

§ 1.57-0

(iv) L is eligible to make the election under paragraph (r)(1) of this section in accordance with paragraph (r)(3)(i) of this section (a prospective election).

(v) L must compute its LIFO recapture adjustment for each year by reference to—

(A) The FIFO inventory amount after applying the provisions of section 263A but before applying the adjustments of sections 56 and 58 and the items of preference in section 57; and

(B) The LIFO inventory amount used in computing taxable income.

(5) *Election to use alternative minimum tax inventories to compute adjusted current earnings.* A taxpayer may elect under this paragraph (r)(5) to use the inventory amounts used to compute pre-adjustment alternative minimum taxable income in computing its adjusted current earnings. Rules similar to those of paragraphs (r)(2) and (r)(3) of this section apply for purposes of this election.

(s) *Adjustment for alternative tax energy preference deduction—(1) In general.* For purposes of computing adjusted current earnings, any taxpayer claiming a deduction under section 56(h) must properly decrease basis by the portion of the deduction allowed under section 56(h) which is attributable to adjustments under section 56(g)(4). In taxable years following the taxable year in which the section 56(h) deduction is claimed, basis recovery (including amortization, depletion, and gain on sale) must properly take into account this basis reduction.

(2) *Example.* The following example illustrates the provisions of this paragraph (s):

Example. Corporation A, a calendar year taxpayer, incurs \$100 of intangible drilling costs on January 1, 1994 and as a result of these intangible drilling costs A claims a deduction under section 56(h) of \$40. Assume that \$20 of A's deduction under section 56(h) is attributable to the adjustment under paragraph (f)(1) of this section. A must reduce by \$20 the amount of intangible drilling costs to be amortized under paragraph (f)(1) of this section in 1995 through 1998 (the balance of the 60-month amortization period).

[T.D. 8340, 56 FR 11084, Mar. 15, 1991, as amended by T.D. 8352, 56 FR 29433, June 27, 1991; T.D. 8454, 57 FR 60477, Dec. 21, 1992; T.D. 8482, 58 FR 42207, Aug. 9, 1993; T.D. 8566, 59 FR 51371, Oct. 11, 1994; T.D. 8858, 65 FR 1237, Jan. 7, 2000; T.D. 8940, 66 FR 9929, Feb. 13, 2001]

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TAX PREFERENCE REGULATIONS

§ 1.57-0 Scope.

For purposes of the minimum tax for tax preferences (subtitle A, chapter I, part VI), the items of tax preference are:

(a) Excess investment interest,

(b) The excess of accelerated depreciation on section 1250 property over straight line depreciation,

(c) The excess of accelerated depreciation on section 1245 property subject to a net lease over straight line depreciation,

(d) The excess of the amortization deduction for certified pollution control facilities over the depreciation otherwise allowable,

(e) The excess of the amortization deduction for railroad rolling stock over the depreciation otherwise allowable,

(f) The excess of the fair market value of a share of stock received pursuant to a qualified or restricted stock option over the exercise price,

(g) The excess of the addition to the reserve for losses on bad debts of financial institutions over the amount which have been allowable based on actual experience,

(h) The excess of the percentage depletion deduction over the adjusted basis of the property, and

(i) The capital gains deduction allowable under section 1202 or an equivalent amount in the case of corporations.

Accelerated depreciation on section 1245 property subject to a net lease and excess investment interest are not items of tax preference in the case of a corporation, other than a personal holding company (as defined in section 542) and an electing small business corporation (as defined in section 1371(b)). In addition, excess investment interest is an item of tax preference only for taxable years beginning before January 1, 1972. Rules for the determination of the items of tax preference are contained in §§ 1.57-1 through 1.57-5. Generally, in the case of a nonresident alien or foreign corporation, the application of §§ 1.57-1 through 1.57-5 will be limited to cases in which the taxpayer has income effectively connected with the conduct of a trade or business within the United States. Special rules for

the treatment of items of tax preference in the case of certain entities and the treatment of items of tax preference relating to income from sources outside the United States are provided in section 58 and in §§ 1.58-1 through 1.58-8.

[T.D. 7564, 43 FR 40470, Sept. 12, 1978]

§ 1.57-1 Items of tax preference defined.

(a) [Reserved]

(b) *Accelerated depreciation on section 1250 property*—(1) *In general.* Section 57(a)(2) provides that, with respect to each item of section 1250 property (as defined in section 1250(c)), there is to be included as an item of tax preference the amount by which the deduction allowable for the taxable year for depreciation or amortization exceeds the deduction which would have been allowable for the taxable year if the taxpayer had depreciated the property under the straight line method for each year of its useful life for which the taxpayer has held the property. The determination of the excess under section 57(a)(2) is made with respect to each separate item of section 1250 property. Accordingly, where the amount of depreciation which would have been allowable with respect to one item of section 1250 property if the taxpayer had originally used the straight line method exceeds the allowable depreciation or amortization with respect to such property, such excess may not be used to reduce the amount of the item of tax preference resulting from another item of section 1250 property.

(2) *Separate items of section 1250 property.* The determination of what constitutes a separate item of section 1250 property is to be made on the facts and circumstances of each individual case. In general, each building (or component thereof, if the taxpayer uses the component method of computing depreciation) is a separate item of section 1250 property. However, for purposes of this section, assets placed in a group, classified, or composite account are to be treated as a single item by a taxpayer, provided that such account contains only property placed in service during a single taxable year. In addition, two or more items may be treated as one item of section 1250

property for purposes of this paragraph where, with respect to each such item:

(i) The period for which depreciation is taken begins on the same date, (ii) the same estimated useful life has continually been used for purposes of taking depreciation or amortization, and (iii) the same method (and rate) of depreciation or amortization has continually been used. For example, assume a taxpayer constructed a 40-unit rental townhouse development and began taking declining balance depreciation on all 40 units as of January 1, 1970, at a uniform rate and has consistently taken depreciation on all 40 units on this same basis. Although each townhouse is a separate item of section 1250 property, all 40 townhouses may be treated as one item of section 1250 property for purposes of the minimum tax since the conditions of subdivisions (i), (ii), and (iii) of this subparagraph are met. This would be true even if the 40 townhouses comprised two 20-unit developments located apart from each other. However, if the taxpayer constructed an additional development or new section on the existing development for which he began taking depreciation on July 1, 1970, at a uniform rate for all the additional units, the additional units and the original units may not be treated as one item of section 1250 property since the condition of subdivision (i) of this subparagraph is not met. Where a portion of an item of section 1250 property has been depreciated or amortized under a method (or rate) which is different from the method (or rate) under which the other portion or portions of such item have been depreciated or amortized, such portion is considered a separate item of section 1250 property for purposes of this paragraph.

(3) *Allowable depreciation or amortization.* The phrase “deduction allowable for the taxable year for exhaustion, wear and tear, obsolescence, or amortization” and references in this paragraph to “allowable depreciation or amortization” include deductions allowable for the taxable year under sections 162, 167, 212, or 611 for the depreciation or amortization of section 1250 property. Such phrase does not include depreciation allowable in the year in