

ID: CCA\_2009092915504554

Number: **200946039**

Release Date: 11/13/2009

Office:

UILC: 1311.00-00

---

**From:**

**Sent:** Tuesday, September 29, 2009 3:50:46 PM

**To:**

**Cc:**

**Subject:** FW: Barred Overassessment?

forwarded me your question below. "Determination" is defined for mitigation purposes under sec. 1313(a)(3) as a final disposition by the Secretary of a claim for refund. In this situation, it appears as though the determination would allow a deduction for years 1, 2, and 3, and this deduction was also erroneously allowed to the taxpayer for years 4 and 5. This double allowance of a deduction is a circumstance of adjustment pursuant to section 1312(2). If the Secretary allows the taxpayer's claim for refund, the taxpayer would be claiming a deduction for these items both in years 1, 2, and 3 and years 4 and 5. Pursuant to section 1311(b)(1)(B), the Service would be adopting a position maintained by the taxpayer that is inconsistent with the erroneous allowance of the deduction in years 4 and 5. Therefore, there is an argument that mitigation would apply to correct the double allowance and assess for years 4 and 5, assuming that we actually collected the assessments and the taxpayers file a refund claim.

Please let me know if you have any further questions.