

§ 1.57-0

26 CFR Ch. I (4-1-04 Edition)

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 pref-

erence 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.

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§ 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