

excess is, therefore, an item of tax preference pursuant to section 57(a)(2) and §1.57-1(d). Since this amount of "income" is held or accumulated for future distributions to G, he is treated under section 677(a)(2) as an owner of a portion of the trust to which such income is attributable. Therefore, section 671 requires that in computing the tax liability of the grantor the income, deductions, and credits against tax of the trust which are attributable to such portion shall be taken into account. Thus, the grantor has received \$160,000 of income and is entitled to a depreciation deduction in the same amount. The \$60,000 item of tax preference resulting from the excess depreciation is treated as being directly received by G as he has directly received the income sheltered by that preference. Accordingly, no adjustment is made to the trust's minimum tax exemption by reason of such depreciation.

[T.D. 7564, 43 FR 40482, Sept. 12, 1978]

**§ 1.58-3T Treatment of non-alternative tax itemized deductions by trusts and estates and their beneficiaries in taxable years beginning after December 31, 1982 (temporary).**

For purposes of section 58(c), in taxable years beginning after December 31, 1982, itemized deductions of a trust or estate which are not alternative tax itemized deductions (as defined in section 55(e)(1)), shall be treated as items of tax preference and apportioned between trusts and their beneficiaries, and estates and their beneficiaries.

[T.D. 8083, 51 FR 15320, Apr. 23, 1986]

**§ 1.58-4 Electing small business corporations.**

(a) *In general.* Section 58(d)(1) provides rules for the apportionment of the items of tax preference of an electing small business corporation among the shareholders of such corporation. Section 58(d)(2) provides rules for the imposition of the minimum tax on an electing small business corporation with respect to certain capital gains. For purposes of section 58(d) and this section, the items of tax preference are computed at the corporate level as if section 57 generally applied to the corporation. However, the items of tax preference so computed are treated as items of tax preference of the shareholders of such corporation and not as items of tax preference of such corporation (except as provided in paragraph (c) of this section). The items of

tax preference specified in section 57(a)(1) and §1.57-1(a) (excess investment interest) and section 57(a)(3) and §1.57-1(c) (accelerated depreciation on section 1245 property subject to a net lease), while generally inapplicable to corporations, are included as items of tax preference in the case of an electing small business corporation.

(b) *Apportionment to shareholders.* (1) The items of tax preference of an electing small business corporation, other than the capital gains item of tax preference described in paragraph (c) of this section, are apportioned pro rata among the shareholders of such corporation in a manner consistent with section 1374(c)(1). Thus, with respect to the items of tax preference of the electing small business corporation, there is to be treated as items of tax preference of each shareholder a pro rata share of such items computed as follows:

(i) Divide the total amount of such items of tax preference of the corporation by the number of days in the taxable year of the corporation, thus determining the daily amount of such items of tax preference.

(ii) Determine for each day the shareholder's portion of the daily amount of each such item of tax preference by applying to such amount the ratio which the stock owned by the shareholder on that day bears to the total stock outstanding on that day.

(iii) Total the shareholder's daily portions of each such item of tax preference of the corporation for its taxable year.

Amounts taken into account by shareholders in accordance with this paragraph are considered to consist of a pro rata share of each item of tax preference of the corporation. Thus, for example, if the corporation has \$50,000 of excess investment interest and \$150,000 of excess accelerated depreciation on section 1250 property and a shareholder, in accordance with this paragraph, takes into account \$60,000 of the total \$200,000 of tax preference items of the corporation, one-fourth ( $\$50,000 \div \$200,000$ ) of the \$60,000, or \$15,000, taken into account by the shareholder is considered excess investment interest and three-fourths of the \$60,000, or \$45,000, is considered excess