regulations (26 CFR Part 1) and the Regulations on Procedure and Administration (26 CFR Part 301) under sections 165, 246, 381, 491, 1211, 1212, 1222, 1314, 6411, 6501, 6511, 6601 and 6611 of the Internal Revenue Code of 1954 were proposed in order to revise the rules applicable to the deductibility of capital losses and for other purposes. These proposed amendments would reflect the amendment of the Internal Revenue Code by sections 512 and 513 of the Tax Reform Act of 1969 (83 Stat. 638, 642) relating to capital losses and various other statutory amendments relating to procedure and administration. Also, by a notice of proposed rulemaking appearing in the FEDERAL REGISTER for October 3, 1972 (37 F.R. 20700), amendments to the Income Tax Regulations (26 CFR Part 1) and the Regulations on Procedure and Administration (26 CFR Part 301) under sections 6411, 6501, 6511, 6601 and 6611 of the Internal Revenue Code of 1954 were proposed in order to revise certain of the regulations relating to procedure and administration rules pertaining to the credit for certain expenses incurred in work incentive programs. The substantive rules relating to the credit for certain expenses incurred in work incentive programs are the subject of another Treasury decision. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendments of the regulations as proposed are adopted by this document,

subject to certain changes of a relatively minor nature.

In the case of losses sustained in taxable years beginning after December 31, 1969, in the case of individuals, only 50 percent of the excess of loss from the sale or exchange of capital assets held for longer than six months over the gain from the sale or exchange of capital assets held for six months or less may be deducted from ordinary income. However, a net capital loss deduction is generally subject to a maximum of \$1,000. Any such excess loss sustained in taxable years beginning before January 1, 1970, which is carried forward into taxable years beginning after 1969 (because it exceeds the \$1,000 maximum) may still be deducted in full. Section 1.1211-1(b) of the amendment to the regulations provides rules for determining the deduction in taxable years beginning after December 31, 1969, where losses sustained before 1970 and losses sustained after 1969 are involved. A net capital loss attributable to sales or exchanges of capital assets held for six months or less may still be deducted in full subject to the \$1,000 limitation discussed below.

The \$1,000 maximum amount of an allowable deduction for a net capital loss has not been changed except in the case of a married person who files a separate return. As under prior law, corporations are not allowed a deduction against ordinary income for a net capital loss. Section 1.1212-1(b) of the amendment to the regulations provides the new rules for determining the amount of a capital loss carryover.

Effective for taxable years beginning after December 31, 1969, married persons filing separate returns may only deduct a net capital loss up to \$500 rather than the \$1,000 applicable to taxable years beginning before January 1, 1970. However, the \$1,000 limit applies in taxable years beginning after 1969 to the extent losses sustained in taxable years beginning before 1970 are involved. Section 1.1211-1(b)(7) of the amendment to the regulations provides rules for applying the \$500 and \$1,000 limits to taxable years beginning after 1969 where both losses sustained after 1969 and losses sustained before 1970 are involved.

The Tax Reform Act of 1969 allows corporations to carry back a net capital loss to the three taxable years preceding the taxable year in which the loss was sustained. Prior law did not allow corporations a capital loss carryback but only a carryover of 5 years. To be eligible for the new carryback provisions, the net capital loss must be sustained in a taxable year beginning after December 31,

1969. Under § 1.1212-1(a)(3) of the amendment to the regulations hereby adopted, if a corporation has a capital loss carryback to a taxable year to which a net operating loss has also been carried, the corporation must use the capital loss first to offset a net capital gain sustained in the taxable year to which the loss is carried, and then apply the net operating loss deduction to the extent it may be applied under section 172 and the regulations thereunder.

Form 4798, Capital Loss Carryover, is to be used by individuals to compute a capital loss carryover. This form is available at local IRS offices.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

On October 23 and November 17, 1971, notice of proposed rule making with respect to the Income Tax Procedure (26 CFR Part 1) and the Regulations on Procedure and Administration (26 CFR Part 301) under sections 165, 246, 381, 481, 535, 1211, 1212, 1222, 1314, 6411, 6501, 6511, 6601, and 6611 of the Internal Revenue Code of 1954 to conform such regulations to sections 214(b)(2), 230(a), and 232(d)(4) of the Revenue Act of 1964 (78 Stat. 55, 99, 111), section 23(a) of the Act of February 26, 1964 (Pub. L. 88-272, 78 Stat. 19), section 3(b), (c), (d), and (e) and 7(a) of the Act of September 2, 1964 (Pub. L. 88-581, 78 Stat. 857, 858, 861), sections 2(b) and (f) and 3(a) of the Act of November 2, 1966 (Pub. L. 89-721, 80 Stat. 1150, 1151), section 2(b), (c), (d), (e), and (f) of the Act of December 27, 1967 (Pub. L. 90-225, 81 Stat. 731, 732), and sections 512 and 513 of the Tax Reform Act of 1969 (83 Stat. 638, 642), relating to capital losses, was published in the FEDERAL REGISTER (36 FR 20517, 21894). Also, on October 3, 1972, notice of proposed rulemaking with respect to the Income Tax Regulations (26 CFR Part 1) and the Regulations on Procedure and Administration (26 CFR Part 301) under sections 6411, 6501, 6511, 6601, and 6611 of the Internal Revenue Code of 1954 to conform such regulations to section 601(d) and (e) of the Revenue Act of 1971 (85 Stat. 558), relating to the credit for certain expenses incurred in work incentive programs, was published in the FEDERAL REGISTER (37 FR 20700). After consideration of all relevant matter presented by interested persons regarding the proposed rules, the amendment of regulations is hereby adopted, subject to the changes set forth below.

PARAGRAPH 1. Paragraph (b) of § 1.1211-1 as set forth in paragraph 10 of the appendix to the notice of proposed rulemaking published on October 23 and November 17, 1971, is amended by revising so much of subdivision (iv) of subparagraph (3) as follows (b), by revising subdivision (v) of subparagraph (3) to correct a typographical error, by revising examples (3), (4), (7), and (9) of subparagraph (8), and by adding a heading to subparagraph (8). These added and revised provisions read as set forth:

PAR. 2. Paragraph (b) of § 1.1212-1, as set forth in paragraph 12 of the ap-

pendix to the notice of proposed rulemaking published on October 23 and November 17, 1971, is amended by revising the heading of subparagraph (4), by revising the third paragraph of example (5) and the second paragraph of example (7) of subparagraph (5) to correct typographical errors, and by adding a heading to subparagraph (5). These revised and added provisions read as set forth below.

PAR. 3. Section 301.6511(d), as set forth in paragraph 33 of the appendix to the notice of proposed rulemaking published October 23, 1971, is amended by revising the historical note to read as set forth below.

PAR. 4. Paragraph (b) of § 301.6511(d)-2, as set forth in paragraph 34 of the appendix to the notice of proposed rulemaking published October 23, 1971, is designated subparagraph (1) to read as set forth below.

PAR. 5. Paragraph (j) of § 301.6611-1, as set forth in paragraph 39 of the appendix to the notice of proposed rulemaking published October 23, 1971, is amended to read as set forth below.

(Sec. 7805, Internal Revenue Code of 1954, 68A Stat. 917 (26 U.S.C. 7805))

[SEAL] DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: December 27, 1973.

FREDERIC W. HICKMAN,
Assistant Secretary of the
Treasury.

PARAGRAPH 1. Paragraph (c)(3) of § 1.165-1 is amended to read as follows:

§ 1.165-1 Losses.

(c) Amount deductible.

(3) A loss from the sale or exchange of a capital asset shall be allowed as a deduction under section 165(a) but only to the extent allowed in section 1211 (relating to limitation on capital losses) and section 1212 (relating to capital loss carrybacks and carryovers), and in the regulations under those sections.

PAR. 2. Section 1.246-2 is amended by revising paragraph (a) to read as follows:

§ 1.246-2 Limitation on aggregate amount of deductions.

(a) General rule. The sum of the deductions allowed by sections 243(a)(1) (relating to dividends received by corporations), 244(a) (relating to dividends received on certain preferred stock), and 245 (relating to dividends received from certain foreign corporations), except as provided in section 246(b)(2) and in paragraph (b) of this section, is limited to 85 percent of the taxable income of the corporation. The taxable income of the corporation for this purpose is computed without regard to the net operating loss deduction allowed by section 172, the deduction for dividends paid on certain preferred stock of public utilities allowed by section 247, any capital loss carryback under section 1212(a)(1), and the deductions provided in sections 243(a)

(1), 244(a), and 245. For definition of the term "taxable income", see section 63.

PAR. 3. Section 1.381(b) is amended by revising paragraph (3) of section 381(b) and the historical note to read as follows:

§ 1.381 Statutory provisions; carryovers in certain corporate acquisitions; operating rules.

Sec. 381. Carryovers in certain corporate acquisitions.

(b) Operating rules.

(3) The corporation acquiring property in a distribution or transfer described in subsection (a) shall not be entitled to carry back a net operating loss or a net capital loss for a taxable year ending after the date of distribution or transfer to a taxable year of the distributor or transferor corporation.

[Sec. 381(b) as amended by sec. 512(c), Tax Reform Act 1969 (83 Stat. 639)]

PAR. 4. Section 1.481 is amended by revising paragraph (3) (A) of section 481(b) and the historical note to read as follows:

§ 1.481 Statutory provisions; adjustments required by changes in method of accounting.

Sec. 481. Adjustments required by changes in method of accounting.

(b) Limitation on tax where adjustments are substantial.

(3) Special rules for computations under paragraphs (1) and (2). For purposes of this subsection—

(A) There shall be taken into account the increase or decrease in tax for any taxable year preceding the year of the change to which no adjustment is allocated under paragraph (1) or (2) but which is affected by a net operating loss (as defined in section 172) or by a capital loss carryback or carryover (as defined in section 1212), determined with reference to taxable years with respect to which adjustments under paragraph (1) or (2) are allocated.

[Sec. 481 as amended by sec. 29, Technical Amendments Act 1958 (72 Stat. 1626); sec. 512(f)(4), Tax Reform Act 1969 (83 Stat. 641)]

PAR. 5. Section 1.481-2 is amended by revising paragraphs (c) (2) and (3) (iii) to read as follows:

§ 1.481-2 Limitation on tax.

(c) Rules for computation of tax.

(2) The next step is to compute under section 481(b)(1) the tax attributable to the adjustments referred to in subparagraph (1) of this paragraph for the taxable year of the change and the two preceding taxable years as if an amount equal to one-third of the net amount of such adjustments had been received or accrued in each of such taxable years. The increase in tax attributable to the adjustments for each such taxable year is the excess of the tax for such year computed with the allocation of one-third of the net adjustments to such taxable year over the tax computed without the allocation of any part of the adjustments to such year. For the purpose of computing the aggregate increase in taxes for such taxable years, there shall be taken into account the increase or de-

crease in tax for any taxable year preceding the taxable year of the change to which no adjustment is allocated under section 481(b)(1) but which is affected by a net operating loss under section 172 or by a capital loss carryback or carryover under section 1212, determined with reference to taxable years with respect to which adjustments under section 481 (b)(1) are allocated.

(3) ***

(iii) Any taxable year preceding the taxable year of the change to which no adjustment is allocated under section 481(b)(2), but which is affected by a net operating loss or by a capital loss carryback or carryover determined with reference to taxable years with respect to which such adjustments are allocated.

PAR. 6. Section 1.535 is amended by revising paragraphs (6) and (7) of section 535(b) and the historical note to read as follows:

§ 1.535 Statutory provisions; accumulated taxable income.

Sec. 535. *Accumulated taxable income.* ***

(b) *Long-term capital gains.* There shall be allowed as a deduction the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year (determined without regard to the capital loss carryback or carryover provided in section 1212) minus the taxes imposed by this subtitle attributable to such excess. The taxes attributable to such excess shall be an amount equal to the difference between—

(A) The taxes imposed by this subtitle (except the tax imposed by this part) for such year, and

(B) Such taxes computed for such year without including in taxable income the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year (determined with regard to the capital loss carryback or carryover provided in section 1212).

(7) *Capital loss.* No allowance shall be made for the capital loss carryback or carryover provided in section 1212.

[Sec. 535 as amended by sec. 31, Technical Amendments Act 1958 (72 Stat. 1631); sec. 205, Small Business Tax Revision Act 1958 (72 Stat. 1680); sec. 9(d)(2), Rev. Act 1962 (76 Stat. 1001); secs. 401(b)(2)(C) and 512(f)(5), Tax Reform Act 1969 (83 Stat. 602, 641)]

PAR. 7. Section 1.535-2 is amended by revising paragraph (g) to read as follows:

§ 1.535-2 Adjustments to taxable income.

(g) *Capital loss carrybacks and carryovers.* Capital losses carried to a taxable year under section 1212(a) shall have no application for purposes of computing accumulated taxable income for such year.

PAR. 8. Section 1.1211 is amended by revising subsection (b) of section 1211 and by adding a historical note. The amended and added provisions read as follows:

§ 1.1211 Statutory provisions; limitation on capital losses.

Sec. 1211. *Limitation on capital losses.* ***

(b) *Other taxpayers—(1) In general.* In

the case of a taxpayer other than a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges, plus (if such losses exceed such gains) whichever of the following is smallest:

(A) The taxable income for the taxable year

(B) \$1,000, or

(C) The sum of—

(1) The excess of the net short-term capital loss over the net long-term capital gain, and

(2) One-half of the excess of the net long-term capital loss over the net short-term capital gain.

(2) *Married individuals.* In the case of a husband or wife who files a separate return, the amount specified in paragraph (1)(B) shall be \$500 in lieu of \$1,000.

(3) *Computation of taxable income.* For purposes of paragraph (1), taxable income shall be computed without regard to gains or losses from sales or exchanges of capital assets and without regard to the deductions provided in section 151 (relating to personal exemptions) or any deduction in lieu thereof. If the taxpayer elects to pay the optional tax imposed by section 3, "taxable income" as used in this subsection shall read as "adjusted gross income".

[Sec. 1211 as amended by sec. 513(a), Tax Reform Act 1969 (83 Stat. 642)]

PAR. 9. Section 1.1211-1 is amended to read as follows:

§ 1.1211-1 Limitation on capital losses.

(a) *Corporations—(1) General rule.* In the case of a corporation, there shall be allowed as a deduction an amount equal to the sum of—

(i) Losses sustained during the taxable year from sales or exchanges of capital assets, plus

(ii) The aggregate of all losses sustained in other taxable years which are treated as a short-term capital loss in such taxable year pursuant to section 1212(a)(1).

but only to the extent of gains from such sales or exchanges of capital assets in such taxable year.

(2) *Banks.* See section 582(c) for modification of the limitation under section 1211(a) in the case of a bank, as defined in section 581.

(b) *Taxpayers other than corporations—(1) General rule.* In the case of a taxpayer other than a corporation, there shall be allowed as a deduction an amount equal to the sum of—

(i) Losses sustained during the taxable year from sales or exchanges of capital assets, plus

(ii) The aggregate of all losses sustained in other taxable years which are treated either as a short-term capital loss or as a long-term capital loss in such taxable year pursuant to section 1212(b), but only to the extent of gains from sales or exchanges of capital assets in such taxable year, plus (if such losses exceed such gains) the additional allowance or transitional additional allowance deductible under section 1211(b) from ordinary income for such taxable year. The additional allowance deductible under section 1211(b) shall be determined by application of subparagraph (2) of this paragraph, and the transitional additional

allowance by application of subparagraph (3) of this paragraph.

(2) *Additional allowance.* Except as otherwise provided by subparagraph (3) of this paragraph, the additional allowance deductible under section 1211(b) for taxable years beginning after December 31, 1969, shall be the least of—

(i) The taxable income for the taxable year,

(ii) \$1,000, or

(iii) The sum of the excess of the net short-term capital loss over the net long-term capital gain, plus one-half of the excess of the net long-term capital loss over the net short-term capital gain.

(3) *Transitional additional allowance—(i) In general.* If, pursuant to the provisions of § 1.1212-1(b) and subdivision (iii) of this subparagraph, there is carried to the taxable year from a taxable year beginning before January 1, 1970, a long-term capital loss, and if for the taxable year there is an excess of net long-term capital loss over net short-term capital gain, then, in lieu of the additional allowance provided by subparagraph (2) of this paragraph, the transitional additional allowance deductible under section 1211(b) shall be the least of—

(a) The taxable income for the taxable year,

(b) \$1,000, or

(c) The sum of the excess of the net short-term capital loss over the net long-term capital gain; that portion of the excess of the net long-term capital loss over the net short-term capital gain computed as provided in subdivision (ii) of this subparagraph; plus one-half of the remaining portion of the excess of the net long-term capital loss over the net short-term capital gain.

(ii) *Computation of specially treated portion of excess long-term capital loss over net short-term capital gain.* In determining the transitional additional allowance deductible as provided by this subparagraph, there shall be applied thereto in full on a dollar-for-dollar basis the excess of net long-term capital loss over net short-term capital gain (computed with regard to capital losses carried to the taxable year) to the extent that the long-term capital losses carried to the taxable year from taxable years beginning before January 1, 1970, as provided by § 1.1212-1(b) and subdivision (iii) of this subparagraph, exceed the sum of (a) the portion of the net capital gain actually realized in the taxable year (i.e., computed without regard to capital losses carried to the taxable year) which consists of net long-term capital gain actually realized in the taxable year, plus (b) the amount by which the portion of the net capital gain actually realized in the taxable year (i.e., computed without regard to capital losses carried to the taxable year) which consists of net short-term capital gain actually realized in the taxable year exceeds the total of short-term capital losses carried to the taxable year from taxable years beginning before January 1, 1970, as provided by § 1.1212-1(b) and subdivision (iv) of this subparagraph. The amount by which

the net long-term capital losses carried to the taxable year from taxable years beginning before January 1, 1970, exceeds the sum of (a) plus (b) shall constitute the "transitional net long-term capital loss component" for the taxable year for the purpose of this subparagraph.

(iii) *Carryover of certain long-term capital losses not utilized in computation of transitional additional allowance.* If for a taxable year beginning after December 31, 1969, the transitional net long-term capital loss component determined as provided in subdivision (ii) of this subparagraph exceeds the amount of such component applied to the transitional additional allowance for the taxable year as provided by subdivision (i) of this subparagraph and subparagraph (4)(ii) of this paragraph, then such excess shall for the purposes of this subparagraph be carried to the succeeding taxable year as long-term capital losses from taxable years beginning before January 1, 1970, for utilization in the computation of the transitional additional allowance in the succeeding taxable year as provided in subdivisions (i) and (ii) of this subparagraph. In no event, however, shall the amount of such component carried to the following taxable year as otherwise provided by this subdivision exceed the total of net long-term capital losses actually carried to such succeeding taxable year pursuant to section 1212(b) and § 1.1212-1(b).

(iv) *Carryover of certain short-term capital losses not utilized in computation of additional allowance or transitional additional allowance.* If for a taxable year beginning after December 31, 1969, the total short-term capital losses carried to such year from taxable years beginning before January 1, 1970, as provided by § 1.1212-1(b) and this subdivision exceed the sum of—

(a) The portion of the net capital gain actually realized in the taxable year (i.e., computed without regard to capital losses carried to the taxable year) which consists of net short-term capital gain actually realized in the taxable year, plus

(b) The amount by which the portion of the net capital gain actually realized in the taxable year (i.e., computed without regard to capital losses carried to the taxable year) which consists of net long-term capital gain actually realized in the taxable year exceeds the total long-term capital losses carried to the taxable year from taxable years beginning before January 1, 1970, as provided in § 1.1212-1(b) and subdivision (iii) of this subparagraph,

then such excess shall constitute the "transitional net short-term capital loss component" for the taxable year, and to the extent such component also exceeds the net short-term capital loss applied to the additional allowance (as provided in subparagraphs (2) and (4)(i) of this paragraph) or the transitional additional allowance (as provided by subdivision (i) of this subparagraph and subparagraph (4)(i) of this paragraph) for the taxable

year shall be carried to the succeeding taxable year as short-term capital losses from taxable years beginning before January 1, 1970, for utilization in such succeeding taxable year in the computation of the additional allowance (as provided by subparagraph (2) of this paragraph) or the transitional additional allowance (as provided by subdivision (i) and (ii) of this subparagraph). In no event, however, shall the amount of such component so carried to the following taxable year as otherwise provided by this subdivision exceed the total of net short-term capital losses actually carried to such succeeding taxable year pursuant to section 1212(b) and § 1.1212-1(b).

(v) *Scope of rules.* The rules provided by this subparagraph are for the purpose of computing the amount of the transitional additional allowance deductible for the taxable year pursuant to the provisions of section 1212(b)(3) and this subparagraph. More specifically, their operation permits the limited use of a long-term capital loss carried to the taxable year from a taxable year beginning before December 31, 1969, in full on a dollar-for-dollar basis in computing the transitional additional allowance deductible for the taxable year. These rules have no application to, or effect upon, a determination of the character or amount of net capital gains and losses reportable in the taxable year. See paragraph (b)(1) of this section and § 1.1212-1 for the determination of the amount and character of capital gains and losses reportable in the taxable year. Further, except to the extent that their application may affect the amount of the transitional additional allowance deductible for the taxable year and thus the amount to be treated as short-term capital loss for carryover purposes under section 1212(b) and § 1.1212-1(b)(2), these rules have no effect upon a determination of the character or amount of capital losses carried to or from the taxable year pursuant to section 1212(b) and § 1.1212-1(b).

(4) *Order of application of capital losses to additional allowance or transitional additional allowance.* In applying the excess of the net short-term capital loss over the net long-term capital gain and the excess of the net long-term capital loss over the net short-term capital gain to the additional allowance or transitional additional allowance deductible under section 1211(b) and this paragraph, such excesses shall, subject to the limitations of subparagraph (2) or (3) of this paragraph, be used in the following order:

(i) First, there shall be applied to the additional allowance or transitional additional allowance the excess, if any, of the net short-term capital loss over the net long-term capital gain.

(ii) Second, if such transitional additional allowance exceeds the amount so applied thereto as provided in subdivision (i) of this subparagraph, there shall next be applied thereto as provided in subparagraph (3) of this paragraph the excess, if any, of the net long-term

capital loss over the net short-term capital gain to the extent of the transitional net long-term capital loss component for the taxable year computed as provided by subdivision (ii) of subparagraph (3) of this paragraph.

(iii) Third, if such additional allowance or transitional additional allowance exceeds the sum of the amounts so applied thereto as provided in subdivisions (i) and (ii) of this subparagraph, there shall be applied thereto one-half of the balance, if any, of the excess net long-term capital loss not applied pursuant to the provisions of subdivision (ii) of this subparagraph.

(5) *Taxable years beginning prior to January 1, 1970.* For any taxable year beginning prior to January 1, 1970, subparagraphs (2) and (3) of this paragraph shall not apply and losses from sales or exchanges of capital assets shall be allowed as a deduction only to the extent of gains from such sales or exchanges, plus (if such losses exceed such gains) the taxable income of the taxpayer or \$1,000, whichever is smaller.

(6) *Special rules.* (i) For purposes of section 1211(b) and this paragraph, taxable income is to be computed without regard to gains or losses from sales or exchanges of capital assets and without regard to the deductions provided in section 151 (relating to personal exemptions) or any deduction in lieu thereof. For example, the deductions available to estates and trusts under section 642(b) are in lieu of the deductions allowed under section 151, and, in the case of estates and trusts, are to be added back to taxable income for the purposes of section 1211(b) and this paragraph.

(ii) In case the tax is computed under section 3 and the regulations thereunder (relating to optional tax tables for individuals), the term "taxable income" as used in section 1211(b) and this paragraph shall be read as "adjusted gross income."

(iii) In the case of a joint return, the limitation under section 1211(b) and this paragraph, relating to the allowance of losses from sales or exchanges of capital assets, is to be computed and the net capital loss determined with respect to the combined taxable income and the combined capital gains and losses of the spouses.

(7) *Married taxpayers filing separate returns.* (i) *In general.* In the case of a husband or a wife who files a separate return for a taxable year beginning after December 31, 1969, the sum of \$1,000 specified in subdivisions (ii) and (i)(b) of subparagraphs (2) and (3), respectively, of this paragraph shall instead be \$500.

(ii) *Special rule.* If, pursuant to the provisions of § 1.1212-1(b) and subparagraph (3) (iii) or (iv) of this paragraph there is carried to the taxable year from a taxable year beginning before January 1, 1970, a short-term capital loss or a long-term capital loss, the \$500 specified in subdivision (i) of this subparagraph shall instead be an amount not in excess of \$1,000, equal to \$500 plus the total of the transitional net long-

term capital loss component for the taxable year computed as provided by subparagraph (3) (ii) of this paragraph and the transitional net short-term capital loss component for the taxable year computed as provided by subparagraph (3) (iv) of this paragraph.

(8) *Examples.* The provisions of section 1211(b) may be illustrated by the following examples:

Example (1). A, an unmarried individual with one exemption allowable as a deduction under section 151, has the following transactions in 1970:

Taxable income exclusive of capital gains and losses	\$4,400
Deduction provided by section 151	625
Taxable income for purposes of section 1211(b)	5,025
Long-term capital gain	\$1,200
Long-term capital loss	(5,300)
Net long-term capital loss	(4,100)
Losses to the extent of gains	(1,200)
Additional allowance deductible under section 1211(b)	1,000

The net long-term capital loss of \$4,100 is deductible in 1970 only to the extent of an additional allowance of \$1,000 which is smaller than the taxable income of \$5,025. Under section 1211(b) and subparagraph (2) of this paragraph, \$2,000 of excess net long-term capital loss was required to produce the \$1,000 additional allowance. Therefore, a net long-term capital loss of \$2,100 (\$4,100 minus \$2,000) is carried over under section 1212(b) to the succeeding taxable year.

Example (2). B, an unmarried individual with one exemption allowable as a deduction under section 151, has the following transactions in 1970:

Taxable income exclusive of capital gains and losses	\$90
Deduction provided by section 151	625
Taxable income for purposes of section 1211(b)	715
Long-term capital gain	\$1,200
Long-term capital loss	(5,200)
Net long-term capital loss	(4,000)
Losses to the extent of gains	(1,200)
Additional allowance deductible under section 1211(b)	715

The net long-term capital loss of \$4,000 is deductible in 1970 only to the extent of an additional allowance of \$715, since the \$715 of taxable income for purposes of section 1211(b) is smaller than \$1,000. Under section 1211(b) and subparagraph (2) of this paragraph, \$1,430 of net long-term capital loss was required to produce the \$715 additional allowance. Therefore, a net long-term capital loss of \$2,570 (\$4,000 minus \$1,430) is carried over under section 1212(b) of the succeeding taxable year. For illustration of the result if the net capital loss for the taxable year is smaller than both \$1,000 and taxable income for the purposes of section 1211(b), see examples (3) and (4) of this subparagraph. For carryover of a net capital loss, see § 1.1212-1.

Example (3). A, an unmarried individual with one exemption allowable as a deduction under section 151, has the following transactions in 1971:

Taxable income exclusive of capital gains and losses	\$13,300
Deduction provided by section 151	675
Taxable income for purposes of section 1211(b)	13,975
Long-term capital gain	\$400
Long-term capital loss	(600)
Net long-term capital loss	(200)
Short-term capital gain	900
Short-term capital loss	(1,400)
Net short-term capital loss	(500)
Losses to extent of gains	(1,300)
Additional allowance deductible under section 1211(b)	600

The \$600 additional allowance deductible under section 1211(b) is the least of: (i) taxable income of \$13,975, (ii) \$1,000, or (iii) the sum of the excess of the net short-term capital loss of \$500 over the net long-term capital gain, plus one-half of the excess of the net long-term capital loss of \$200 over the net short-term capital gain. The \$600 additional allowance, therefore, consists of the net short-term capital loss of \$500, plus \$100 (one-half of the net long-term capital loss of \$200), the total of which is smaller than both \$1,000 and taxable income for purposes of section 1211(b). No amount of net capital loss remains to be carried over under section 1212(b) to the succeeding taxable year since the entire amount of the net short-term capital loss of \$500 plus the entire amount of the net long-term capital loss of \$200 required to produce \$100 of the deduction was absorbed by the additional allowance deductible under section 1211(b) for 1971.

Example (4). A, a married individual filing a separate return with one exemption allowable as a deduction under section 151, has the following transactions in 1971:

Taxable income exclusive of capital gains and losses	\$12,000
Deduction provided by section 151	675
Taxable income for purposes of section 1211(b)	12,675
Long-term capital loss	(\$800)
Long-term capital gain	300
Net long-term capital loss	(500)
Short-term capital loss	(500)
Short-term capital gain	600
Net short-term capital gain	100
Losses to the extent of gains	(900)
Additional allowance deductible under section 1211(b)	200

The excess net long-term capital loss of \$400 (net long-term capital loss of \$500 minus net short-term capital gain of \$100) is deductible in 1971 only to the extent of an additional allowance of \$200 (one-half of \$400) which is smaller than both \$500 (married taxpayer filing a separate return for a taxable year beginning after December 31, 1969) and taxable income for purposes of section 1211(b). Since there is no net short-term capital loss in excess of net long-term capital gains for the taxable year, the \$200 additional allowance deductible under section 1211(b)

consists entirely of excess net long-term capital loss. No amount of net capital loss remains to be carried over under section 1212(b) to the succeeding taxable year.

Example (5). A, an unmarried individual with one exemption allowable as a deduction under section 151, has the following transactions in 1970:

Taxable income exclusive of capital gains and losses	\$13,300
Deduction provided by section 151	625
Taxable income for purposes of section 1211(b)	13,925
Long-term capital loss	(\$6,000)
Long-term capital gain	2,000
Net long-term capital loss	(4,000)
Short-term capital gain	3,000
Short-term capital loss carried to 1970 from 1969 under section 1212(b) (1)	(3,000)
Net short-term capital loss	0
Losses to the extent of gains	(5,000)
Additional allowance deductible under section 1211(b)	1,000

The \$1,000 additional allowance deductible under section 1211(b) is the least of: (i) taxable income of \$13,925, (ii) \$1,000, or (iii) the sum of the net short-term capital loss (\$0) plus one-half of the net long-term capital loss of \$4,000. The \$1,000 additional allowance, therefore, consists of net long-term capital loss. Since \$2,000 of the net long-term capital loss of \$4,000 was required to produce the \$1,000 additional allowance, the \$2,000 balance of the net long-term capital loss is carried over under section 1212(b) to 1971.

Example (6). A, an unmarried individual with one exemption allowable as a deduction under section 151, has the following transactions in 1970:

Taxable income exclusive of capital gains and losses	\$13,300
Deduction provided by section 151	625
Taxable income for purposes of section 1211(b)	13,925
Long-term capital gain	\$5,000
Long-term capital loss	(7,000)
Long-term capital loss carried to 1970 from 1969 under section 1212 (b) (1)	(500)
Net long-term capital loss	(2,500)
Short-term capital gain	1,100
Short-term capital loss	(1,400)
Net short-term capital loss	(300)
Losses to extent of gains	(6,100)
Transitional additional allowance deductible under section 1211(b)	1,000

Because a component of the net long-term capital loss for 1970 is a \$500 long-term capital loss carried to 1970 from 1969, the

transitional additional allowance deductible under section 1211(b) and subparagraph (3) of this paragraph is the least of (i) taxable income of \$13,925, (ii) \$1,000 or (iii) the sum of the net short-term capital loss of \$300, plus the net long-term capital loss for 1970, to the extent of the \$500 long-term capital loss carried to 1970 from 1969 and one-half of the \$2,000 balance of the net long-term capital loss. The entire \$500 long-term capital loss carried to 1970 from 1969 is applicable in full to the transitional additional allowance because there was no net capital gain actually realized in 1970. The \$1,000 transitional additional allowance, therefore, consists of the net short-term capital loss of \$300, the \$500 long-term capital loss carried to 1970 from 1969, plus one-half of enough of the balance of the 1970 net long-term capital loss (\$400) to make up the \$200 balance of the \$1,000 transitional additional allowance. A long-term capital loss of \$1,600 (\$2,500 minus \$900), all of which is attributable to 1970, is carried over under section 1212(b) to 1971.

Example (7). A, an unmarried individual with one exemption allowable as a deduction under section 151, has the following transactions in 1970:

Taxable income exclusive of capital gains and losses.....	\$13,300
Deduction provided by section 151.....	625
Taxable income for purposes of section 1211(b).....	13,925
Long-term capital loss.....	(\$2,000)
Long-term capital loss carried to 1970 from 1969 under section 1212 (b) (1).....	(500)
Net long-term capital loss.....	(2,500)
Short-term capital gain.....	2,600
Short-term capital loss carried to 1970 from 1969 under section 1212 (b) (1).....	(3,000)
Net short-term capital loss.....	(400)
Losses to the extent of gains.....	(2,600)
Transitional additional allowance deductible under section 1211(b).....	1,000

Because a component of the net long-term capital loss for 1970 is a \$500 long-term capital loss carried to 1970 from 1969, the transitional additional allowance deductible under section 1211(b) and subparagraph (3) of this paragraph is the least of (i) taxable income of \$13,925, (ii) \$1,000, or (iii) the sum of the net short-term capital loss of \$400, plus the net long-term capital loss for 1970 to the extent of the \$500 long-term capital loss carried to 1970 from 1969, and one-half of the \$2,000 balance of the net long-term capital loss. The entire \$500 long-term capital loss carried to 1970 from 1969 is applicable in full to the transitional additional allowance because the net capital gain for the taxable year (computed without regard to capital losses carried to the taxable year) consisted entirely of net short-term capital gain not in excess of the short-term capital loss carried to 1970 from 1969. The \$1,000 transitional additional allowance, therefore, consists of the net short-term capital loss of \$400, the \$500 long-term capital loss carried to 1970 from 1969, plus one-half of enough of the balance of the 1970 net long-term capital loss (\$200) to make up the \$100 balance of the \$1,000 transitional

additional allowance. A long-term capital loss of \$1,800 (\$2,500 minus \$700), all of which is attributable to 1970, is carried over under section 1212(b) to 1971.

Example (8). Assume the facts in Example (7) but assume that the individual with one exemption allowable as a deduction under section 151 is married and files a separate return for 1970. The maximum transitional additional allowance to which the individual would be entitled for 1970 pursuant to subparagraph (7) (ii) of this paragraph would be the sum of \$500 plus (i) \$2,400 of the short-term capital loss of \$3,000 carried to 1970 from 1969 (the amount by which such carryover exceeds the \$600 net capital gain actually realized in 1970, all of which is net short-term capital gain) and (ii) the \$500 long-term capital loss carried to 1970 from 1969. However, since this sum (\$3,400) exceeds \$1,000, the maximum transitional additional allowance to which the individual is entitled for 1970 is limited to \$1,000. If for 1971, the same married individual had taxable income of \$13,925 for purposes of section 1211(b) and no capital transactions, and filed a separate return, the additional allowance deductible under section 1211(b) for 1971 would be limited to \$500 by reason of subdivision (i) of subparagraph (7) of this paragraph, since, as illustrated in Example (7), no part of the capital loss carried over to 1971 under section 1212 (b) is attributable to 1969.

Example (9). B, an unmarried individual with one exemption allowable as a deduction under section 151, has the following transactions in 1971:

Taxable income exclusive of capital gains and losses.....	\$10,000
Deductions provided by section 151.....	675
Taxable income for purposes of section 1211(b).....	10,675
Long-term capital gain.....	\$2,500
Long-term capital loss treated under § 1.1211-1 (b) (3) (iii) as carried over from 1969.....	(5,000)
Net long-term capital loss.....	(2,500)
Short-term capital gain.....	2,700
Short-term capital loss carried to 1971 from 1970 under section 1212 (b) (1).....	(1,000)
Short-term capital loss treated under § 1.1211-1 (b) (3) (iv) as carried over from 1969.....	(2,000)
Net short-term capital loss.....	(300)
Losses to extent of gain.....	(5,200)
Transitional additional allowance deductible under section 1211(b).....	1,000

Because a component of the net long-term capital loss for 1971 is a long-term capital loss treated under subparagraph (3) (iii) of this paragraph as carried over from 1969, the rules for computation of the transitional additional allowance under subparagraph (3) (i) and (ii) of this paragraph apply. The "transitional net long-term capital loss component" for 1971 under subparagraph (3) (ii) of this paragraph is \$1,800, that is, the amount by which the \$5,000 long-term loss treated as carried over from 1969 to 1971 exceeds (a) the net long-term capital gain of \$2,500 actually realized in 1971 plus (b)

the \$700 excess of the \$2,700 net short-term capital gain actually realized in 1971 over the \$2,000 short-term capital loss treated as carried over to 1971 from 1969. The transitional additional allowance for 1971 consists of the \$300 net short-term capital loss plus \$700 of the net long-term capital loss attributable to 1969. A net long-term capital loss of \$1,800 (\$2,500 minus \$700) is carried over to 1972 under section 1212(b). Only \$1,100 of the \$1,800 will be treated in 1972 as carried over from 1969 since under subparagraph (3) (iii) of this paragraph the "transitional net long-term capital loss component" of \$1,800 is reduced by the amount (\$700) applied to the transitional additional allowance for 1971.

PAR. 10. Section 1.1212 is amended by revising the heading of such section, by revising the heading and subsections (a) (1) and (b) of section 1212, by adding new paragraphs (3) and (4) to section 1212(a), and by revising the historical note. The amended and added provisions read as follows:

§ 1.1212 Statutory provisions; capital loss carrybacks and carryovers.

Sec. 1212. Capital loss carrybacks and carryovers—(a) Corporations—(1) In general. If a corporation has a net capital loss for any taxable year (hereinafter in this paragraph referred to as the "loss year"), the amount thereof shall be—

(A) A capital loss carryback to each of the 3 taxable years preceding the loss year, but only to the extent—

(i) Such loss is not attributable to a foreign expropriation capital loss, and

(ii) The carryback of such loss does not increase or produce a net operating loss (as defined in section 172(c)) for the taxable year to which it is being carried back; and

(B) A capital loss carryover to each of the 5 taxable years (10 taxable years to the extent such loss is attributable to a foreign expropriation capital loss) succeeding the loss year,

and shall be treated as a short-term capital loss in each such taxable year. The entire amount of the net capital loss for any taxable year shall be carried to the earliest of the taxable years to which such loss may be carried, and the portion of such loss which shall be carried to each of the other taxable years to which such loss may be carried shall be the excess, if any, of such loss over the total of the net capital gains for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the net capital gain for any such prior taxable year shall be computed without regard to the net capital loss for the loss year or for any taxable year thereafter. In the case of any net capital loss which cannot be carried back in full to a preceding taxable year by reason of clause (ii) of subparagraph (A), the net capital gain for such prior taxable year shall in no case be treated as greater than the amount of such loss which can be carried back to such preceding taxable year upon the application of such clause (ii).

(3) Electing small business corporations. Paragraph (1) (A) shall not apply to the net capital loss of a corporation for any taxable year for which it is an electing small business corporation under subchapter S, and a net capital loss of a corporation (for a year for which it is not such an electing small business corporation) shall not be carried back under paragraph (1) (A) to a taxable year for which it is an electing small business corporation.

(4) *Special rules on carrybacks.* A net capital loss of a corporation shall not be carried back under paragraph (1)(A) to a taxable year—

(A) For which it is a foreign personal holding company (as defined in section 552);

(B) For which it is a regulated investment company (as defined in section 851);

(C) For which it is a real estate investment trust (as defined in section 856); or

(D) For which an election made by it under section 1247 is applicable (relating to election by foreign investment companies to distribute income currently).

(b) *Other taxpayers.*—(1) *In general.* If a taxpayer other than a corporation has a net capital loss for any taxable year—

(A) The excess of the net short-term capital loss over the net long-term capital gain for such year shall be a short-term capital loss in the succeeding taxable year, and

(B) The excess of the net long-term capital loss over the net short-term capital gain for such year shall be a long-term capital loss in the succeeding taxable year.

(2) *Special rules.* (A) For purposes of determining the excess referred to in paragraph (1)(A), an amount equal to the amount allowed for the taxable year under section 1211(b)(1)(A), (B), or (C) shall be treated as a short-term capital gain in such year.

(B) For purposes of determining the excess referred to in paragraph (1)(B), an amount equal to the sum of—

(i) The amount allowed for the taxable year under section 1211(b)(1)(A), (B), or (C), and

(ii) The excess of the amount described in clause (i) over the net short-term capital loss (determined without regard to this subsection) for such year,

shall be treated as a short-term capital gain in such year.

(3) *Transitional rule.* In the case of any amount which, under paragraph (1) and section 1211(b) (as in effect for taxable years beginning before January 1, 1970), is treated as a capital loss in the first taxable year beginning after December 31, 1969, paragraph (1) and section 1211(b) (as in effect for taxable years beginning before January 1, 1970) shall apply (and paragraph (1) and section 1211(b) as in effect for taxable years beginning after December 31, 1969, shall not apply) to the extent such amount exceeds the total of any net capital gains (determined without regard to this subsection) of taxable years beginning after December 31, 1969.

[Sec. 1212 as amended by sec. 230(a), Rev. Act 1964 (78 Stat. 99); sec. 7(a), Act of Sept. 2, 1964 (Public Law 88-571, 78 Stat. 861); sec. 512 (a) and (b) and sec. 513(b), Tax Reform Act 1969 (83 Stat. 638, 639, 642)]

PAR. 11. Section 1.1212-1 is amended by revising the heading of such section, by revising subdivision (i) of paragraph (a)(1), by adding a new subparagraph (3) to paragraph (a), and by revising paragraph (b). The amended and added provisions read as follows:

§ 1.1212-1 Capital loss carryovers and carrybacks.

(a) *Corporations; other taxpayers for taxable years beginning before January 1, 1964.*—(1) *Regular net capital loss sustained for taxable years beginning before January 1, 1970.* (i) A corporation sustaining a net capital loss for any taxable year beginning before January 1, 1970, and a taxpayer other than a corporation sustaining a net capital loss for

any taxable year beginning before January 1, 1964, shall carryover such net loss to each of the 5 succeeding taxable years and treat it in each of such 5 succeeding taxable years as a short-term capital loss to the extent not allowed as a deduction against any net capital gains of any taxable years intervening between the taxable year in which the net capital loss was sustained and the taxable year to which carried. The carryover is thus applied in each succeeding taxable year to offset any net capital gain in such succeeding taxable year. The amount of the capital loss carryover may not be included in computing a new net capital loss of a taxable year which can be carried over to the next 5 succeeding taxable years. For purposes of this subparagraph, a net capital gain shall be computed without regard to capital loss carryovers or carrybacks. In the case of nonresident alien individuals, see section 871 for special rules on capital loss carryovers. For the rules applicable to the portion of a net capital loss of a corporation which is attributable to a foreign expropriation capital loss sustained in taxable years beginning after December 31, 1958, see subparagraph (2) of this paragraph. For the rules applicable to a taxpayer other than a corporation in the treatment of that amount of a net capital loss which may be carried over under section 1212 and this subparagraph as a short-term capital loss to the first taxable year beginning after December 31, 1963, see paragraph (b) of this section.

(3) *Regular net capital loss sustained by a corporation for taxable years beginning after December 31, 1969.*—(i) *General rule.* A corporation sustaining a net capital loss for any taxable year beginning after December 31, 1969 (hereinafter in this paragraph referred to as the "loss year"), shall—

(a) Carry back such net capital loss to each of the 3 taxable years preceding the loss year, but only to the extent that such net capital loss is not attributable to a foreign expropriation capital loss and the carryback of such net capital loss does not increase or produce a net operating loss (as defined in section 172 (c)) for the taxable year to which it is carried back; and

(b) Carry over such net capital loss to each of the 5 taxable years succeeding the loss year,

and, subject to subdivision (ii) of this subparagraph, treat such net capital loss in each of such 3 preceding and 5 succeeding taxable years as a short-term capital loss.

(ii) *Amount treated as a short-term capital loss in each year.* The entire amount of the net capital loss for any loss year shall be carried to the earliest of the taxable years to which such net capital loss may be carried, and the portion of such net capital loss which shall be carried to each of the other taxable years to which such net capital loss may be carried shall be the excess, if any, of such net capital loss over the total of the net capital gains (computed without re-

gard to the capital loss carryback from the loss year or any taxable year thereafter) for each of the prior taxable years to which such net capital loss may be carried.

(iii) *Special rules.* (a) In the case of a net capital loss which is not a foreign expropriation capital loss and which cannot be carried back in full to a preceding taxable year by reason of section 1212(a)(1)(A)(ii) and subdivision (i) (a) of this subparagraph because such loss would produce or increase a net operating loss in such preceding taxable year, the net capital gain for such preceding taxable year shall in no case be treated as greater than the amount of such net capital loss which can be carried back to such preceding taxable year upon the application of section 1212(a)(1)(A)(ii) and subdivision (i) (a) of this subparagraph.

(b) For the rules applicable to the portion of a net capital loss of a corporation which is attributable to a foreign expropriation capital loss sustained in a taxable year beginning after December 31, 1958, see section 1212(a)(2) and subparagraph (2) of this paragraph.

(c) Section 1212(a)(1)(A) and subdivision (i) (a) of this subparagraph shall not apply to (and no carryback shall be allowed with respect to) the net capital loss of a corporation for any taxable year for which such corporation is an electing small business corporation under subchapter S. See § 1.1372-1.

(d) A net capital loss of a corporation for a year for which it is not an electing small business corporation under subchapter S shall not be carried back under section 1212(a)(1)(A) and subdivision (i) (a) of this subparagraph to a taxable year for which such corporation is an electing small business corporation. See section 1212(a)(3).

(e) A net capital loss of a corporation shall not be carried back under section 1212(a)(1)(A) and subdivision (i) (a) of this subparagraph to a taxable year for which the corporation was a foreign personal holding company, a regulated investment company, or a real estate investment trust, or for which an election made by the corporation under section 1247 is applicable. See section 1212(a)(4).

(f) A taxable year to which a net capital loss of a corporation cannot, by reason of (d) or (e) of this subdivision, be carried back under section 1212(a)(1)(A) and subdivision (i) (a) of this subparagraph shall nevertheless be treated as 1 of the 3 taxable years preceding the loss year for purposes of section 1212(a)(1)(A) and such subdivision (i) (a); but any net capital gains for such taxable year to which such net capital loss cannot be carried back shall be disregarded for purposes of subdivision (ii) of this subparagraph.

(iv) The application of this subparagraph may be illustrated by the following examples, in each of which it is assumed that the corporation is not, and never has been, a corporation described in subdivision (iii) (c) or (d) of this subparagraph, that the corporation files its tax

returns on a calendar year basis, and that no capital loss sustained is a foreign expropriation capital loss:

Example (1). A corporation has a net capital loss for 1970 which section 1212(a)(1)(A) permits to be carried back. The entire net capital loss for 1970 may be carried back to 1967, but only to the extent that a net operating loss for 1967 would not be produced or increased. The amount of the carryback to 1968 is the excess of the net capital loss for 1970 over the net capital gain for 1967, computed without regard to a capital loss carryback from 1970 or any taxable year thereafter. The amount of the carryback to 1969 is the excess of the net capital loss for 1970 over the sum of the net capital gains for 1967 and 1968, computed without regard to a capital loss carryback from 1970 or any taxable year

thereafter. The amount of the carryover to 1971 is the excess of the net capital loss for 1970 over the sum of the net capital gains for 1967, 1968, and 1969, computed without regard to a capital loss carryback from 1970 or any taxable year thereafter. Similarly, the amount of the carryover to 1972, 1973, 1974, and 1975, respectively, is the excess of the net capital loss for 1970 over the sum of the net capital gains for taxable years prior to 1972, 1973, 1974, or 1975, as the case may be, to which the net capital loss for 1970 may be carried, computed without regard to a capital loss carryback from 1970 or any year thereafter.

Example (2). For the taxable years 1967 to 1975, inclusive, a corporation is assumed to have net capital loss, net capital gain, and taxable income (computed without regard to capital gains and losses) as follows:

	1967	1968	1969	1970	1971	1972	1973	1974	1975
Taxable income (computed without regard to capital gains or losses)	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
Net capital loss			(1,000)	(29,500)	(16,000)	(500)			
Net capital gain (computed without regard to carrybacks or carryovers)	14,000	16,000					8,000	7,500	6,500
Carryback or carryover:									
From 1969						(1,000)			
From 1970	(14,000)	(16,000)							
From 1971		(500)				(7,000)	(7,500)	(1,000)	(500)
From 1972									

The net capital loss of 1969, under the rules of subparagraph (1) of this paragraph, may not be carried back. Thus, the net capital loss for 1970 is carried back and partially absorbed by the net capital gain for 1967, and a portion of the net capital losses of both 1970 and 1971 are carried back to 1968. The net capital loss for 1969 is the oldest that may be carried to 1973, and thus, it is the first carried over and absorbed by the net capital gain for 1973. The net capital loss for 1972 (which is not carried back because of the net capital losses in the 3 years preceding 1972) may be carried over to 1973.

Example (3). For the taxable years 1967 to 1970, inclusive, a corporation which was organized on January 1, 1967, realized operating income and net capital gains and sustained operating losses and net capital losses as follows:

	Operating income or loss (exclusive of capital gain or loss)	Capital gain or loss
1967	\$20,000	\$24,000
1968	20,000	0
1969	20,000	0
1970	(25,000)	(20,000)

The net capital loss of \$20,000 for 1970 is carried back to 1967 and applied against the \$24,000 net capital gain realized in that year, reducing such net capital gain to \$4,000. The net operating loss of \$25,000 for 1970 is then carried back to 1967 and applied first to eliminate the \$20,000 of operating income for that year and then to eliminate the net capital gain for that year of \$4,000 (as reduced by the 1970 capital loss carryback).

Example (4). Assume the same facts as in Example (3) but substitute the following figures:

	Operating income or loss (exclusive of capital gain or loss)	Capital gain or loss
1967	(\$20,000)	\$24,000
1968	20,000	0
1969	20,000	0
1970	(25,000)	(20,000)

The net capital loss of \$20,000 for 1970 is carried back to 1967 and applied against the \$24,000 net capital gain realized in that year only to the extent of \$4,000, the maximum amount to which the 1970 capital loss carryback can be applied without producing a net operating loss for 1967. The unused \$16,000 balance of the 1970 net long-term capital loss can be carried forward to 1971 and subsequent taxable years to the extent provided in subdivision (1)(b) of this subparagraph.

Example (5). Assume the same facts as in Example (3) but substitute the following figures:

	Operating income or loss (exclusive of capital gain or loss)	Capital gain or loss
1967	0	0
1968	(\$20,000)	0
1969	0	\$24,000
1970	20,000	(24,000)

The net capital loss of \$24,000 for 1970 is carried back to 1969 and applied against the \$24,000 net capital gain realized in that year to the extent of \$24,000. The application of the capital loss carryback is not limited as it was in Example (4) because such carryback neither increases nor produces a net operating loss, as such, for 1969. The \$20,000 net operating loss for 1968 is then carried forward to 1970 to eliminate the \$20,000 of operating income for that year.

Example (6). Assume the same facts as in Example (3) but substitute the following figures:

	Operating income or loss (exclusive of capital gain or loss)	Capital gain or loss
1967	0	0
1968	0	0
1969	(\$20,000)	(\$24,000)
1970	20,000	20,000

The net capital loss of \$24,000 for 1969 is carried forward to 1970 and applied against the \$20,000 net capital gain realized in that

year. The unused \$4,000 balance of the 1969 net capital loss can be carried forward to 1971 and subsequent taxable years to the extent provided in subdivision (1)(b) of this subparagraph.

(b) *Taxpayers other than corporations for taxable years beginning after December 31, 1963—(1) In general.* If a taxpayer other than a corporation sustains a net capital loss for any taxable year beginning after December 31, 1963, the portion thereof which is a short-term capital loss carryover shall be carried over to the succeeding taxable year and treated as a short-term capital loss sustained in such succeeding taxable year, and the portion thereof which constitutes a long-term capital loss carryover shall be carried over to the succeeding taxable year and treated as a long-term capital loss sustained in such succeeding taxable year. The carryovers are included in the determination of the amount of the short-term capital loss, the net short-term capital gain or loss, the long-term capital loss, and the net long-term capital gain or loss in such year, the net capital loss in such year, and the capital loss carryovers from such year. For purposes of this subparagraph—

(i) A short-term capital loss carryover is the excess of the net short-term capital loss for the taxable year over the net long-term capital gain for such year, and

(ii) A long-term capital loss carryover is the excess of the net long-term capital loss for the taxable year over the net short-term capital gain for such year.

(2) *Special rules for determining a net short-term capital gain or loss for purposes of carryover—(i) Taxable years beginning after December 31, 1963, and before January 1, 1970.* In determining a net short-term capital gain or loss of a taxable year beginning after December 31, 1963, and before January 1, 1970, for purposes of computing a short-term or long-term capital loss carryover to the succeeding taxable year, an amount equal to the additional allowance deductible under section 1211(b) for the taxable year (determined as provided in section 1211(b), as in effect for taxable years beginning before January 1, 1970, and § 1.1211-1(b)(5)) is treated as a short-term capital gain occurring in such year.

(ii) *Taxable years beginning after December 31, 1969.* In determining a net short-term capital gain or loss of a taxable year beginning after December 31, 1969—

(a) For purposes of computing a short-term capital loss carryover to the succeeding taxable year, an amount equal to the additional allowance for the taxable year (determined as provided in section 1211(b) and § 1.1211-1(b)(2)) is treated as a short-term capital gain occurring in such year, and

(b) For purposes of computing a long-term capital loss carryover to the succeeding taxable year, an amount equal to the sum of the additional allowance for the taxable year (determined as provided in section 1211(b) and § 1.1211-1(b)(2)), plus the excess of such addi-

tional allowance over the net short-term capital loss (determined without regard to section 1212(b)(2) for such year) is treated as a short-term capital gain in such year.

The rules provided in this subdivision are for the purpose of taking into account the additional allowance deductible for the current taxable year under section 1211(b) and § 1.1211-1(b)(2) in determining the amount and character of capital loss carryovers from the current taxable year to the succeeding taxable year. Their practical application to a determination of the amount and character of capital loss carryovers from the current taxable year to the succeeding taxable year involves identification of the net long-term and net short-term capital loss components of the additional allowance deductible in the current taxable year as provided by § 1.1211-1(b)(2)(iii). To the extent that the additional allowance is composed of net short-term capital losses, such losses are treated as a short-term capital gain in the current taxable year in determining the capital loss carryovers to the succeeding year. To the extent that the additional allowance is composed of net long-term capital losses applied pursuant to the provisions of § 1.1211-1(b)(2)(iii), an amount equal to twice the amount of such component of the additional allowance is treated as a short-term capital gain in the current taxable year. See paragraph (4) of this section for transitional rules if any part of the additional allowance is composed of net long-term capital losses carried to the current taxable year from a taxable year beginning before January 1, 1970.

(3) *Transitional rule for net capital losses sustained in a taxable year beginning before January 1, 1964.* A taxpayer other than a corporation sustaining a net capital loss for any taxable year beginning before January 1, 1964, shall treat as a short-term capital loss in the first taxable year beginning after December 31, 1963, any amount which would be treated as a short-term capital loss in such year under subchapter P of chapter 1 of the Code as in effect immediately before the enactment of the Revenue Act of 1964.

(4) *Transitional rule for net long-term capital losses sustained in a taxable year beginning before January 1, 1970.* In the case of a net long-term capital loss sustained by a taxpayer other than a corporation in a taxable year beginning prior to January 1, 1970 (referred to in this section as a "pre-1970 taxable year") which is carried over and treated as a long-term capital loss in the first taxable year beginning after December 31, 1969 (referred to in this section as a "post-1969 taxable year"), the transitional additional allowance deductible under section 1211(b) for the taxable year shall be determined by application of section 1211(b) as in effect for pre-1970 taxable years and § 1.1211-1(b)(3), and the amount of such long-term capital loss carried over and treated as a long-term capital loss in the succeeding taxable year shall be determined by application of section 1212(b)(1) as in effect for

pre-1970 taxable years and subparagraph (2)(i) of this paragraph (instead of under sections 1211(b) and 1212(b)(1) as in effect for post-1969 taxable years and § 1.1211-1(b)(2) and subparagraph (2)(ii) of this paragraph, respectively) but only to the extent that such pre-1970 long-term capital loss constitutes a "transitional net long-term capital loss component" (determined as provided in § 1.1211-1(b)(3)(ii)) in the taxable year to which such pre-1970 long-term capital loss is carried. Thus, for purposes of paragraph (2) of this section, to the extent that a component of the transitional additional allowance deductible for a post-1969 taxable year under section 1211(b) and § 1.1211-1(b)(3)(i) is a transitional net long-term capital loss component carried over to such post-1969 taxable year, such component shall be treated as a short-term capital gain in determining the amount and character of capital loss carryovers from such post-1969 taxable year to the succeeding taxable year. Such component shall be so treated as a short-term capital gain in full on a dollar-for-dollar basis and shall not be doubled for this purpose as is provided by subdivision (ii) of paragraph (2) of this section in the case of a component of the additional allowance made up of net long-term capital losses applied pursuant to the provisions of § 1.1211-1(b)(2)(iii). The transitional rule provided in this paragraph does not apply to a determination of the character of capital losses (as long-term or short-term) actually deductible for the current taxable year under section 1211(b) and § 1.1211-1(b).

(5) *Examples.* The application of this paragraph can be illustrated by the following examples:

Example (1). For the taxable year 1971, an unmarried individual has taxable income for purposes of section 1211(b) of \$8,000, a long-term capital loss of \$2,000, and no other capital gains or losses. \$1,000 (one-half) of the net long-term capital loss is deductible in 1971 as the additional allowance deductible under section 1211(b). No amount of capital loss remains to be carried over to the succeeding taxable year.

Example (2). For the taxable year 1972, the same unmarried individual has taxable income for purposes of section 1211(b) of \$8,000, a long-term capital loss of \$3,000, and no other capital gains or losses. \$1,500 (one-half of the excess net capital loss) is deductible in 1972, but limited to the \$1,000 maximum additional allowance deductible under section 1211(b). By application of section 1212(b)(1), he will carry over to 1973 a long-term capital loss of \$1,000 determined as follows:

Net long-term capital loss	(\$3,000)
Additional allowance deductible under section 1211(b)	1,000
Excess of additional allowance over net short-term capital loss (determined without regard to section 1212(b)(2)(B)(i))	1,000
Total amount treated as short-term capital gain under 1212(b)(2)(B) for purposes of determining carryover	2,000
Long-term capital loss carryover to 1973	(1,000)

If, in 1973, he had taxable income for purposes of section 1211(b) of \$8,000, but no capital gains or losses, \$500 (one-half) of the net long-term capital loss carryover from 1972 would be deductible in 1973 as the additional allowance deductible under section 1211(b). No amount of capital loss would be carried over to 1974.

Example (3). For the taxable year 1971, an unmarried individual has taxable income for purposes of section 1211(b) of \$9,000, a \$500 short-term capital gain, a \$700 short-term capital loss, a \$1,000 long-term capital gain and a \$1,700 long-term capital loss. He will offset \$1,500 of capital losses against capital gains. The excess net capital loss of \$900 is deductible in 1971 to the extent of a \$550 additional allowance deductible under 1211(b) which is smaller than both \$1,000 and taxable income for purposes of section 1211(b), determined as follows:

Losses allowed to the extent of gains	(\$1,500)
Amount allowed under section 1211(b)(1)(C):	
(i) excess of net short-term capital loss over net long-term capital gain	(200)
(ii) one-half of the excess of net long-term capital loss over net short-term capital gain	(350)
Additional allowance deductible under section 1211(b)	550

The total amount treated as short-term capital gain under section 1212(b)(2)(B) for purposes of determining any carryover to the succeeding taxable year exceeds \$900. No amount of net capital loss remains to be carried over to the succeeding taxable year.

Example (4). If in example (3) above, the long-term capital loss had been \$2,800, the taxpayer would carry over \$200 of long-term capital loss to 1972, determined as follows:

Losses allowed to extent of gains	(\$1,500)
Amount allowed under section 1211(b)(1)(B) and (C):	
(i) excess of net short-term capital loss over net long-term capital gain	(200)
(ii) one-half the excess of net long-term capital loss over net short-term capital gain	(900)

as limited by 1211(b)(1)(B) to an additional allowance of \$1,000.

Carryover under section 1212(b)(1):	
Net long-term capital loss for 1971	(\$1,800)
Additional allowance under section 1211(b)(1)(B)	1,000
Excess of additional allowance deductible under section 1211(b) over net short-term capital loss determined without regard to section 1212(b)(2)(B)(i) (\$1,000 less \$200)	800
Total amount treated as short-term capital gain under section 1212(b)(2)(B) for purposes of determining carryover	1,800
Short-term capital gain for 1971	500
Total short-term capital gain	2,300
Short-term capital loss for 1971	(700)
Net short-term capital gain	1,600
Long-term capital loss carryover (\$1,800 less \$1,600)	200

Example (5). For 1969, an unmarried individual has taxable income for purposes of section 1211(b) of \$8,000, a long-term capital loss of \$3,000, and no other capital gains or losses. He is allowed to deduct in 1969 \$1,000 as the additional allowance deductible under section 1211(b) (as in effect for pre-1970 taxable years) and to carry over to 1970, a long-term capital loss of \$2,000 under section 1212(b) (as in effect for pre-1970 taxable years).

If, in 1970, the same unmarried individual with taxable income for purposes of section 1211(b) of \$8,000, has no capital gains or losses, he would deduct \$1,000 of his pre-1970 capital loss carryover as the transitional additional allowance deductible under section 1211(b) (as in effect for pre-1970 years) and carry over under section 1212(b) (1) (as in effect for pre-1970 taxable years) to 1971 the remaining \$1,000 as a pre-1970 long-term capital loss.

If, in 1970, the same individual instead has a long-term capital gain of \$2,500, and a long-term capital loss of \$1,500, he would net these two items with the \$2,000 carried to 1970 as a long-term capital loss. Thus, he would have a net long-term capital loss for 1970 of \$1,000 which is deductible in 1970 as the transitional additional allowance deductible under section 1211(b). He would have no amount to carry over under section 1212(b) (1) to 1971.

If, in 1970, the same individual instead has a long-term capital loss of \$1,200, and a long-term capital gain of \$200, resulting in a net long-term capital loss of \$3,000 when netted with the \$2,000 carried to 1970 as a long-term capital loss, he would deduct \$1,000 in respect of his pre-1970 long-term capital loss carryover as the transitional additional allowance deductible under section 1211(b) (as in effect for pre-1970 taxable years) and carry over under section 1212(b) (1) (as in effect for pre-1970 taxable years) to 1971 the remaining \$1,000 of the pre-1970 component of his long-term capital loss carryover, and the \$1,000 net long-term capital loss actually sustained in 1970 as the second component of his long-term capital loss carryover.

Example (6). For 1970 a married individual filing a separate return has taxable income of \$8,000, a long-term capital loss of \$3,500 and a short-term capital gain of \$3,000. He also has a pre-1970 short-term capital loss of \$2,000 which is carried to 1970. The \$3,000 short-term capital gain realized in 1970 would first be reduced by the \$2,000 short-term capital loss carryover, and then the remaining \$1,000 balance of the short-term capital gain would be offset against the \$3,500 long-term capital loss, producing a net long-term capital loss of \$2,500, no part of which is a net long-term capital loss carried over from 1969. However, under the special rule of § 1.1211-1(b) (7) (ii) in 1970, the taxpayer would deduct as the additional allowance deductible under section 1211(b), the \$500 limitation in § 1.1211-1(b) (2) (ii) in the case of a married taxpayer filing a separate return in a taxable year ending after December 31, 1969, plus the "transitional net short-term capital loss component" of \$2,000 computed under § 1.1211-1(b) (3) (iv), but limited to a total deduction of \$1,000. The \$1,000 additional allowance deductible under section 1211(b) would absorb \$2,000 of the \$2,500 net long-term capital loss, and he would carry the unused \$500 balance of such loss to 1971 for use in that year.

Example (7). For 1970, an unmarried individual filing a separate return has taxable income for purposes of section 1211(b) of \$8,000, and a long-term capital loss of \$2,000. He also has a pre-1970 long-term capital loss of \$2,500 which is carried to 1970. In 1970, the

taxpayer would deduct as the transitional additional allowance deductible under section 1211(b) \$1,000, absorbing \$1,000 of the pre-1970 long-term capital loss of \$2,500. He would carry to 1971 the unused \$1,500 balance of his pre-1970 long-term capital loss plus the 1970 long-term capital loss of \$2,000, or a total of \$3,500, for use in 1971.

For 1971, the same taxpayer filing a separate return with taxable income for purposes of section 1211(b) of \$8,000, has a \$3,600 long-term capital gain and a \$2,200 long-term capital loss. When these gains and losses are combined with the long-term capital loss carryover from 1970 of \$3,500, a net long-term capital loss of \$2,100 results. He would deduct \$1,000 as the transitional additional allowance deductible under section 1211(b). The \$1,000 additional allowance would absorb \$100 of the unused pre-1970 long-term capital loss carryover of \$1,500 plus \$1,800 of the unused post-1969 long-term capital loss carryover of \$2,100 (the amount of the 1971 net long-term capital loss necessary to make up the remaining \$900 balance of the additional allowance). Although a component of the 1971 net long-term capital loss is the unused pre-1970 long-term capital loss carryover of \$1,500, only \$100 of this carryover is available for use in full on a dollar-for-dollar basis in computing the transitional additional allowance for 1971 since it only exceeds by that amount the \$1,400 net capital gain actually realized in 1971 all of which is net long-term capital gain (long-term capital gain of \$3,600 reduced by long-term capital loss of \$2,200). See § 1.1221-1(b) (3) (ii). The taxpayer would carry over to 1972 as a long-term capital loss the remaining \$200 of the 1971 long-term capital loss.

Example (8). For 1970, an unmarried individual has taxable income for purposes of section 1211(b) of \$8,000 and a short-term capital loss of \$700. He also has a pre-1970 long-term capital loss carryover of \$1,200. He would deduct \$1,000 as the transitional additional allowance deductible under section 1211(b). The \$1,000 transitional additional allowance would be composed of the 1970 short-term capital loss of \$700 and \$300 of the pre-1970 long-term capital loss carryover. He would carry over to 1971 the unused \$900 balance of his \$1,200 pre-1970 long-term capital loss carryover for use in 1971.

PAR. 13. Section 1.1222 is amended by revising paragraph (9) of section 1222 and the historical note to read as follows:

§ 1.1222 Statutory provisions; other terms relating to capital gains and losses.

Sec. 1222. Other terms relating to capital gains and losses.

(9) *Net capital gain.* The term "net capital gain" means the excess of the gains from sales or exchanges of capital assets over the losses from such sales or exchanges.

[Sec. 1222 as amended by sec. 230(b), Rev. Act 1964, (78 Stat. 100); sec. 513(c), Tax Reform Act 1969 (83 Stat. 643)]

PAR. 14. Section 1.1222-1 is amended by revising paragraphs (d) and (e) to read as follows:

§ 1.1222-1 Other terms relating to capital gains and losses.

(d) (1) The term "net capital gain" means the excess of the gains from sales or exchanges of capital assets over the losses from sales or exchanges of capital

assets, which losses include any amounts carried to the taxable year pursuant to section 1212(a) or section 1212(b).

(2) Notwithstanding subparagraph (1) of this paragraph, in the case of a taxpayer other than a corporation for taxable years beginning before January 1, 1964, the term "net capital gain" means the excess of (i) the sum of the gains from sales or exchanges of capital assets, plus the taxable income (computed without regard to gains and losses from sales or exchanges of capital assets and without regard to the deductions provided by section 151, relating to personal exemptions, or any deductions in lieu thereof) of the taxpayer or \$1,000, whichever is smaller, over (ii) the losses from sales or exchanges of capital assets, which losses include amounts carried to the taxable year by such taxpayer under paragraph (a) (1) of § 1.1212-1. Thus, in the case of estates and trusts for taxable years beginning before January 1, 1964, taxable income for the purposes of this paragraph shall be computed without regard to gains and losses from sales or exchanges of capital assets and without regard to the deductions allowed by section 642(b) to estates and trusts in lieu of personal exemptions. The term "net capital gain" is not applicable in the case of a taxpayer other than a corporation for taxable years beginning after December 31, 1963, and before January 1, 1970. In the case of a taxpayer whose tax liability is computed under section 3 for taxable years beginning before January 1, 1964, the term "taxable income", for purposes of this paragraph, shall be read as "adjusted gross income".

(e) The term "net capital loss" means the excess of the losses from sales or exchanges of capital assets over the sum allowed under section 1211. However, in the case of a corporation, amounts which are short-term capital losses under § 1.1212-1(a) are excluded in determining such "net capital loss".

PAR. 15. Section 1.1314(a) is amended by revising so much of section 1314(a) as follows paragraph (2) of such section and adding a historical note to read as follows:

§ 1.1314(a) Statutory provisions, amount and method of adjustment; ascertainment of amount of adjustment.

Sec. 1314. Amount and method of adjustment—(a) Ascertainment of amount of adjustment.

There shall then be ascertained the increase or decrease in tax previously determined which results solely from the correct treatment of the item which was the subject of the error (with due regard given to the effect of the item in the computation of gross income, taxable income, and other matters under this subtitle). A similar computation shall be made for any other taxable year affected, or treated as affected, by a net operating loss deduction (as defined in section 172) or by a capital loss carryback or carryover (as defined in section 1212), determined with reference to the taxable year with respect to which the error was made. The amount so ascertained (together with any

amounts wrongfully collected as additions to the tax or interest, as a result of such error) for each taxable year shall be the amount of the adjustment for that taxable year.

[Sec. 1314 (a) as amended by sec. 512(f) (7), Tax Reform Act 1969 (83 Stat. 641)]

PAR. 16. Section 1.1314(a)-2 is amended by revising paragraphs (a) (1) and (2), (b), and (c) to read as follows:

§ 1.1314(a)-2 Adjustment to other barred taxable years.

(a) * * *

(1) The tax liability for such other year or years must be affected, or must have been treated as affected, by a net operating loss deduction (as defined in section 172) or by a capital loss carryback or carryover (as defined in section 1212).

(2) The net operating loss deduction or capital loss carryback or carryover must be determined with reference to the taxable year with respect to which the error was made.

(b) The amount of the adjustment for such other year or years shall be computed in a manner similar to that provided in § 1.1314(a)-1. The tax previously determined for such other year or years shall be ascertained. A recomputation must then be made to ascertain the increase or decrease in tax, if any, resulting solely from the correction of the net operating loss deduction or capital loss carryback or carryover. The difference between the tax previously determined and the tax as recomputed is the amount of the adjustment. In the recomputation, no consideration shall be given to items other than the following: (1) The items upon which the tax previously determined for such other year or years was based, and (2) the net operating loss deduction or capital loss carryback or carryover as corrected. In determining the correct net operating loss deduction or capital loss carryback or carryover, no changes shall be made in taxable income (net income in the case of taxable years subject to the provisions of the Internal Revenue Code of 1939 or prior revenue laws), net operating loss or capital loss, for any barred taxable year, except as provided in section 1314. Section 172 and the corresponding provisions of prior revenue laws, and the regulations promulgated thereunder, prescribe the methods of computing the net operating loss deduction. Section 1212 and the corresponding provisions of prior revenue laws, and the regulations promulgated thereunder, prescribe the methods for computing the capital loss carryback and carryover.

(c) A net operating loss deduction or a capital loss carryback or carryover determined with reference to the year of the error may affect, or may have been treated as affecting, a taxable year with respect to which an adjustment is not prevented by the operation of any law or rule of law. In such case, the appropriate adjustment shall be made with respect to such open taxable year. However, the redetermination of the tax for such open taxable year is not made pur-

suant to part II (section 1311 and following), subchapter Q, chapter 1 of the Code, and the adjustment for such open year and the method of computation are not limited by the provisions of said sections.

PAR. 17. Section 1.1314(b) is amended by revising section 1314(b) and adding a historical note to read as follows:

§ 1.1314(b) Statutory provisions; amount and method of adjustment; method of adjustment.

Sec. 1314. Amount and method of adjustment. * * *

(b) Method of adjustment. The adjustment authorized in section 1311(a) shall be made by assessing and collecting, or refunding or crediting, the amount thereof in the same manner as if it were a deficiency determined by the Secretary or his delegate with respect to the taxpayer as to whom the error was made or an overpayment claimed by such taxpayer, as the case may be, for the taxable year or years with respect to which an amount is ascertained under subsection (a). and as if on the date of the determination 1 year remained before the expiration of the periods of limitation upon assessment or filing claim for refund for such taxable year or years. If, as a result of a determination described in section 1313(a)(4), an adjustment has been made by the assessment and collection of a deficiency or the refund or credit of an overpayment, and subsequently such determination is altered or revoked, the amount of the adjustment ascertained under subsection (a) of this section shall be redetermined on the basis of such alteration or revocation and any overpayment or deficiency resulting from such redetermination shall be refunded or credited, or assessed and collected, as the case may be, as an adjustment resulting from an increase or decrease in a net operating loss or net capital loss which is carried back to the year of adjustment, interest shall not be collected or paid for any period prior to the close of the taxable year in which the net operating loss or net capital loss arises.

[Sec. 1341(b) as amended by sec. 512(f) (8), Tax Reform Act 1969 (83 Stat. 642)]

PAR. 18. Section 1.1314(b)-1 is amended by revising paragraph (c) to read as follows:

§ 1.1314(b)-1 Method of adjustment.

(c) The amount of an adjustment treated as if it were a deficiency or an overpayment, as the case may be, will bear interest and be subject to additions to the tax to the extent provided by the internal revenue laws applicable to deficiencies and overpayments for the taxable year with respect to which the adjustment is made. In the case of an adjustment resulting from an increase or decrease in a net operating loss or net capital loss which is carried back to the year of adjustment, interest shall not be collected or paid for any period prior to the close of the taxable year in which the net operating loss or net capital loss arises.

PAR. 19. Section 1.6411 is amended by revising so much of subsection (a) as precedes paragraph (1) of such subsection, subsections (a) (1) and (5), (b),

and (c) of section 6411, and by adding a historical note. The amended and added provisions read as follows:

§ 1.6411 Statutory provisions; tentative carryback adjustments.

Sec. 6411. Tentative carryback adjustments.—(a) Application for adjustment. A taxpayer may file an application for a tentative carryback adjustment of the tax for the prior taxable year affected by a net operating loss carryback provided in section 172(b), by an investment credit carryback provided in section 46(b), by a work incentive program carryback provided in section 50A(b), or by a capital loss carryback provided in section 1212(a)(1), from any taxable year. The application shall be verified in the manner prescribed by section 6065 in the case of a return of such taxpayer, and shall be filed, on or after the date of filing of the return for the taxable year of the net operating loss, net capital loss, unused investment credit, or unused work incentive program credit from which the carryback results and within a period of 12 months from the end of such taxable year (or, with respect to any portion of an investment credit carryback or a work incentive program carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, within a period of 12 months from the end of such subsequent taxable year), in the manner and form required by regulations prescribed by the Secretary or his delegate. The application shall set forth in such detail and with such supporting data and explanation as such regulations shall require—

(1) The amount of the net operating loss, net capital loss, unused investment credit, or unused work incentive program credit;

(5) The amount, with respect to the tax for the taxable year immediately preceding the taxable year from which the carryback is made, as to which an extension of time for payment under section 6164 is in effect; and

(b) Allowance of adjustments. Within a period of 90 days from the date on which an application for a tentative carryback adjustment is filed under subsection (a), or from the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss, net capital loss, unused investment credit, or unused work incentive program credit from which such carryback results, whichever is the later, the Secretary or his delegate shall make, to the extent he deems practicable in such period, a limited examination of the application, to discover omissions and errors of computation therein, and shall determine the amount of the decrease in the tax attributable to such carryback upon the basis of the application and the examination, except that the Secretary or his delegate may disallow, without further action, any application which he finds contains errors of computation which he deems cannot be corrected by him within such 90-day period or material omissions. Such decrease shall be applied against any unpaid amount of the tax decreased (including any amount of such tax as to which an extension of time under section 6164 is in effect) and any remainder shall be credited against any unsatisfied amount of any tax for the taxable year immediately preceding the taxable year of the net operating loss, net capital loss, unused investment credit, or unused work incentive program credit the time for payment of which tax is extended under section 6164. Any remainder

shall, within such 90-day period, be either credited against any tax or installment thereof then due from the taxpayer, or refunded to the taxpayer.

(c) *Consolidated returns.* If the corporation seeking a tentative carryback adjustment under this section, made or was required to make a consolidated return, either for the taxable year within which the net operating loss, net capital loss, unused investment credit, or unused work incentive program credit arises, or for the preceding taxable year affected by such loss or credit, the provisions of this section shall apply only to such extent and subject to such conditions, limitations, and exceptions as the Secretary or his delegate may by regulations prescribe.

[Sec. 6411 as amended by sec. 2 (a), (b), (c), (d), and (e), Act of Nov. 2, 1966 (Public Law 89-721, 80 Stat. 1150); sec. 2(b), Act of Dec. 27, 1967 (Public Law 90-225, 81 Stat. 731); sec. 512(d), Tax Reform Act 1969 (83 Stat. 639); sec. 601(e) (1), Rev. Act 1971 (85 Stat. 560)]

PAR. 20. Section 1.6411-1 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1.6411-1 Tentative carryback adjustments.

(a) *In general.* Any taxpayer who has a net operating loss under section 172, a net capital loss under section 1211(a) which is a carryback under section 1212, an unused investment credit under section 46, or an unused work incentive program (WIN) credit under section 50A, may file an application under section 6411 for a tentative carryback adjustment of the taxes for taxable years prior to the taxable year of the net operating or capital loss or the unused credit, whichever is applicable, which are affected by the net operating loss carryback, the capital loss carryback, the unused investment credit carryback, or the unused WIN credit carryback, resulting from such loss or unused credit. The regulations under section 6411 shall apply with respect to investment credit carrybacks for taxable years ending after December 31, 1961, but only with respect to applications for tentative carryback adjustments for investment credit carrybacks filed after November 2, 1966. The regulations under section 6411 shall apply with respect to WIN credit carrybacks for taxable years beginning after December 31, 1971. The right to file an application for a tentative carryback adjustment is not limited to corporations, but is available to any taxpayer otherwise entitled to carry back a loss or unused credit. A corporation may file an application for a tentative carryback adjustment even though it has not extended the time for payment of tax under section 6164.

(c) *Time and place for filing application.* Except as otherwise provided in this paragraph the application for a tentative carryback adjustment shall be filed on or after the date of the filing of the return for the taxable year of the net operating loss, net capital loss, unused investment credit, or unused WIN credit and shall be filed within a period of twelve months from the end of such tax-

able year. With respect to any portion of an investment credit carryback or a WIN credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, the twelve-month period shall be measured from the end of such subsequent taxable year. In the case of an application for a tentative carryback adjustment attributable to the carryback of an unused investment credit, the twelve-month period for filing shall not expire before the close of December 31, 1966. Any application filed prior to the date on which the return for the taxable year of the loss or unused credit is filed shall be considered to have been filed on the date such return is filed. In the case of an application filed before April 15, 1968, the application shall be filed with the internal revenue officer to whom the tax was paid or by whom the assessment was made. Except as provided in paragraph (b) of § 301.6091-1 (relating to hand-carried documents), in the case of an application filed after April 14, 1968, if the tax was paid to the Director of International Operations, the application shall be filed with him; otherwise the application shall be filed with the internal revenue office with which the return was filed.

PAR. 21. Section 1.6411-2 is amended by revising paragraph (a) to read as follows:

§ 1.6411-2 Computation of tentative carryback adjustment.

(a) *Tax previously determined.* The taxpayer is to determine the amount of decrease, attributable to the carryback, in tax previously determined for each taxable year before the taxable year of the net operating loss, net capital loss, unused investment credit, or unused WIN credit. The tax previously determined is to be ascertained in accordance with the method prescribed in section 1314(a). Thus, the tax previously determined will be the tax shown on the return as filed, increased by any amounts assessed (or collected without assessment) as deficiencies before the date of the filing of the application for a tentative carryback adjustment, and decreased by any amounts abated, credited, refunded, or otherwise repaid prior to such date. Any items as to which the Internal Revenue Service and the taxpayer are in disagreement at the time of the filing of the application shall be taken into account in ascertaining the tax previously determined only if, and to the extent that, they were reported in the return, or were reflected in any amounts assessed (or collected without assessment) as deficiencies, or in any amounts abated, credited, refunded, or otherwise repaid, before the date of filing the application. The tax previously determined, therefore, will reflect the foreign tax credit and the credit for tax withheld at source provided in section 32.

PAR. 22. Section 1.6411-3 is amended by revising paragraphs (a) (2), (b), and (d) (2) to read as follows:

§ 1.6411-3 Allowance of adjustments.

(a) *Time prescribed.* * * *
(2) The last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss, net capital loss, unused investment credit, or unused WIN credit from which the carryback results.

(b) *Examination.* Within the 90-day period described in paragraph (a) of this section, the district director or director of a service center shall make, to the extent he deems practicable in such period, an examination of the application to discover omissions and errors of computation. He shall determine within such period the decrease in tax previously determined, affected by the carryback or any related adjustments, upon the basis of the application and such examination. Such decrease shall be determined in the same manner as that provided in section 1314(a) for the determination by the taxpayer of the decrease in taxes previously determined which must be set forth in the application for a tentative carryback adjustment. Such internal revenue officer, however, may correct any errors of computation or omissions he may discover upon examination of the application. In determining the decrease in tax previously determined which is affected by the carryback or any related adjustment, he accordingly may correct any mathematical error appearing in the application and he may likewise correct any modification required by the law and incorrectly made by the taxpayer in computing the net operating loss, net capital loss, unused investment credit, or unused WIN credit, the resulting carrybacks, or the net operating loss deduction, capital loss deduction, investment credit, or WIN credit allowable. If the required modification has not been made by the taxpayer and such internal revenue officer has available the necessary information to make such modification within the 90-day period, he may, in his discretion, make such modification. In determining such decrease, however, such internal revenue officer will not, for example, change the amount claimed on the return as a deduction for depreciation because he believes that the taxpayer has claimed an excessive amount; likewise, he will not include in gross income any amount not so included by the taxpayer, even though such officer believes that such amount is subject to tax and properly should be included in gross income.

(d) *Application of decrease.* * * *
(2) In case the unpaid amount of tax includes more than one of such amounts, the district director, or director of a service center in his discretion, shall determine against which amount or amounts, and in what proportion, the decrease is to be applied. In general, however, the decrease will be applied

against any amounts described in subparagraph (1) (i), (ii), and (iii) of this paragraph in the order named. If there are several amounts of the type described in subparagraph (1)(iii) of this paragraph, any amount of the decrease which is to be applied against such amount will be applied by assuming that the tax previously determined minus the amount of the decrease to be so applied is "the tax" and that the taxpayer had elected to pay such tax in installments. The unpaid amount of tax against which a decrease may be applied under subparagraph (1) of this paragraph may not include any amount of tax for any taxable year other than the year of the decrease. After making such application, such internal revenue officer will credit any remainder of the decrease against any unsatisfied amount of any tax for the taxable year immediately preceding the taxable year of the net operating loss, capital loss, unused investment credit, or unused WIN credit, the time for payment of which has been extended under section 6164.

PAR. 23. Section 301.6411 is amended by revising so much of subsection (a) as precedes paragraph (1) of such subsection, subsections (a) (1) and (5), (b), and (c), of section 6411, and by adding a historical note. The amended and added provisions read as follows:

§ 301.6411 Statutory provisions; tentative carryback adjustments.

SEC. 6411. *Tentative carryback adjustments—(a) Application for adjustment.* A taxpayer may file an application for a tentative carryback adjustment of the tax for the prior taxable year affected by a net operating loss carryback provided in section 172 (b), by an investment credit carryback provided in section 46(b), by a work incentive program carryback provided in section 50A (b), or by a capital loss carryback provided in section 1212(a) (1), from any taxable year. The application shall be verified in the manner prescribed by section 6065 in the case of a return of such taxpayer, and shall be filed, on or after the date of filing of the return for the taxable year of the net operating loss, net capital loss, unused investment credit, or unused work incentive program credit from which the carryback results and within a period of 12 months from the end of such taxable year (or, with respect to any portion of an investment credit carryback or a work incentive program carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, within a period of 12 months from the end of such subsequent taxable year), in the manner and form required by regulations prescribed by the Secretary or his delegate. The application shall set forth in such detail and with such supporting data and explanation as such regulations shall require—

(1) The amount of the net operating loss, net capital loss, unused investment credit, or unused work incentive program credit;

(5) The amount, with respect to the tax for the taxable year immediately preceding the taxable year from which the carryback is made, as to which an extension of time for payment under section 6164 is in effect; and

(b) *Allowance of adjustments.* Within a period of 90 days from the date on which an application for a tentative carryback adjustment is filed under subsection (a), or from the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss, net capital loss, unused investment credit, or unused work incentive program credit from which such carryback results, whichever is the later, the Secretary or his delegate shall make, to the extent he deems practicable in such period, a limited examination of the application, to discover omissions and errors of computation therein, and shall determine the amount of the decrease in the tax attributable to such carryback upon the basis of the application and the examination, except that the Secretary or his delegate may disallow, without further action, any application which he finds contains errors of computation which he deems cannot be corrected by him within such 90-day period or material omissions. Such decrease shall be applied against any unpaid amount of the tax decreased (including any amount of such tax as to which an extension of time under section 6164 is in effect) and any remainder shall be credited against any unsatisfied amount of any tax for the taxable year immediately preceding the taxable year of the net operating loss, net capital loss, unused investment credit, or unused work incentive program credit the time for payment of which tax is extended under section 6164. Any remainder shall, within such 90-day period, be either credited against any tax or installment thereof then due from the taxpayer, or refunded to the taxpayer.

(c) *Consolidated returns.* If the corporation seeking a tentative carryback adjustment under this section, made or was required to make a consolidated return, either for the taxable year within which the net operating loss, net capital loss, unused investment credit, or unused work incentive program credit arises, or for the preceding taxable year affected by such loss or credit, the provisions of this section shall apply only to such extent and subject to such conditions, limitations, and exceptions as the Secretary or his delegate may by regulations prescribe.

[Sec. 6411 as amended by sec. 2 (a), (b), (c), (d), and (e), Act of Nov. 2, 1966 (Public Law 89-721, 80 Stat. 1150); sec. 2(b), Act of Dec. 27, 1967 (Public Law 90-225, 81 Stat. 731); sec. 512(d), Tax Reform Act 1969 (83 Stat. 639); sec. 601(e) (1), Rev. Act 1971 (85 Stat. 560).]

PAR. 24. Section 301.6501(h) is amended by revising the heading of such section, the heading and subsection (h) of section 6501, and the historical note to read as follows:

§ 301.6501(h) Statutory provisions; limitations on assessment and collection; net operating loss or capital loss carrybacks.

SEC. 6501. *Limitations on assessment and collection.* * * *

(h) *Net operating loss or capital loss carrybacks.* In the case of a deficiency attributable to the application to the taxpayer of a net operating loss carryback or a capital loss carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(2)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the net operating loss or net capital loss which results in such carry-

back may be assessed. In the case of a deficiency attributable to the application of a net operating loss carryback, such deficiency may be assessed within 18 months after the date on which the taxpayer files in accordance with section 172(b)(3) a copy of the certification (with respect to the taxable year of the net operating loss) issued under section 317 of the Trade Expansion Act of 1962, if later than the date prescribed by the preceding sentence.

[Sec. 6501(h) as added by sec. 81(b), Technical Amendments Act 1958 (72 Stat. 1663); and as amended by sec. 317(c), Trade Expansion Act 1962 (76 Stat. 890); sec. 512(e) (1) (A), (B), (C), and (D), Tax Reform Act 1969 (83 Stat. 640).]

PAR. 25. Section 301.6501(h)-1 is amended by revising such section and its heading to read as follows:

§ 301.6501(h)-1 Net operating loss or capital loss carrybacks.

In the case of a deficiency attributable to the application to the taxpayer of a net operating loss or capital loss carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(2)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the net operating loss or net capital loss which results in such carryback may be assessed. In the case of a deficiency attributable to the application of a net operating loss carryback, such deficiency may be assessed within 18 months after the date on which the taxpayer files in accordance with section 172(b)(3) a copy of the certification (with respect to such taxable year) issued under section 317 of the Trade Expansion Act of 1962, if later than the date prescribed by the preceding sentence.

PAR. 26. Section 301.6501(j) is amended by revising section 6501(j) and the historical note to read as follows:

§ 301.6501(j) Statutory provisions; limitations on assessment and collection; investment credit carrybacks.

SEC. 6501. *Limitations on assessment and collection.* * * *

(j) *Investment credit carrybacks.* In the case of a deficiency attributable to the application to the taxpayer of an investment credit carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(2)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the unused investment credit which results in such carryback may be assessed, or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback or capital loss carryback from a subsequent taxable year, at any time before the expiration of the period within which a deficiency for such subsequent taxable year may be assessed.

[Sec. 6501(j) as added by sec. 2(e) (1), Rev. Act. 1962 (76 Stat. 971); and as amended by sec. 2(f), Act of Nov. 2, 1966 (Public Law 89-721, 80 Stat. 1150); sec. 2(c), Act of Dec. 27, 1967 (Public Law 90-225, 81 Stat. 731); sec. 512(e) (1) (E), Tax Reform Act 1969 (83 Stat. 640).]

PAR. 27. Section 301.6501(j)-1 is amended to read as follows:

§ 301.6501(j)-1 Investment credit carryback; taxable years ending after December 31, 1961.

With respect to taxable years ending after December 31, 1961, a deficiency attributable to the application to the taxpayer of an investment credit carryback may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the unused investment credit which results in such carryback may be assessed, or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss or capital loss carryback from a subsequent taxable year, at any time before the expiration of the period within which a deficiency for such subsequent taxable year may be assessed. For purposes of this section a deficiency shall include a deficiency which may be assessed pursuant to the provisions of section 6213(b)(2), but only those arising with respect to applications for tentative carryback adjustments filed after November 2, 1966.

PAR. 28. Section 301.6501(k) is redesignated as section 301.6501(l) and the historical note is revised. Such redesignated section and revised historical note read as follows:

§ 301.6501(l) Statutory provisions; limitations on assessment and collection; joint income return after separate return.

Sec. 6501. Limitations on assessment and collection. . . .

(1) Joint income return after separate return. For period of limitations for assessment and collection in the case of a joint income return filed after separate returns have been filed, see section 6013(b)(3) and (4).

[Sec. 6501(h) as redesignated by sec. 81(b), Technical Amendments Act 1958 (72 Stat. 1663); sec. 3(c), Act of Sept. 14, 1960 (Public Law 86-780, 74 Stat. 1013); sec. 2(e)(1), Rev. Act 1962 (76 Stat. 971); sec. 6501(k) as redesignated by sec. 3(b), Act of Sept. 2, 1964 (Public Law 88-571, 78 Stat. 857)]

PAR. 29. There is inserted immediately after section 301.6501(j)-1 the following new section:

§ 301.6501(k) Statutory provisions; limitations on assessment and collection; reductions of policyholders surplus account of life insurance companies.

Sec. 6501. Limitations on assessment and collection. . . .

(k) Reductions of policyholders surplus account of life insurance companies. In the case of a deficiency attributable to the application to the taxpayer of section 815(d)(5) (relating to reductions of policyholders surplus account of life insurance companies for certain unused deductions), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the last taxable year to which the loss described in section 815(d)(5)(A) is carried under section 812(b)(2) may be assessed.

[Sec. 6501(k) as added by sec. 3(b), Act of Sept. 2, 1964 (Public Law 88-571, 78 Stat. 858)]

PAR. 30. These are inserted immediately after redesignated section 301.6501(l) the following new sections:

§ 301.6501(m) Statutory provisions; limitations on assessment and collection; tentative carryback adjustment assessment period.

Sec. 6501. Limitation on assessment and collection. . . .

(m) Tentative carryback adjustment assessment period. In a case where an amount has been applied, credited, or refunded under section 6411 (relating to tentative carryback adjustments) by reason of a net operating loss carryback, a capital loss carryback, an investment credit carryback, or a work incentive program carryback to a prior taxable year, the period described in subsection (a) of this section for assessing a deficiency for such prior taxable year shall be extended to include the period described in subsection (h), (j), or (o), whichever is applicable; except that the amount which may be assessed solely by reason of this subsection shall not exceed the amount so applied, credited, or refunded under section 6411, reduced by any amount which may be assessed solely by reason of subsection (h), (j), or (o), as the case may be.

[Sec. 6501(m) as added by sec. 3(a), Act of Nov. 2, 1966 (Public Law 89-721, 80 Stat. 1151); and as amended by sec. 512(e)(1)(F), Tax Reform Act 1969 (83 Stat. 640); sec. 601(e)(2), Rev. Act 1971 (85 Stat. 560).]

§ 301.6501(m)-1 Tentative carryback adjustment assessment period.

(a) Period of limitation after tentative carryback adjustment. (1) Under section 6501(m), in a case where an amount has been applied, credited, or refunded under section 6411, by reason of a net operating loss carryback, a capital loss carryback, an investment credit carryback, or a work incentive program credit carryback to a prior taxable year, the period described in section 6501(a) of the Code for assessing a deficiency for such prior taxable year is extended to include the period described in section 6501(h), (j), or (o), whichever is applicable; except that the amount which may be assessed solely by reason of section 6501(m) may not exceed the amount so applied, credited, or refunded under section 6411, reduced by any amount which may be assessed solely by reason of section 6501(h), (j), or (o), as the case may be.

(2) The application of this paragraph may be illustrated by the following example:

Example. Assume that M Corporation, which claims an unused investment credit of \$50,000 for the calendar year 1968, files an application under section 6411 of the Code for an adjustment of its tax for 1965, and receives a refund of \$50,000 in 1969. In 1971, it is determined that the amount of the unused investment credit for 1968 is \$30,000 rather than \$50,000. Moreover, it is determined that M Corporation would have owed \$40,000 of additional tax for 1965 if it had properly reported certain income which it failed to include in its 1965 return. Assuming that M Corporation filed its 1968 return on March 15, 1969, and that the 3-year period described in section 6501(a) has not been extended, the period prescribed in section 6501(j) for assessing the excessive amount refunded, \$20,000 (i.e., \$50,000, original amount refunded less \$30,000, correct amount of unused investment credit), does not expire until March 15, 1972, and \$20,000 may be assessed on or before such date under section 6501(j). Under section 6501(m), M

Corporation may be assessed on or before March 15, 1972, an amount not in excess of \$30,000 (\$50,000, the amount refunded under section 6411, minus \$20,000, the amount which may be assessed solely by reason of section 6501(j)).

(b) Effective date. The provisions of paragraph (a) of this section apply only with respect to applications under section 6411 filed after November 2, 1966.

§ 301.6501(o) Statutory provisions; limitation on assessment and collection; work incentive program credit carrybacks.

Sec. 6501. Limitation on assessment and collection. . . .

(o) Work incentive program credit carrybacks. In the case of a deficiency attributable to the application to the taxpayer of a work incentive program credit carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(2)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the unused work incentive program credit which results in such carryback may be assessed, or, with respect to any portion of a work incentive program credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, at any time before the expiration of the period within which a deficiency for such subsequent taxable year may be assessed.

[Sec. 6501(o) as added by sec. 601(d)(1), Rev. Act 1971 (85 Stat. 558)]

§ 301.6501(o)-1 Work incentive program credit carrybacks, taxable years beginning after December 31, 1971.

With respect to taxable years beginning after December 31, 1971, a deficiency attributable to the application to the taxpayer of a work incentive program credit carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(2)) may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the unused work incentive program credit which results in such carryback may be assessed, or, with respect to any portion of a work incentive program credit carryback from a taxable year attributable to a net operating loss or capital loss carryback from a subsequent taxable year, at any time before the expiration of the period within which a deficiency for such subsequent taxable year may be assessed.

PAR. 31. Section 6511(d) of section 301.6511(d) is amended by revising the heading of paragraph (2), by revising so much of subparagraph (A) as precedes clause (i) of such subparagraph and subparagraph (B) of paragraph (2), by revising paragraph (4) (A) of section 6511(d), by adding paragraphs (5), (6), and (7), and by revising the historical note. The amended and added provisions read as follows:

§ 301.6511(d) Statutory provisions; limitations on credit or refund; special rules applicable to income taxes.

Sec. 6511. Limitations on credit or refund. . . .

(d) Special rules applicable to income taxes. . . .

(2) *Special period of limitation with respect to net operating loss or capital loss carrybacks*—

(A) *Period of limitation.* If the claim for credit or refund relates to an overpayment attributable to a net operating loss carryback or a capital loss carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends with the expiration of the 15th day of the 40th month (or the 39th month, in the case of a corporation) following the end of the taxable year of the net operating loss or net capital loss which results in such carryback, or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later; except that—

(B) *Applicable rules.* (1) If the allowance of a credit or refund of an overpayment of tax attributable to a net operating loss carryback or a capital loss carryback is otherwise prevented by the operation of any law or rule of law other than section 7122, relating to compromises, such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparagraph (A) of this paragraph. If the allowance of an application, credit, or refund of a decrease in tax determined under section 6411(b) is otherwise prevented by the operation of any law or rule of law other than section 7122, such application, credit, or refund may be allowed or made if application for a tentative carryback adjustment is made within the period provided in section 6411 (a). In the case of any such claim for credit or refund or any such application for a tentative carryback adjustment, the determination by any court, including the tax court, in any proceeding in which the decision of the court has become final, shall be conclusive except with respect to the net operating loss deduction, and the effect of such deduction, or with respect to the determination of a short-term capital loss, and the effect of such short-term capital loss, to the extent that such deduction or short-term capital loss is affected by a carryback which was not an issue in such proceeding.

(ii) A claim for credit or refund for a computation year (as defined in section 1302 (c)(1)) shall be determined to relate to an overpayment attributable to a net operating loss carryback or a capital loss carryback, as the case may be, when such carryback relates to any base period year (as defined in section 1302(c)(3)).

(4) *Special period of limitation with respect to investment credit carrybacks*—(A) *Period of limitation.* If the claim for credit or refund relates to an overpayment attributable to an investment credit carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends with the expiration of the 15th day of the 40th month (or 39th month, in the case of a corporation) following the end of the taxable year of the unused investment credit which results in such carryback (or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, the period shall be that period which ends with the expiration of the 15th day of the 40th month, or 39th month, in the case of a corporation, following the end of such subsequent taxable year) or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b) (2) or (c),

whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback.

(5) *Special period of limitation with respect to self-employment tax in certain cases.* If the claim for credit or refund relates to an overpayment of the tax imposed by chapter 2 (relating to the tax on self-employment income) attributable to an agreement, or modification of an agreement, made pursuant to section 218 of the Social Security Act (relating to coverage of State and local employees), and if the allowance of a credit or refund of such overpayment is otherwise prevented by the operation of any law or rule of law other than section 7122 (relating to compromises), such credit or refund may be allowed or made if claim therefor is filed on or before the later of the following dates: (A) the last day of the second year after the calendar year in which such agreement (or modification) is agreed to by the State and the Secretary of Health, Education, and Welfare, or (B) December 31, 1965.

(6) *Special period of limitation with respect to reduction of policyholders surplus account of life insurance companies*—(A) *Period of limitation.* If the claim for credit or refund relates to an overpayment arising by operation of section 815(d)(5) (relating to reduction of policyholders surplus account of life insurance companies for certain unused deductions), in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends with the expiration of the 15th day of the 39th month following the end of the last taxable year to which the loss described in section 815(d)(5)(A) is carried under section 812(b)(2), or the period prescribed in subsection (c), in respect of such taxable year, whichever expires later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b) (2) or (c), whichever is applicable, to the extent of the amount of overpayment arising by operation of section 815(d)(5).

(B) *Applicable rules.* If the allowance of a credit or refund of an overpayment arising by operation of section 815(d)(5) is otherwise prevented by operation of any law or rule of law, other than section 7122 (relating to compromises), such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparagraph (A) of this paragraph. In the case of any such claim for credit or refund, the determination by any court, including the tax court, in any proceeding in which the decision of the court has become final, shall be conclusive except with respect to the effect of the operation of section 815(d)(5), to the extent such effect of the operation of section 815(d)(5) was not in issue in such proceeding.

(7) *Special period of limitation with respect to work incentive program credit carrybacks*—(A) *Period of limitation.* If the claim for credit or refund relates to an overpayment attributable to a work incentive program credit carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends with the expiration of the 15th day of the 40th month (or 39th month, in the case of a corporation) following the end of the taxable year of the unused work incentive program credit which results in such carryback (or, with respect to any portion of a work incentive program credit carryback from a taxpayer year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, the period shall be that period which ends with the expiration of the 15th day of the 40th month, or 39th month, in the case of a

corporation, following the year of such taxable year) or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b) (2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback.

(B) *Applicable rules.* If the allowance of a credit or refund of an overpayment of tax attributable to a work incentive program credit carryback is otherwise prevented by the operation of any law or rule of law other than section 7122, relating to compromises, such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparagraph (A) of this paragraph. In the case of any such claim for credit or refund, the determination by any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall not be conclusive with respect to the work incentive program credit, and the effect of such credit, to the extent that such credit is affected by a carryback which was not in issue in such proceeding.

[Sec. 6511(d) as amended by sec. 82(d), Technical Amendments Act 1958 (72 Stat. 1663); sec. 1(a), Act of Sept. 16, 1959 (Public Law 86-280, 73 Stat. 563); sec. 317(d), Trade Expansion Act of 1962 (76 Stat. 891); sec. 2(e)(2), Rev. Act 1962 (76 Stat. 971); sec. 232(d) and sec. 239, Rev. Act 1964 (78 Stat. 111, 128); sec. 3(c), Act of Sept. 2, 1964 (Public Law 88-571, 78 Stat. 858); sec. 2(d), Act of December 27, 1967 (Public Law 90-235, 81 Stat. 731); sec. 311(d)(3) and sec. 512(e)(2), Tax Reform Act 1969 (83 Stat. 588, 640); sec. 601(d)(2), Rev. Act 1971 (85 Stat. 558)]

PAR. 32. Section 301.6511(d)(2), is amended by revising the heading and paragraphs (a) and (b)(1) thereof to read as follows:

§ 301.6511(d)—2 Overpayment of income tax on account of net operating loss or capital loss carrybacks.

(a) *Special period of limitation.* (1) If the claim for credit or refund relates to an overpayment of income tax attributable to a net operating loss carryback (provided in section 172(b)), or a capital loss carryback (provided in section 1212(a)), then in lieu of the 3-year period from the time the return was filed in which the claim may be filed or credit or refund allowed, as prescribed in section 6511 (a) or (b), the period shall be whichever of the following two periods expires later:

(i) The period which ends with the expiration of the 15th day of the 40th month (or 39th month, in the case of a corporation) following the end of the taxable year of the net operating loss or net capital loss which resulted in the carryback; or

(ii) The period which ends with the expiration of the period prescribed in section 6511(c) within which a claim for credit or refund may be filed with respect to the taxable year of the net operating loss or net capital loss which resulted in the carryback except that—

(a) With respect to an overpayment attributable to a net operating loss carryback to any year on account of a certification issued to the taxpayer under section 317 of the Trade Expansion Act

of 1962, the period shall not expire before the expiration of the sixth month following the month in which such certification is issued to the taxpayer, and

(b) With respect to an overpayment attributable to the creation of, or an increase in, a net operating loss as a result of the elimination of excessive profits by a renegotiation (as defined in section 1481(a)(1)(A)), the period shall not expire before September 1, 1959, or the expiration of the 12th month following the month in which the agreement or order for the elimination of such excessive profits becomes final, whichever is the later.

(2) In the case of a claim for credit or refund involving a net operating loss or capital loss carryback described in subparagraph (1) of this paragraph, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in section 6511 (b) (2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the carryback. If the claim involves an overpayment based not only on a net operating loss or capital loss carryback described in subparagraph (1) of this paragraph but based also on other items, the credit or refund cannot exceed the sum of the following:

(i) The amount of the overpayment which is attributable to the net operating loss or capital loss carryback, and

(ii) The balance of such overpayment up to a limit of the portion, if any, of the tax paid within the period provided in section 6511 (b) (2) or (c), or within the period provided in any other applicable provision of law.

(3) If the claim involves an overpayment based not only on a net operating loss or capital loss carryback described in subparagraph (1) of this paragraph but based also on other items, and if the claim with respect to any items is barred by the expiration of any applicable period of limitation, the portion of the overpayment attributable to the items not so barred shall be determined by treating the allowance of such items as the first adjustment to be made in computing such overpayment. If a claim for credit or refund is not filed, and if credit or refund is not allowed, within the period prescribed in this paragraph, then credit or refund may be allowed or made only if claim therefor is filed, or if such credit or refund is allowed, within the period prescribed in section 6511 (a), (b), or (c), whichever is applicable, subject to the provisions thereof limiting the amount of credit or refund in the case of a claim filed, or if no claim was filed, in case of credit or refund allowed, within such applicable period. For the limitations on the allowance of interest for an overpayment where credit or refund is subject to the provisions of this section, see section 6611(f).

(b) (1) *Barred overpayments.* If the allowance of a credit or refund of an overpayment of tax attributable to a net operating loss carryback or capital loss carryback is otherwise prevented by the operation of any law or rule of law (other than section 7122, relating to com-

promises), such credit or refund may be allowed or made under the provisions of section 6511(d)(2)(B) if a claim therefor is filed within the period provided by section 6511(d)(2)(A) and paragraph (a) of this section for filing a claim for credit or refund of an overpayment attributable to a carryback. Similarly, if the allowance of an application, credit, or refund of a decrease in the tax determined under section 6411(b) is otherwise prevented by the operation of any law or rule of law (other than section 7122), such application, credit, or refund may be allowed or made if an application for a tentative carryback adjustment is filed within the period provided in section 6411(a). Thus, for example, even though the tax liability (not including the net operating loss deduction or capital loss carryback (or the effect of such deduction or carryback)) for a given taxable year has previously been litigated before the Tax Court, credit or refund of an overpayment may be allowed or made despite the provisions of section 6512(a), if claim for such credit or refund is filed within the period provided in section 6511(d)(2)(A) and paragraph (a) of this section. In the case of a claim for credit or refund of an overpayment attributable to a carryback, or in the case of an application for a tentative carryback adjustment, the determination of any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall be conclusive except with respect to the net operating loss deduction, and the effect of such deduction, or with respect to the determination of a short-term capital loss, and the effect of such short-term capital loss, to the extent that such deduction or short-term capital loss is affected by a carryback which was not in issue in such proceeding.

PAR. 33. Section 301.6511(d)-4 is amended by revising subdivision (i) of paragraph (a) (1) to read as follows:

§ 301.6511(d)-4 Overpayment of income tax on account of investment credit carryback.

(a) *Special period of limitation.* (1) * * *

(i) The period which ends with the expiration of the 15th day of the 40th month (or 39th month, in the case of a corporation) following the end of the taxable year of the unused investment credit which resulted in the carryback (or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, the period which ends with the expiration of the 15th day of the 40th month (or 39th month, in the case of a corporation) following the end of such subsequent taxable year); or

PAR. 34. There is inserted immediately after § 301.6511(d)-6 the following new section:

§ 301.6511(d)-7 Overpayment of income tax on account of work incentive program credit carryback.

(a) *Special period of limitation.* (1) If the claim for credit or refund related to an overpayment of income tax attributable to a work incentive program (WIN) credit carryback, provided in section 50A, then in lieu of the 3-year period from the time the return was filed in which the claim may be filed or credit or refund allowed, as prescribed in section 6511 (a) or (b), the period shall be whichever of the following 2 periods expires later:

(i) The period which ends with the expiration of the fifteenth day of the fortieth month (or thirty-ninth month, in the case of a corporation) following the end of the taxable year of the unused WIN credit which resulted in the carryback (or, with respect to any portion of a WIN credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, the period which ends with the expiration of the fifteenth day of the fortieth month (or thirty-ninth month in the case of a corporation) following the end of such subsequent taxable year); or

(ii) The period which ends with the expiration of the period prescribed in section 6511(c) within which a claim for credit or refund may be filed with respect to the taxable year of the unused WIN credit which resulted in the carryback.

(2) In the case of a claim for credit or refund involving a WIN credit carryback described in paragraph (a)(1) of this section, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in section 6511 (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the carryback. If the claim involves an overpayment based not only on a WIN credit carryback described in paragraph (a)(1) of this section but based also on other items, the credit or refund cannot exceed the sum of the following:

(i) The amount of the overpayment which is attributable to the WIN credit carryback, and

(ii) The balance of such overpayment up to a limit of the portion, if any, of the tax paid within the period provided in section 6511 (b)(2) or (c), or within the period provided in any other applicable provision of law.

(3) If the claim involves an overpayment based not only on a WIN credit carryback described in paragraph (a)(1) of this section but based also on other items, and if the claim with respect to any items is barred by the expiration of any applicable period of limitation, the portion of the overpayment attributable to the items not so barred shall be determined by treating the allowance of such items as the first adjustment to be made in computing such overpayment. If a claim for credit or refund is not filed, and if credit or refund is not allowed, within the period prescribed in this paragraph, then credit or refund may be

allowed or made only if claim therefor is filed, or if such credit or refund is allowed, within the period prescribed in section 6511 (a), (b), or (c), whichever is applicable, subject to the provisions thereof limiting the amount of credit or refund in the case of a claim filed, or if no claim was filed, in case of credit or refund allowed, within such applicable period. For the limitations on the allowance of interest for an overpayment where credit or refund is subject to the provisions of this section, see section 6611(f).

(b) **Barred overpayments.** If the allowance of a credit or refund of an overpayment of tax attributable to a WIN credit carryback is otherwise prevented by the operation of any law or rule of law (other than section 7122, relating to compromises), such credit or refund may be allowed or made under the provisions of section 6511(d)(7)(B) if a claim therefor is filed within the period provided by section 6511(d)(7)(A) and paragraph (a) of this section for filing a claim for credit or refund of an overpayment attributable to a carryback. In the case of a claim for credit or refund of an overpayment attributable to a carryback, the determination of any court, including the Tax Court, in any proceeding in which the decision of the courts has become final, shall not be conclusive with respect to the WIN credit, and the effect of such credit, to the extent that such credit is affected by a carryback which was not in issue in such proceeding.

PAR. 35. Section 301.6601 is amended by revising subsection (e) of section 6601 and the historical note to read as follows:

§ 301.6601 Statutory provisions; interest or underpayment, nonpayment, or extensions of time for payment, of tax.

SEC. 6601. *Interest on underpayment, nonpayment, or extensions of time for payment, of tax.*

(e) **Income tax reduced by carryback or adjustment for certain unused deductions—**

(1) **Net operating loss or capital loss carryback.** If the amount of any tax imposed by subtitle A is reduced by reason of a carryback or a net operating loss or net capital loss carryback, the computation of interest under this section for the period ending with the last day of the taxable year in which the net operating loss or net capital loss arises.

(2) **Investment credit carryback.** If the credit allowed by section 38 for any taxable year is increased by reason of an investment loss, such reduction in tax shall not affect credit carryback, such increase shall not affect the computation of interest under this section for the period ending with the last day of the taxable year in which the investment credit carryback arises, or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, such increase shall not affect the computation of interest under this section for the period ending with the last day of such subsequent taxable year.

(3) **Adjustment for certain unused deductions of life insurance companies.** If the amount of any tax imposed by subtitle A is reduced by operation of section 815(d)(5)

(relating to reduction of policyholders surplus account of life insurance companies for certain unused deductions), such reduction in tax shall not affect the computation of interest under this section for the period ending with the last day of the last taxable year to which the loss described in section 815(d)(5)(A) is carried under section 812 (b)(2).

(4) **Work incentive program credit carryback.** If the credit allowed by section 40 for any taxable year is increased by reason of a work incentive program credit carryback, such increase shall not affect the computation of interest under this section for the period ending with the last day of the taxable year in which the work incentive program credit carryback arises, or, with respect to any portion of a work incentive program credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, such increase shall not affect the computation of interest under this section for the period ending with the last day of such subsequent taxable year.

[Sec. 6601 as amended by secs. 66(c), 83(a)(1), 84(a), Technical Amendments Act 1958 (72 Stat. 1658, 1663, 1664); sec. 206(e), Small Business Tax Revision Act 1958 (72 Stat. 1685); sec. 203(c)(2), Federal-Aid Highway Act 1961 (75 Stat. 126); sec. 2(e)(3), Rev. Act 1962 (76 Stat. 972); sec. 3(d), Act of Sept. 2, 1964 (Public Law 88-571, 78 Stat. 857); sec. 1(f), Act of Apr. 8, 1966 (Pub. Law 89-384, 80 Stat. 104); sec. 2(e), Act of Dec. 27, 1967 (Pub. L. 90-225, 81 Stat. 731); sec. 2(e), Act of Aug. 7, 1969 (Pub. L. 91-53, 83 Stat. 92); sec. 512(e)(3), Tax Reform Act 1969 (83 Stat. 641); sec. 601(d)(3), Rev. Act 1971 (85 Stat. 558)]

PAR. 36. Section 301.6601-1 is amended by revising paragraph (e) to read as follows:

§ 301.6601-1 Interest on underpayments.

(e) **Income tax reduced by carryback.**

(1) The carryback of a net operating loss, net capital loss, investment credit, or a work incentive program (WIN) credit shall not affect the computation of interest on any income tax for the period commencing with the last day prescribed for the payment of such tax and ending with the last day of the taxable year in which the loss or credit arises. For example, if the carryback of a net operating loss, a net capital loss, an investment credit, or a WIN credit to a prior taxable period eliminates or reduces a deficiency in income tax for that period, the full amount of the deficiency will nevertheless bear interest at the rate of 6 percent per annum from the last date prescribed for payment of such tax until the last day of the taxable year in which the loss or credit arose. Interest will continue to run beyond such last day on any portion of the deficiency which is not eliminated by the carryback. With respect to any portion of an investment credit carryback or a WIN credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, such investment credit carryback or WIN credit carryback shall not affect the computation of interest on any income tax for the period commencing with the last day prescribed for the pay-

ment of such tax and ending with the last day of such subsequent taxable year.

(2) Where an extension of time for payment of income tax has been granted under section 6164 to a corporation expecting a net operating loss carryback or a net capital loss carryback, interest is payable at the rate of 6 percent per annum on the amount of such unpaid tax from the last date prescribed for payment thereof without regard to such extension.

(3) Where there has been an allowance of an overpayment attributable to a net operating loss carryback, a capital loss carryback, an investment credit carryback, or a WIN credit carryback and all or part of such allowance is later determined to be excessive, interest shall be computed on the excessive amount from the last day of the year in which the net operating loss, net capital loss, investment credit, or WIN credit arose until the date on which the repayment of such excessive amount is received. Where there has been an allowance of an overpayment with respect to any portion of an investment credit carryback or a WIN credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year and all or part of such allowance is later determined to be excessive, interest shall be computed on the excessive amount from the last day of such subsequent taxable year until the date on which the repayment of such excessive amount is received.

PAR. 37. Section 301.6611 is amended by revising subsections (e) and (f) of section 6611 and the historical note to read as follows:

§ 301.6611 Statutory provisions; interest on overpayments.

SEC. 6611. *Interest on overpayments.*

(e) **Income tax refund within 45 days after return is filed.** If any overpayment of tax imposed by subtitle A is refunded within 45 days after the last date prescribed for filing the return of such tax (determined without regard to any extension of time for filing the return) or, in case the return is filed after such last date, is refunded within 45 days after the date the return is filed, no interest shall be allowed under subsection (a) on such overpayment.

(f) **Refund of income tax caused by carryback or adjustments for certain unused deductions—**(1) **Net operating loss or capital loss carryback.** For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from a carryback of a net operating loss or net capital loss, such overpayment shall be deemed not to have been made prior to the close of the taxable year in which such net operating loss or net capital loss arises.

(2) **Investment credit carryback.** For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from an investment credit carryback, such overpayment shall be deemed not to have been made prior to the close of the taxable year in which such investment credit carryback arises, or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, such overpayment shall be

deemed not to have been made prior to the close of such subsequent taxable year.

(3) *Adjustment for certain unused deductions of life insurance companies.* For purposes of subsection (a), if any overpayment of tax imposed by subtitle A arises by operation of section 815(d)(5) (relating to reduction of policyholders surplus account of life insurance companies for certain unused deductions), such overpayment shall be deemed not to have been made prior to the close of the last taxable year to which the loss described in section 815(d)(5)(A) is carried under section 812(b)(2).

(4) *Work incentive program credit carryback.* For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from a work incentive program credit carryback, such overpayment shall be deemed not to have been made prior to the close of the taxable year in which such work incentive program credit carryback arises, or, with respect to any portion of a work incentive program credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, such overpayment shall be deemed not to have been made prior to the close of such subsequent taxable year.

[Sec. 6611 as amended by secs. 42(b) and 83 (b) and (c), Technical Amendments Act 1958 (72 Stat. 1640, 1664); sec. 2(e)(4), Rev. Act 1962 (76 Stat. 972); sec. 3(e), Act of Sept. 2, 1964 (Public Law 88-571, 78 Stat. 858); sec. 1(a), Act of Nov. 2, 1966 (Public Law 89-721, 80 Stat. 1150); sec. 2(f), Act of Dec. 27, 1967 (Public Law 90-225, 81 Stat. 732); sec. 512(e)(4), Tax Reform Act 1969 (83 Stat. 641); sec. 601(d)(4), Rev. Act 1971 (85 Stat. 559)]

PAR. 38. Section 301.6611-1 is amended by revising paragraphs (e) and (j) to read as follows:

§ 301.6611-1 Interest on overpayments.

(e) *Refund of income tax caused by carryback.* If any overpayment of tax imposed by subtitle A of the Code results from the carryback of a net operating loss, a net capital loss, an investment credit, or a work incentive (WIN) credit, such overpayment, for purposes of this section, shall be deemed not to have been made prior to the end of the taxable year in which the loss or credit arises, or, with respect to any portion of an investment credit carryback or a WIN credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, such overpayment shall be deemed not to have been made prior to the close of such subsequent taxable year.

(j) *Refund within 45 days.* No interest shall be allowed on any overpayment of tax imposed by subtitle A of the Code if such overpayment is refunded—

(1) In the case of a return filed on or before the last date prescribed for filing the return of such tax (determined without regard to any extension of time for filing such return), within 45 days after such last date, or

(2) After December 17, 1966, in the case of a return filed after the last day prescribed for filing the return, within 45 days after the date on which the return is filed.

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Title 5—Economic Stabilization CHAPTER I—COST OF LIVING COUNCIL PART 150—COST OF LIVING COUNCIL PHASE IV PRICE REGULATIONS

Implementation of Second Step of Refinery Incentive Plan—Petroleum Prices

Pursuant to the authority of Executive Orders 11695 and 11730 and Cost of Living Council Delegation Order No. 47, and Executive Order 11748, the Federal Energy Office hereby adopts the amendments proposed to be made by the Cost of Living Council to Subpart L of the Cost of Living Council Phase IV Price regulations which implement the second step of the refinery incentive plan. These amendments, adopted by reference in the provisions of Title 10, Code of Federal Regulations Chapter II, are effective immediately and apply to January 1974 price calculations.

The amendments, adopted in substantially the form proposed, set forth a schedule for a refiner's computation of base prices for middle distillate fuels by specifying a permitted price increase in relation to the refiner's increases in distillate production.

After receiving public comment, the incentive rule stated in § 150.357(d)(1) was modified to make clear that a refiner which increases its prices of middle distillate by increasing production of middle distillate must do so by decreasing the production of gasoline. The change is intended to specify that increases in the production of middle distillates are to occur relative to gasoline production, while output of heavier, high value petroleum products should remain constant. The price increments set forth in the matrix, therefore, may not be applied if the increase in production of middle distillates is accomplished at the expense of the production of such products as residual fuels, petrochemical feedstocks or lubricants. Accordingly, corresponding definitions to explain these changes have been added in § 150.357.

A second change in the rule provides that a refiner may apply the full monetary amount set forth in the matrix while offsetting any resulting increase in total revenues by a decrease in its gasoline prices. As originally proposed, a refiner was required to apply only that portion of the price adjustment specified in the matrix which would not result in any increase in total revenues.

The final change made to the proposed rule appears in the matrix of § 150.357(d)(2). Originally the matrix allowed price increases only for increases in distillate yields above 20 percent. Comments received indicated that application of the matrix at lower percentages of distillate yield would encourage refiners whose middle distillate yield is less than 20 percent, to increase that yield. To accommodate such a situation, the matrix has been extended so that refiners producing 10 percent or more distillate yield may use the matrix structure to increase their production.

As stated in the notice of proposed rulemaking, application of the matrix is not designed to provide any increase

in a refiner's total revenues. Since some refineries are operating under different economic parameters than that of the refinery model used to design the matrix, application of the full amount permitted by the matrix would create windfall profits for them. Thus, § 150.357(d)(1) as proposed limited a refiner's increase in price due to increased production of middle distillates to that portion of the amounts specified in the matrix which would not cause any increase in total revenues. Section 150.357(d)(1) as adopted is changed to allow a refiner the option if either using less than the full amount permitted by the matrix as proposed, or by using the full amount and offsetting it by decreases in gasoline prices in order to assure there is no increase in total revenues.

(Economic Stabilization Act of 1970, as amended, Pub. L. 92-210, 85 Stat. 743; Pub. L. 93-28, 87 Stat. 27; E.O. 11730, 38 FR 19345; Cost of Living Council Order No. 14, 38 FR 1489; Cost of Living Council Order No. 47, 38 FR —, Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159; E.O. 11748, 38 FR 33575.)

In consideration of the foregoing Part 150 of Title 6 of the Code of Federal Regulations is amended as follows, and effective immediately.

Issued in Washington, D.C., on December 28, 1973.

JOHN SAWHILL,
Deputy Administrator,
Federal Energy Office.

1. Section 150.355 is amended in paragraph (g)(1)(i) to read as follows:

§ 150.355 Price rule: Refiners.

(g) *Base price.*—(1) *General rule.* (i) The base price for sales of an item by a refiner is the weighted average price at which the item was lawfully priced in transactions with the class of purchaser concerned on May 15, 1973, plus (A) increased product costs incurred between the month of measurement and the month of May 1973 and measured pursuant to the provisions of § 150.356 and (B) the refiner incentive factor calculated and permitted pursuant to the provisions of § 150.357. In computing the base price, a firm may not exclude any temporary special sale, deal or allowance in effect on May 15, 1973.

2. Section 150.355 is amended in paragraph (g)(2)(i) to read as follows:

§ 150.355 Price rule: Refiners.

(g) *Base price.* * * *
(2) *Special products.* (i) Notwithstanding the general rule in paragraph (g)(1) of this section, in computing the base price for special products for each month beginning with January 1974, a refiner may use adjusted May 15, 1973 selling prices for No. 2 heating oil and No. 2-D diesel fuel, and must use adjusted May 15, 1973 selling prices for gasoline. In computing base prices for special products, a refiner may not increase its May 15, 1973 selling price to each class of purchaser more than once

in any calendar month to reflect the increased product costs allowable pursuant to the provisions of § 150.356, the adjustment specified in paragraph (g) (2) (ii) of this section, or the incentive factor permitted pursuant to § 150.357, but may implement the increase on any day during that month.

3. Section 150.357 is added to read as follows:

§ 150.357 Refiner's incentive factor.

(a) *Scope.* This section sets forth an incentive plan designed to increase the yield of middle distillates by allowing an increase in May 15, 1973 selling prices for middle distillates in proportion to the increase in yield of middle distillate products.

(b) *Applicability.* This section prescribes the requirements governing the inclusion of the incentive factor in a refiner's adjusted May 15, 1973 selling prices used to compute its base prices of middle distillates pursuant to § 150.355(g).

(c) *Definition.* For purposes of this section—

"Adjusted base percentage distillate yield" means the higher of either (i) the base percentage distillate yield or (ii) the ratio which the maximum economic distillate production bears to estimated crude runs to stills in the current month.

"Base percentage distillate yield" means the ratio which the total number of barrels of middle distillates produced by the refiner in December 1973, bears to the refiner's total crude runs to stills in that month and expressed as a percentage.

"Base percentage yield" means the ratio which the total number of barrels of middle distillates plus gasoline produced by the refiner in December 1973 bears to the refiner's total crude runs to stills in that month and expressed as a percentage.

"Crude runs to stills" means the total barrels of refinery input to crude oil distillation units processed by the refiner and measured in accordance with Bureau of Mines form 6-1300-M.

"Crude capacity" means the operable refinery capacity of all of the refiner's refineries for the current month, expressed in terms of the maximum number of barrels of input to crude oil distillation units that can be processed during the current month, calculated and measured in accordance with the conditions and stipulations described in Bureau of Mines form 6-1300-M.

"Current month" means the calendar month in which the adjustment to May 15, 1973 selling prices are to be applied.

"Current percentage distillate yield" means the ratio which the estimated total number of barrels of middle distillates to be produced by the refiner in the current month bears to the refiner's total estimated crude runs to stills in the current month and expressed as a percentage.

"Current percentage yield" means the ratio which the estimated total number of barrels of middle distillate plus gasoline to be produced by the refiner in the current month bears to the refiner's total estimated crude runs to stills in the current month and expressed as a percentage.

"Maximum economic distillate production" means the total number of barrels of middle distillates that would have to be produced by the refiner in the current month (without any change in the base percentage yield) in order to maximize profits using May 15, 1973 selling prices plus the increased cost allowable in the period of measurement pursuant to § 150.356, and the adjustment to May 15, 1973 selling prices pursuant to § 150.355(g).

"Middle distillates" means No. 1 and 2 heating oil, Nos. 1-D, 2-D and 4-D diesel fuels, No. 4 fuel oil, kerosene and aviation turbine fuel.

"Percentage of refinery capacity operated" means the ratio which estimated crude runs to stills bears to crude capacity in the current month.

"Residual fuel oil" means those fuel oils commonly known as Nos. 5 and 6 fuel oils, Bunker C and all other fuel oils which have a fifty percent boiling point over 700° F. in the ASTM D 86 standard distillation test.

(d) *Rule.*—(1) *Middle distillates.* In computing base prices under § 150.355(g) for middle distillates for a particular month beginning with January, 1974, a refiner whose current percentage distillate yield exceeds the adjusted base percentage distillate yield may add to the adjusted May 15, 1973 selling prices for each middle distillate a maximum amount determined according to the matrix in paragraph (d) (2) of this section: *provided*, That

(i) The refiner's current percentage yield is not greater than its base percentage yield and that (ii) if the application of the matrix in the current month would result in an increase in total rev-

enues, the refiner must either (A) implement in the current month only that part of the amount shown on the matrix which does not result in an increase in the refiner's total revenues because of the application of the matrix, or (B) reduce the selling price of gasoline in the current month equally to each class of purchaser to the extent necessary to assure that there is no increase in the refiner's total revenues because of the application of the matrix.

(2) *Matrix.* The matrix shown below is the table to be used in applying the price rule of paragraph (d) (1) of this section. Application of the matrix may be illustrated as follows:

Refiner R, operating at 73 percent of refinery capacity, produced a middle distillate yield during December 1973 of 24 percent of the total crude runs to stills. R's adjusted base percentage distillate yield is 27 percent. By January 1, 1974, R estimates an increase in production of middle distillate so that its "current percentage distillate yield" is 30 percent.

To determine the maximum allowable increase from the matrix which R may use in computing its base prices for January 1974, R first locates the entry corresponding to the percent of refinery capacity operated and moves across that row to the appropriate "cell" for its adjusted base percentage distillate yield. R then continues along that row horizontally, accumulating the value in each new "cell" entered until reaching the "cell" located in the column corresponding to R's current percentage distillate yield. (R does not include the value shown in the starting "cell", but does include the value shown in the ending "cell".) Using this method, R's computations are as follows:

(1) Starting at row "less than 80" under the caption "percentage of refinery capacity operated", move to "cell" at column "27" under the caption "Percentage of distillate yield on crude runs to stills";

(2) Move along that same row horizontally, accumulating the values shown:

.52¢ (or \$.0052) (under column "28").
+.50¢ (or \$.0050) (under column "29").
+.50¢ (or \$.0050) (under column "30").
1.52¢ (or \$.0152 per gallon—the maximum allowable incentive amount which R may use to compute January 1974 base prices for middle distillates.

INCENTIVE MATRIX—DISTILLATE PRODUCTION, ALLOWABLE INCREASES IN MAY 15 SELLING PRICES FOR REFINER'S DISTILLATE YIELDS
[Fraction of a cent per gallon]

Percentage of refinery capacity operated	Percentage distillate yield on crude runs to stills																			
	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
0 to 80	.53	.53	.53	.53	.53	.53	.53	.53	.52	.52	.52	.52	.52	.52	.52	.52	.52	.52	.52	.52
80 to 90	.52	.51	.51	.51	.51	.51	.50	.50	.50	.50	.50	.50	.50	.50	.50	.50	.50	.50	.50	.50
90 to 95	.46	.46	.46	.46	.46	.46	.46	.46	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45
More than 95	.18	.21	.23	.25	.27	.28	.29	.30	.30	.31	.31	.33	.36	.36	.38					
	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40					
0 to 80	.52	.52	.52	.50	.50	.50	.50	.50	.48	.48	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45
80 to 90	.48	.48	.48	.48	.48	.48	.48	.48	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45
90 to 95	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45
More than 95	.40	.40	.40	.43	.43	.43	.43	.43	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45	.45

4. Section 150.363 is amended in paragraph (a) (2) by adding a sentence to read as follows:

§ 150.363 Reports and recordkeeping.

(a) *Reports.* * * *
(2) *Refiners, retailers, and resellers.* Each refiner shall submit monthly re-

ports concerning increased percentage production yields and prices of middle distillates and production levels of residual fuel oils under § 150.347 in accordance with forms and instructions issued by the Council.

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