(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 which the section 1250 property is disposed of. For the determination of ''allowable depreciation or amortization'' for taxable years in which the taxpayer has taken no deduction, see §1.1016–3(a)(2).

(4) *Straight line depreciation.* (i) For purposes of computing the depreciation which would have been allowable for the taxable year if the taxpayer had depreciated the property under the straight line method for each taxable year of its useful life, the taxpayer must use the same useful life and salvage value as was used for the first taxable year in which the taxpayer depreciated or amortized the property (subject to redeterminations made pursuant to §1.167(a)–1 (b) and (c)). If, however, for any taxable year, no useful life was used under the method of depreciation or amortization used or an artificial period was used, such as, for example, by application of section 167(k), or salvage value was not taken into account in determining the annual allowances, such as, for example, under the declining balance method, then, for purposes of computing the depreciation which would have been allowable under the straight line method for the taxable year—

(a) There is to be used the useful life and salvage value which would have been proper if depreciation had actually been determined under the straight line method (without reference to an artificial life) throughout the period the property was held, and

(b) Such useful life and such salvage value is to be determined by taking into account for each taxable year the same facts and circumstances as would have been taken into account if the taxpayer had used such method throughout the period the property was held.

If an election under §1.167(a)–11(f), §1.167(a)–12(e), or §1.167(a)–12(f) is applicable to the property, the salvage value of the property shall be determined in accordance with such election, and the asset depreciation period (or asset guideline period) applicable to the property pursuant to such election shall be considered to be the useful life of the property for the purposes of this section.

(ii) Where the taxpayer acquires property in a transaction to which section 381(a) applies or from another member of an affiliated group during a consolidated return year and an ''accelerated'' method of depreciation as described in section 167(b) (2), (3), or (4) or section 167(j)(1) (B) or (C) is permitted (see §1.381(c)(6)–1 and §1.1502–12(g)), the depreciation which would have been allowable under the straight line method is determined as if the property had been depreciated under the straight line method since depreciation was first taken on the property by the transferor of such property. In such cases, references in this paragraph to the period for which the property is

held or useful life of the property are treated as including the period beginning with the commencement of the original use of the property.

(iii) For purposes of section 57(a)(2), the straight line method includes the method of depreciation described in §1.167(b)–1 or any other method which provides for a uniform proration of the cost or other basis (less salvage value) of the property over the estimated useful life of the property to the taxpayer (in terms of years, hours of use, or other similar time units) or estimated number of units to be produced over the life of the property to the taxpayer. If a method other than the method described in §1.167(b)–1 is used, the estimated useful life or estimated units of production shall be determined in a manner consistent with subdivision (i) of this subparagraph.

(iv) In the case of property constructed by or improvements made by a lessee, the useful life is to be determined in accordance with §1.167(a)–4.

(5) *Application for partial period.* If an item is section 1250 property for less than the entire taxable year, the allowable depreciation or amortization includes only the depreciation or amortization for that portion of the taxable year during which the item is section 1250 property and the amount of the depreciation which would have been allowable under the straight line method is determined only with regard to such portion of the taxable year.

(6) *No section 1250 and basis adjustment.* No adjustment is to be made as a result of the minimum tax either to the basis of section 1250 property or with respect to computations under section 1250.

(7) *Example.* The principles of this paragraph may be illustrated by the following example:

Example. The taxpayer's only item of section 1250 property is an office building with respect to which operations were commenced on January 1, 1971. The taxpayer depreciates the component parts of the building on the declining balance method. The useful life and costs of the component parts for depreciation purposes are as follows:

Asset	Useful life	Cost	Salvage value
Building shell	50	$400,000	$50,000
Partitions and walls	10	40,000	.....
Ceilings	10	20,000	.....
Electrical system	25	40,000	2,500
Heating and air-conditioning system	25	60,000	2,500

For purposes of computing the item of tax preference under this paragraph for the taxpayer, the partitions, walls, and ceilings may be grouped together and the electrical, heating, and air-conditioning systems may be grouped together since the period for which depreciation is taken began with respect to the assets within these two groups on the same date and the assets within each group have continually had the same useful life and have continually been depreciated under the same method (and rate).

(a) The taxpayer's 1971 item of tax preference under this paragraph would be determined as follows:

(1) Item of 1250 property	(2) Declining balance depreciation	(3) Straight line depreciation	(4) Excess of (2) over (3)
1. Shell	$12,000	$7,000	$5,000
2. Partitions, walls, ceilings	9,000	6,000	3,000
3. Electrical, heating and air-conditioning systems	6,000	3,800	2,200
1971 preference	.....	.....	10,200

(b) Assuming the above facts are the same for 1974, the taxpayer's 1974 item of tax preference under this paragraph would be determined as follows:

(1) Item of 1250 property	(2) Declining balance depreciation	(3) Straight line depreciation	(4) Excess of (2) over (3)
1. Shell	$10,952	$7,000	$3,952

(1)	(2)	(3)	(4)
Item of 1250 property	Declining balance depreciation	Straight line depreciation	Excess of (2) over (3)
2. Partitions, walls, ceilings	5,529	6,000	None
3. Electrical, heating and air-conditioning systems	4,983	3,800	1,183
1974 preference	.....	.....	5,135

(c) *Accelerated depreciation on section 1245 property subject to a net lease*—(1) *In general.* Section 57(a)(3) provides that, with respect to each item of section 1245 property (as defined in section 1245(a)(3)) which is the subject of a net lease for the taxable year, 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. Except as provided in paragraph (b)(1)(ii) of this section, the determination of the excess under section 57(a)(3) is made with respect to each separate item of section 1245 property. Accordingly, where the amount of depreciation which would have been allowable with respect to one item of section 1245 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 1245 property.

(2) *Separate items of property.* The determination of what constitutes a separate item of section 1245 property must be made on the facts and circumstances of each individual case. Such determination shall be made in a manner consistent with the principles expressed in paragraph (b)(2) of this section.

(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 (including depreciation allowable under section 167 by reason of section 179), 169, 184, 185, 212, or 611 for the depreciation or amortization of section 1245 property. Such phrase does not include depreciation allowable in the year in which the section 1245 property is disposed of. Amortization of certified pollution control facilities under section 169, and amortization of railroad rolling stock under section 184 are not to be treated as amortization for purposes of section 57(a)(3) to the extent such amounts are treated as an item of tax preference under section 57(a) (4) or (5) (see paragraphs (d) and (e) of this section). For the determination of ''allowable depreciation or amortization'' for taxable years in which the taxpayer has taken no deduction, see §1.1016–3(a)(2).

(4) *Straight line method of depreciation.* The determination of the depreciation which would have been allowable under the straight line method shall be made in a manner consistent with paragraph (b)(4) of this section. Such amount shall include any amount allowable under section 167 by reason of section 179 (relating to additional first-year depreciation for small business).

(5) *Application for partial period.* If an item is section 1245 property for less than the entire taxable year or subject to a net lease for less than the entire taxable year the allowable depreciation or amortization includes only the depreciation or amortization for that portion of the taxable year during which the item was both section 1245 property and subject to a net lease and the amount of the depreciation which would have been allowable under the straight line method is to be determined only with regard to such portion of the taxable year.

(6) *Net lease.* Section 57(a)(3) applies only if the section 1245 property is the

subject of a net lease for all or part of the taxable year. See §1.57–3 for the determination of when an item is considered the subject of a net lease. p

(7) *No section 1245 and basis adjustment.* No adjustment is to be made as a result of the minimum tax either to the basis of section 1245 property or with respect to computations under section 1245.

(8) *Nonapplicability to corporations.* Section 57(a)(3) does not apply to a corporation other than an electing small business corporation (as defined in section 1371(b)) and a personal holding company (as defined in section 542).

(d) *Amortization of certified pollution control facilities*—(1) *In general.* Section 57(a)(4) provides that, with respect to each certified pollution control facility for which an election is in effect under section 169, there is to be included as an item of tax preference the amount by which the deduction allowable for the taxable year under such section exceeds the depreciation deduction which would otherwise be allowable under section 167. The determination under section 57(a)(4) is made with respect to each separate certified pollution control facility. Accordingly, where the amount of the depreciation deduction which would otherwise be allowable under section 167 with respect to one facility exceeds the allowable amortization deduction under section 169 with respect to such facility, such excess may not be used to offset an item of tax preference resulting from another facility.

(2) *Separate facilities.* The determination of what constitutes a separate facility must be made on the facts and circumstances of each individual case. Generally, each facility with respect to which a separate election is in effect under section 169 shall be treated as a separate facility for purposes of this paragraph. However, if the depreciation or amortization which would have been allowable without regard to section 169 with respect to any part of a facility is based on a different useful life, date placed in service, or method of depreciation or amortization from the other part or parts of such facility, such part is considered a separate facility for purposes of this paragraph. For example, if a building constitutes a certified pollution control facility and various component parts of the building have different useful lives, each group of component parts with the same useful life would be treated as a separate facility for purposes of this paragraph. Two or more facilities may be treated as one facility for purposes of this paragraph where, with respect to each such facility: (i) The initial amortization under section 169 commences on the same date, (ii) the facility is placed in service on the same date, (iii) the estimated useful life which would be the basis for depreciation or amortization other than under section 169 has continually been the same, and (iv) the method of depreciation or amortization which could have been used without regard to section 169 could have continually been the same.

(3) *Amount allowable under section 169.* For purposes of the determination of the amount of the deduction allowable under section 169, see section 169 and the regulations thereunder. Such amount, however, does not include amortization allowable in the year in which the pollution control facility is disposed of.

(4) *Otherwise allowable deduction.* (i) The determination of the amount of the depreciation deduction otherwise allowable under section 167 is made as if the taxpayer had depreciated the property under section 167 for each year of its useful life for which the property has been held. This amount may be determined under §1.167(a)–(11)(c) if the property is eligible property (as defined in §1.167(a)–11(b)(2)) and, during the taxable year in which the property was first placed in service, the taxpayer—

(*a*) Has made an election under §1.167(a)–11(f) with respect to eligible property first placed in service in such taxable year, or

(*b*) Has placed no eligible property in service other than property described in §1.167(a)–11(b)(5) (iii), (iv), or (v).

The amount determined pursuant to the preceding sentence shall be determined as if the taxpayer had depreciated the property in accordance with §1.167(a)–11 for all years to which such section applies and during which the taxpayer held the property. This amount may be determined under

§1.167(a)–12(a)(5) if the property is qualified property (as defined in §1. 167(a)–12 (a)(3)) and the taxpayer has made an election with respect to such property under §1.167(a)–12(e). If the taxpayer has made an election under §1.167(a)–12(f)(1) for a taxable year ending before January 1, 1971, this amount shall be determined for such year in accordance with such election. For purposes of this determination, any method selected by the taxpayer which would have been permissible under section 167 for such taxable year, including accelerated methods, may be used. Any additional amount which would have been allowable by reason of section 179 (relating to additional first-year depreciation for small business) may be included provided such amount is reflected in the determination made under this paragraph in subsequent years.

(ii) If a deduction for depreciation has not been taken by the taxpayer in any taxable year under section 167 with respect to the facility—

(*a*) There is to be used the useful life and salvage value which would have been proper under section 167.

(*b*) Such useful life and salvage value is determined by taking into account for each taxable year the same facts and circumstances as would have been taken into account if the taxpayer had used such method throughout the period the property has been held, and

(*c*) The date the property is placed in service is, for purposes of this section, deemed to be the first day of the first month for which the amortization deduction is taken with respect to the facility under section 169.

If, prior to the date amortization begins under section 169, a deduction for depreciation has been taken by the taxpayer in any taxable year under section 167 with respect to the facility, the useful life, salvage value, etc., used for that purpose is deemed to be the appropriate useful life, salvage value, etc., for purposes of this paragraph, with such adjustments as are appropriate in light of the facts and circumstances which would have been taken into account since the time the last such depreciation deduction was taken, unless it is established by clear and convincing evidence that some other useful life, salvage value, or date the property is placed in service is more appropriate.

(iii) For purposes of section 57(a)(4) and this paragraph, if the deduction for amortization or depreciation which would have been allowable had no election been made under section 169 would have been—

(*a*) An amortization deduction based on the term of a leasehold or

(*b*) A depreciation deduction determined by reference to section 611,

such deduction is to be deemed to be a deduction allowable under section 167.

(iv) If a facility is subject to amortization under section 169 for less than the entire taxable year, the otherwise allowable depreciation deduction under section 167 shall be determined only with regard to that portion of the taxable year during which the election under section 169 is in effect.

(v) If less than the entire adjusted basis of a facility is subject to amortization under section 169, the otherwise allowable depreciation deduction under section 167 shall be determined only with regard to that portion of the adjusted basis subject to amortization under section 169.

(5) *No section 1245 and basis adjustment.* No adjustment is to be made as a result of the minimum tax either to the basis of a certified pollution control facility or with respect to computations under sections 1245.

(6) *Relationship to section 57(a)(3).* See paragraph (c)(3) with respect to an adjustment in the amount treated as amortization under that provision where both paragraphs (3) and (4) of section 57(a) are applicable to the same item of property.

(7) *Example.* The principles of this paragraph may be illustrated by the following example:

Example. A calendar year taxpayer has a certified pollution control facility on which an election is in effect under section 169 commencing with January 1, 1971. No part of the facility is section 1250 property. The original basis of the facility is $100,000 of which $75,000 constitutes amortizable basis. The useful life of the facility is 20 years. The taxpayer depreciates the $25,000 portion of the facility which is not amortizable basis under the double declining method and began taking depreciation on January 1, 1971.

(a) The taxpayer's 1971 item of tax preference under this paragraph would be determined as follows:

1. Amortization deduction	$15,000
2. Depreciation deduction on amortizable basis (double declining method)	7,500
1971 preference (excess of 1 over 2)	7,500

(b) If the taxpayer terminated his election under section 169 in 1972 effective as of July 1, 1972, the taxpayer's 1972 item of tax preference would be determined as follows:

1. Amortization deduction	$7,500
2. Depreciation deduction on amortizable basis: Full year ($75,000 (original basis) less $7,500 (''depreciation'' to 1–1–72) equals adjusted basis of $67,500; multiplied by 0.10 (double declining rate))	6,750
Portion of full year's depreciation attributable to amortization period (one-half)	3,375
1972 preference (excess of 1 over 2)	4,125

(e) *Amortization of railroad rolling stock*—(1) *In general.* Section 57(a)(5) provides that, with respect to each unit of railroad rolling stock for which an election is in effect under section 184, there is to be included as an item of tax preference the amount by which the deduction allowable for the taxable year under such section exceeds the depreciation deduction which would otherwise be allowable under section 167. The determination under section 57(a)(5) is made with respect to each separate unit of rolling stock. Accordingly, where the amount of the depreciation deduction which would otherwise be allowable under section 167 with respect to one unit exceeds the allowable amortization deduction under section 184 with respect to such unit, such excess may not be used to offset an item of tax preference resulting from another unit.

(2) *Separate units of rolling stock.* The determination of what constitutes a separate unit of rolling stock must be made on the facts and circumstances of each individual case. Such determination shall be made in a manner consistent with the manner in which the comparable determination is made with respect to separate certified pollution control facilities under paragraph (d) (2) of this section.

(3) *Amount allowable under section 184.* For purposes of the determination of the amount of the deduction allowable under section 184, see section 184. Such amount, however, does not include amortization allowable in the year in which the rolling stock is disposed of.

(4) *Otherwise allowable deduction.* The determination of the amount of the depreciation deduction otherwise allowable under section 167 is to be made in a manner consistent with the manner in which the comparable deduction with respect to certified pollution control facilities is determined under paragraph (d)(4) of this section.

(5) *No section 1245 or basis adjustment.* No adjustment is to be made as a result of the minimum tax either to the basis of a unit of railroad rolling stock or with respect to computations under section 1245.

(6) *Relationship to section 57(a)*(3). See paragraph (c)(3) of this section with respect to an adjustment in the amount treated as amortization under that provision where both paragraphs (3) and (5) of section 57(a) are applicable to the same item.

(f) *Stock options*—(1) *In general.* Section 57(a)(6) provides that with respect to each transfer of a share of stock pursuant to the exercise of a qualified stock option or a restricted stock option, there shall be included by the transferee as an item of tax preference the amount by which the fair market value of the share at the time of exercise exceeds the option price. The stock option item of tax preference is subject to tax under section 56(a) in the taxable year of the transferee in which the transfer is made.

(2) *Definitions.* See generally §1.421–7 (e), (f), and (g) for the definitions of ''option price,'' ''exercise,'' and ''transfer,'' respectively; however, in the case of a transfer of a share of stock pursuant to the exercise of a qualified stock option or a restricted stock option after the death of an employee by the estate of the decedent (or by a person who acquired the right to exercise such option by bequest or inheritance or by reason of the death of the decedent), the term ''option price'' shall, for purposes of this paragraph, include both the consideration paid by the estate (or such person) for such share of stock and so much of the basis of the option as is attributable to such share of stock. For the definition of a qualified stock option see section 422(b)

and §1.422–2. For the definition of a restricted stock option see section 424(b) and §1.424–2. The definitions and special rules contained in section 425 and the regulations thereunder are applicable to this paragraph.

(3) *Fair market value.* In accordance with the principles of section 83(a)(1), the fair market value of a share of stock received pursuant to the exercise of a qualified or restricted stock option is to be determined without regard to restrictions (other than nonlapse restrictions within the meaning of §1.83–3(h)). Notwithstanding any valuation date given in section 83(a)(1), for purposes of this section, fair market value is determined as of the date the option is exercised.

(4) *Foreign source options.* In the case of an option attributable to sources within any foreign country or possession, see section 58(g) and §1.58–8.

(5) *Inapplicability in certain cases.* (i) Section 57(a)(6) is inapplicable if during the same taxable year in which stock is transferred pursuant to the exercise of an option, the transferee makes a disposition (within the meaning of section 425(c)) of such stock. In the case of a nonresident alien, section 57(a)(6) is inapplicable to the extent the stock option is attributable (in accordance with the principles of sections 861 through 863 and the regulations thereunder) to sources without the United States.

(ii) Section 57(a)(6) is inapplicable if section 421(a) does not apply to the transfer because of employment requirements of section 422(a)(2) or 424(a)(2).

(6) *Proportionate applicability.* Where, by reason of section 422 (b)(7) and (c)(3) (relating to percentage ownership limitations), only a portion of a transfer qualifies for application of section 421, the fair market value and option price shall be determined only with regard to that portion of the transfer which so qualifies.

(7) *No basis adjustment.* No adjustment shall be made to the basis of the stock received pursuant to the exercise of a qualified or restricted stock option as a result of the minimum tax.

(g) *Reserves for losses on bad debts of financial institutions*—(1) *In general.* Section 57(a)(7) provides that, in the case of a financial institution to which section 585 or 593 (both relating to reserves for losses on loans) applies, there shall be included as an item of tax preference the amount by which the deduction allowable for the taxable year for a reasonable addition to a reserve for bad debts exceeds the amount that would have been allowable had the institution maintained its bad debt reserve for all taxable years on the basis of the institution's actual experience.

(2) *Taxpayers covered.* Section 57(a)(7) applies only to an institution (or organization) to which section 585 or 593 applies. See sections 585(a) and 593(a) and the regulations thereunder for a description of those institutions.

(3) *Allowable deduction.* For purposes of this paragraph, the amount of the deduction allowable for the taxable year for a reasonable addition to a reserve for bad debts is the amount of the deduction allowed under section 166(c) by reference to section 585 or 593.

(4) *Actual experience.* (i) For purposes of this paragraph, the determination of the amount which would have been allowable had the institution maintained its reserve for bad debts on the basis of actual experience is the amount determined under section 585(b)(3)(A) and the regulations thereunder. For this purpose, the beginning balance for the first taxable year ending in 1970 is the amount which bears the same ratio to loans outstanding at the beginning of the taxable year as (*a*) the total bad debts sustained during the 5 preceding taxable years, adjusted for recoveries of bad debts during such period, bears to (*b*) the sum of the loans outstanding at the close of such 5 taxable years. The taxpayer may, however, select a more appropriate balance based on its actual experience during a shorter period subject to the approval of the district director upon examination of the return provided there are unusual circumstances which indicate that such period is more indicative of the taxpayer's actual loss experience. Any such selection and approval shall be made in a manner consistent with the selection and approval of a bad debt reserve method under §1.166–1(b). In the case of an institution which has been in existence for less than 5 taxable years as of the beginning of the first taxable year ending in 1970, the above

formula for determining the beginning balance is applied by substituting the number of taxable years for which the institution has been in existence as of the beginning of the taxable year for ''5'' each time it appears. If any taxable year utilized in the above formula for determining the beginning balance is a short taxable year the amount of the bad debts, adjusted for recoveries, for such taxable year is modified by dividing such amount by the number of days in the taxable year and multiplying the resulting amount by 365. The beginning balance for any subsequent taxable year is the amount of the beginning balance of the preceding taxable year, decreased by bad debt losses during such year, increased by recoveries of bad debts during such year and increased by the lower of the maximum amount determined under section 585(b)(3)(A) for such year or the amount of the deduction allowed for such year. The application of this subdivision (i) may be illustrated by the following example:

Example. The Y Bank, a calendar year taxpayer, uses the reserve method of acounting for bad debts. On December 31, 1969, Y determines the balance of its reserve for bad debts to be $70,000 under the percentage method. On the same date Y's 5-year moving average is $52,000. Y incurs net bad debt losses (bad debt losses less recoveries of bad debts) of $3,000 for each of the years 1970, 1971, and 1972, which it charges to its reserve for bad debts. Y's 6-year moving averages computed under section 585(b)(3)(A) at the close of 1970, 1971, and 1972 are $50,000, $49,000, and $51,000, respectively. Y's preference items are computed as follows based upon additional facts assumed:

	1970	1971	1972
1. Bad debt reserve—percentage method:			
(a) Balance beginning of year (closing balance prior year)	$70,000	$70,000	$68,000
(b) Net bad debts charged to reserve	3,000	3,000	3,000
(c) Subtotal	67,000	67,000	65,000
(d) Deduction allowed	3,000	1,000	4,000
(e) Balance end of year	70,000	68,000	69,000
2. Bad debt reserve—''actual experience'':			
(a) Beginning balance (for 1970, 5-year moving average; for other years, closing balance prior year)	52,000	50,000	48,000
(b) Net bad debts charged to reserve	3,000	3,000	3,000
(c) Subtotal	49,000	47,000	45,000
(d) Maximum amount under section 585 (b)(3)(A) (6-year moving average minus (c))	1,000	2,000	6,000
(e) Deduction allowed (line 1(d))	3,000	1,000	4,000
(f) Lower of (d) or (e)	1,000	1,000	4,000
(g) Closing balance (line (c) + (f))	50,000	48,000	49,000
3. Preference item under section 57(a)(7):			
(a) Deduction allowed	3,000	1,000	4,000
(b) Maximum amount under section 585(b)(3)(A)	1,000	2,000	6,000
(c) Preference item (excess of (a) over (b))	2,000	0	0

(ii) In the case of a new institution whose first taxable year ends after 1969, its beginning balance for its reserve for bad debts, for purposes of this paragraph, is zero and its reasonable addition to the reserve for such taxable year is determined on the basis of the actual experience of similar institutions located in the area served by the taxpayer.

(h) *Depletion*—(1) *In general.* Section 57(a)(8) provides that with respect to each property (as defined in section 614), there is to be included as an item of tax preference the amount by which the deduction allowable for the taxable year under section 611 for depletion for the property exceeds the adjusted basis of the property at the end of the taxable year (determined without regard to the depletion deduction for that taxable year). The determination under section 57(a)(8) is made with respect to each separate property. Thus, for example, if one mineral property has an adjusted basis remaining at the end of the taxable year, such basis may not be used to reduce the amount of an item of tax preference resulting from another mineral property.

(2) *Allowable depletion.* For the determination of the amount of the deduction for depletion allowable for the taxable year see section 611 and the regulations thereunder.

(3) *Adjusted basis.* For the determination of the adjusted basis of the property at the end of the taxable year see section 1016 and the regulations thereunder.

(4) *No basis adjustment.* No adjustment is to be made to the basis of property subject to depletion as a result ot the minimum tax.

(i) *Capital gains*—(1) *Taxpayers other than corporations.* Section 57(a)(9)(A) provides that, in the case of a taxpayer other than a corporation, there is to be included as an item of tax preference one-half of the amount by which the taxpayer's net long-term capital gain for the taxable year exceeds the taxpayer's net short-term capital loss for the taxable year. For this purpose, for taxable years beginning after December 31, 1971, the taxpayer's net long-term capital gain does not include an amount equal to the deduction allowable under section 163 (relating to interest expense) by reason of subsection (d)(1)(C) of that section, and the excess described in the preceding sentence is reduced by an amount equal to the reduction of disallowed interest expense by reason of section 163(d)(2)(B). Furthermore, the net long-term capital gain of an estate or trust does not include capital gains described in section 642(c)(4). Included in the computation of the taxpayer's capital gains item of tax preference are amounts reportable by the taxpayer as distributive shares of gain or loss from partnerships, estates or trusts, electing small business corporations, common trust funds, etc. See section 58 and the regulations thereunder with respect to the above entities.

Example. For 1971, A, a calendar year individual taxpayer, recognized $50,000 from the sale of securities held for more than 6 months. In addition, A received a $15,000 dividend from X Fund, a regulated investment company, $12,000 of which was designated as a capital gain dividend by the company pursuant to section 852(b)(3)(C). The AB partnership recognized a gain of $20,000 from the sale of section 1231 property held by the partnership. The AB partnership agreement provides that A is entitled to 50 percent of the income and gains of the partnership. A had net short-term capital loss for the year of $10,000. A's 1971 capital gains item of tax preference is computed as follows:

Capital gain recognized from securities	$50,000
Capital gain dividend from regulated investment company	12,000
Distributive share of partnership capital gain	10,000
Total net long-term capital gain	72,000
Less: net short-term capital loss	(10,000)
Excess of net long-term capital gain over net short-term capital loss	62,000
One-half of above excess	31,000

(2) *Corporations.* (i) Section 57(a)(9)(B) provides that in the case of corporations there is to be included as an item of tax preference with respect to a corporation's net section 1201 gain an amount equal to the product obtained by multiplying the excess of the net long-term capital gain over the net short-term capital loss by a fraction. The numerator of this fraction is the sum of the normal tax rate and the surtax rate under section 11 minus the alternative tax rate under section 1201(a) for the taxable year, and the denominator of the fraction is the sum of the normal tax rate and the surtax rate under section 11 for the taxable year. Included in the above computation are amounts reportable by the taxpayer as distributive shares of gain or loss from partnerships, estates or trusts, common trust funds, etc. In certain cases the amount of the net section 1201 gain which results in preferential treatment will be less than the amount determined by application of the statutory formula. Therefore, in lieu of the statutory formula, the capital gains item of tax preference for corporations may in all cases be determined by dividing—

(*a*) The amount of tax which would have been imposed under section 11 if section 1201(a) did not apply minus—

(*b*) The amount of the taxes actually imposed

by the sum of the normal tax rate plus the surtax rate under section 11. In case of foreign source capital gains and losses which are not taken into account pursuant to sections 58(g)(2)(B) and 1.58–8, the amount determined in the preceding sentence shall be multiplied by a fraction the numerator of which is the corporation's net section 1201 gain without regard to such gains

and losses which are not taken into account and the denominator of which is the corporation's net section 1201 gain. The computation of the corporate capital gains item of tax preference may be illustrated by the following examples:

Example 1. For 1971, A, a calendar year corporate taxpayer, has ordinary income of $10,000 and net section 1201 gain of $50,000, none of which is subsection (d) gain (as defined in sec. 1201(d)) and none of which is attributable to foreign sources. A's 1971 capital gain item of tax preference may be computed as follows:

1. Tax under section 11:		
Normal tax (0.22×$60,000)		$13,200
Surtax (0.26×$35,000)		9,100
		22,300
2. Tax under section 1201:		
(a) Normal tax on ordinary income (0.22×$10,000)		$2,200
Tax on net section 1201 gain (0.30×$50,000)	$15,000	$17,200
3. Excess		5,100
4. Normal tax rate plus surtax rate		.48
5. Capital gains preference (line 3 divided by line 4)		10,625

Example 2. For 1971, A, a calendar year corporate taxpayer, has a loss from operations of $30,000 and net section 1201 gain of $150,000, none of which is subsection (d) gain (as defined in section 1201(d)) and none of which is attributable to foreign sources. A's 1971 capital gain item of tax preference may be computed as follows:

1. Tax under section 11:		
Normal tax (0.22×$120,000)		$26,400
Surtax (0.26×$95,000)		24,700
		51,100
2. Tax under section 1201(a):		
Normal tax on ordinary income	None	
Tax on net section 1201 gain (0.30×$150,000)	45,000	45,000
3. Excess		6,100
4. Normal tax rate plus surtax rate		.48
5. Capital gain preference (line 3 divided by line 4)		12,708

(ii) In the case of organizations subject to the tax imposed by section 511(a), mutual savings banks conducting a life insurance business (see section 594), life insurance companies (as defined in section 801), mutual insurance companies to which part II of subchapter L applies, insurance companies to which part III of subchapter L applies, regulated investment companies subject to tax under part I of subchapter M, real estate investment trusts subject to tax under part II of subchapter M, or any other corporation not subject to the taxes imposed by sections 11 and 1201(a), the capital gains item of tax preference may be computed in accordance with subdivision (i) of this subparagraph except that, in lieu of references to section 11, there is to be substituted the section which imposes the tax comparable to the tax imposed by section 11 and, in lieu of references to section 1201(a), there is to be substituted the section which imposes the alternative or special tax applicable to the capital gains of such corporation.

(iii) For purposes of this paragraph, where the net section 1201 gain is not in any event subject to the tax comparable to the normal tax and the surtax under section 11, such as in the case of regulated investment companies subject to tax under subchapter M, such comparable tax shall be computed as if it were applicable to net section 1201 gain to the extent such gain is subject to the tax comparable to the alternative tax under section 1201(a). Thus, in the case of a regulated investment company subject to tax under subchapter M, the tax comparable to the normal tax and the surtax would be the tax computed under section 852(b)(1) determined as if the amount subject to tax under section 852(b)(3) were included in investment company taxable income. The principles of this subdivision (iii) may be illustrated by the following example:

Example. M, a calendar year regulated investment company, in 1971, has investment company taxable income (subject to tax under sec. 852(b)(1)) of $125,000 and net long-term capital gain of $800,000. M company has no net short-term capital loss but has a deduction for dividends paid (determined with reference to capital gains only) of $700,000, M's 1971 capital gains item of tax preference is computed as follows:

1. Section 852(b)(1) tax computed as if it were applicable to all income including capital gains:		
Amount subject to section 852(b)(1)		$125,000
Net section 1201 gain	$800,000	

Less: Dividends paid deduction	700,000		
Net section 1201 gain subject to tax at the company level		100,000	
		225,000	
Normal tax (0.22×$225,000)			$49,500
Surtax (0.26×200,000)			52,000
			101,500
2. Tax comparable to section 1201(a) tax section 852(b)(1) tax:			
Normal tax (0.22×125,000)	$27,500		
Surtax (0.26×100,000)	26,000	$53,500	
Section 852(b)(3) tax (0.30×100,000)		30,000	
			$83,500
3. Excess			18,000
4. Normal tax rate plus surtax rate			.48
5. Capital gains preference (line 3 divided by line 4)			37,500

(iv) For the computation of the capital gains item of tax preference in the case of an electing small business corporation (as defined in section 1371(b)), see §1.58–4(c).

(3) *Nonresident aliens, foreign corporations.* In the case of a nonresident alien individual or foreign corporation, there shall be included in computing the capital gains item of tax preference under section 57(a)(9) only those capital gains and losses included in the computation of income effectively connected with the conduct of a trade or business within the United States as provided in section 871(b) or 882.

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

§§ 1.57–2—1.57–3 [Reserved]

§ 1.57–4 Limitation on amounts treated as items of tax preference for taxable years beginning before January 1, 1976.

(a) *In general.* If in any taxable year beginning before January 1, 1976, a taxpayer has deductions in excess of gross income and all or a part of any item of tax preference described in §1.57–1 results in no tax benefit due to modifications required under section 172(c) or section 172(b)(2) in computing the amount of the net operating loss or the net operating loss to be carried to a succeeding taxable year, then, for purposes of section 56(a)(1), the sum of the items of tax preference determined under section 57(a) (and §1.57–1) is to be limited as provided in paragraph (b) of this section.

(b) *Limitation.* The sum of the items of tax preference, for purposes of section 56(a)(1) and §1.56A–1(a), is limited to an amount determined under subparagraphs (1) and (2) of this paragraph.

(1) *Loss year.* If the taxpayer has no taxable income for the taxable year without regard to the net operating loss deduction, the amount of the limitation is equal to—

(i) In cases where the taxpayer does not have a net operating loss for the taxable year, the amount of the recomputed income (as defined in paragraph (c) of this section) or

(ii) In cases where the taxpayer has a net operating loss for the taxable year, the amount of the net operating loss (expressed as a positive amount) increased by the recomputed income or decreased by the recomputed loss for the taxable year (as defined in paragraph (c) of this section,

plus the amount of the taxpayer's stock option item of tax preference (as described in §1.57–1(f)).

(2) *Loss carryover and carryback years.* Except in cases to which subparagraph (1)(ii) of this paragraph applies, if, in any taxable year to which a net operating loss is carried, a capital gains deduction is disallowed under section 172(b)(2) in computing the amount of such net operating loss which may be carried to succeeding taxable years, the amount of the limitation is equal to the amount, if any, by which the sum of the items of tax preference