

### § 1.56A-3

pursuant to section 172(b)(2). Thus, M Corporation has no 1971 minimum tax attributable to items of tax preference arising in 1970. Of the \$50,000 remaining of the 1970 net operating loss, \$30,000 is attributable to excess tax preference.

*Example 4.* In 1972, A, a calendar year taxpayer who is a single individual, has \$25,000 of taxable income resulting from \$50,000 of net long-term capital gains. In 1971, A had a net operating loss of \$100,000 all of which is available to carryover to 1972 and \$60,000 of which is attributable to excess tax preferences. By application of section 172(b) only \$50,000 of the 1971 net operating loss is carried over to 1973. Pursuant to paragraph (c) of this section, \$25,000 of the \$40,000 portion of the 1971 net operating loss not attributable to excess tax preferences is considered to reduce taxable income in 1972. Of the \$50,000 remaining of the 1971 net operating loss, \$15,000 is not attributable to excess tax preferences and \$35,000 is attributable to excess tax preferences. Thus, the \$25,000 section 1202 deduction, in effect, reduces the portion of the 1971 net operating loss attributable to excess tax preferences. Because a net operating loss carryover is reduced to the extent of any section 1202 deduction, section 1202 deductions do not normally produce a tax benefit in such circumstances and, pursuant to § 1.57-4, would not be treated as items of tax preference. However, in this case, to the extent the portion of the 1971 net operating loss carryover attributable to excess tax preferences is reduced by reason of the section 1202 deduction, such deduction does result in a tax benefit to the taxpayer and is, therefore, treated as an item of tax preference in 1971. See § 1.57-4(b)(2).

[T.D. 7564, 43 FR 40467, Sept. 12, 1978. Redesignated by T.D. 8138, 52 FR 15309, Apr. 28, 1987]

### § 1.56A-3 Effective date.

(a) *In general.* The minimum tax is effective for taxable years ending after December 31, 1969.

(b) *Taxable year beginning in 1969 and ending in 1970.* In the case of a taxable year beginning in 1969 and ending in 1970, the amount of the minimum tax shall be an amount equal to the amount determined under section 56 multiplied by the following fraction:

$$\frac{\text{Number of days in the taxable year ending after December 31, 1969} + \text{Number of days in the entire taxable year.}}{\text{Number of days in the taxable year ending after December 31, 1969} + \text{Number of days in the entire taxable year.}}$$

Where, by reason of section 56(b) and § 1.56A-2, tax initially imposed in a 1969-70 fiscal year is deferred until a subsequent taxable year or years, the amount of such tax liability in any subsequent taxable year is deter-

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mined by application of the above fraction. Section 21, relating to computation of tax in years where there is a change in rates, is not applicable to the initial imposition of the minimum tax for tax preferences. The applications of this paragraph may be illustrated by the following example:

*Example.* The taxpayer uses a June 30 fiscal year. For fiscal 1969-1970 the taxpayer has \$180,000 of items of tax preference and a \$50,000 net operating loss. In fiscal year 1970-1971, the taxpayer uses the full net operating loss carryover from 1969-1970 to reduce his taxable income by \$50,000. Thus, without regard to the proration rules applicable under this section, the taxpayer's minimum tax liability for items of tax preference arising in 1969-1970 is \$15,000, *i.e.*, 10 percent  $\times$  (\$180,000 - \$30,000), of which \$5,000, *i.e.*, 10 percent  $\times$  \$50,000, is deferred until 1970-1971 under the principles of section 56(b) and section 1.56A-2. By application of the above formula the taxpayer's actual minimum tax liability is \$4,958.90 in 1969-1970 and \$2,479.45 in 1970-1971 determined as follows:

1969-1970:  $181/365 \times \$10,000$

1970-1971:  $181/365 \times \$5,000$

[T.D. 7564, 43 FR 40468, Sept. 12, 1978. Redesignated and amended by T.D. 8138, 52 FR 15309, Apr. 28, 1987]

### § 1.56A-4 Certain taxpayers.

For application of the minimum tax in the case of estates and trusts, electing small business corporations, common trust funds, regulated investment companies, real estate investment trusts, and partnerships, see §§ 1.58-2 through 1.58-6.

[T.D. 7564, 43 FR 40468, Sept. 12, 1978. Redesignated by T.D. 8138, 52 FR 15309, Apr. 28, 1987]

### § 1.56A-5 Tax carryovers.

(a) *In general.* Section 56(c) provides a 7-year carryover of the excess of the taxes described in paragraph (1) of such section imposed during the taxable year over the items of tax preference described in paragraph (2) of such section for such taxable year for the purpose of reducing the amount subject to tax under section 56(a) in subsequent taxable years.

(b) *Computation of amount of carryover.* The amount of tax carryover described in section 56(c) is the excess (if any) of—

(1) The taxes imposed for the taxable year under chapter 1 other than taxes

imposed by section 56 (relating to minimum tax for tax preferences), by section 531 (relating to accumulated earnings tax), or by section 541 (relating to personal holding company tax), reduced by the sum of the credits allowable under—

(i) Section 33 (relating to taxes of foreign countries and possessions of the United States),

(ii) Section 37 (relating to retirement income),

(iii) Section 38 (relating to investment credit),

(iv) Section 40 (relating to expenses of work incentive programs), and

(v) Section 41 (relating to contributions to candidates for public office), over

(2) The sum of the taxpayer's items of tax preference for such year in excess of the taxpayer's minimum tax exemption (determined under §1.58-1) for such year.

For purposes of section 56(c) and this section, taxes imposed in a taxable year ending on or before December 31, 1969, are not included in the taxes described in subparagraph (1) of this paragraph. In addition, the rules of paragraph (c) of §1.56A-1 are applicable in determining the taxable year for which taxes are imposed under chapter 1 for purposes of paragraph (a)(1) of this section.

(c) *Operation of carryover.* Tax carryovers attributable to the taxable year shall be carried over to each of the 7 succeeding taxable years as follows:

(1) To the first such succeeding taxable year to reduce in the manner described in paragraph (d) of this section the amount subject to tax under section 56(a) for such first succeeding taxable year and

(2) To the extent such amount is not used as a reduction in the amount subject to tax under section 56(a) for such taxable year, such amount (if any) is carried over to each of the succeeding 6 taxable years but only to the extent such amount is not used to reduce the amount subject to tax under section 56(a) in taxable years intervening between the taxable year to which such amount is attributable and the taxable year to which such amount may otherwise be carried over.

(d) *Priority of reduction.* Where tax carryovers attributable to two or more taxable years are carried over to a subsequent taxable year such amounts attributable to the earliest taxable year shall be used to reduce the amount subject to tax under section 56(a) for such subsequent taxable year before any such amounts attributable to a later taxable year.

(e) *Special rules—(1) Periods of less than 12 months.* A fractional part of a year which is a taxable year under section 441(b) or 7701(a)(23) is a taxable year for purposes of section 56(c) and this section.

(2) *Electing small business corporations.* A taxable year for which a corporation is an electing small business corporation (as defined in section 1371(b)) shall be counted as a taxable year for purposes of determining the taxable years to which amounts which are available as a carryover under paragraph (a) of this section may be carried whether or not such carryovers arose in a year in which an election was in effect.

(3) *Husband and wife—(i) From joint to separate return.* If a joint return is filed by a husband and wife in a taxable year or years to which a tax carryover is attributable but separate returns are filed in any subsequent taxable year to which such carryover may be carried over to reduce the amount subject to tax under section 56(a), such carryover described in paragraph (b) of this section shall be allocated between husband and wife for purposes of reducing the amount subject to tax under section 56(a) for such subsequent taxable year in accordance with the principles of §1.172-7(d).

(ii) *From separate to joint return.* If separate returns are filed by a husband and wife in a taxable year or years in which a tax carryover is attributable but a joint return is filed in any subsequent taxable year to which such carryover may be carried over to reduce the amount subject to tax under section 56(a), such carryover shall be aggregated for purposes of reducing the amount subject to tax under section 56(a), for such subsequent taxable year.

(4) *Estates and trusts.* In the case of the termination of an estate or trust, tax carryovers attributable to the estate or trust shall not be allowed to

the beneficiaries succeeding to the property of the estate or trust.

(5) *Corporate acquisitions.* In the case of a transaction to which section 381(a) applies, the acquiring corporation shall succeed to and take into account, as of the close of the date transfer the tax carryovers attributable to the distributor or distribution or transferor corporation. The portion of such carryovers which may be taken into account under paragraph (b)(2)(ii) of § 1.56A-1 for any taxable year shall not exceed the excess of (i) the sum of the items of tax preference for such year resulting from the continuation of the business in which the distributor or transferor corporation was engaged at the time of such transaction and the items of tax preference not related to the continuation of such business which are directly attributable to the assets acquired from the distributor or transferor corporation over (ii) an amount which bears the same ratio to the acquiring corporation's minimum tax exemption for such year as the items of tax preference described in subdivision (i) of this subparagraph bears to all of the acquiring corporation's items of tax preference for such year. This item shall be taken into account by the acquiring corporation subject to the rules in section 381(b) and the regulations thereunder.

(f) *Suspense preferences.* Where an item of tax preference which is a suspense preference (as defined in § 1.58-7) arises in a taxable year in which tax carryovers may be used to reduce the minimum tax base (or in which such carryovers arise the minimum tax liability for that year and the tax carryovers to subsequent taxable years shall be recomputed upon the conversion of the suspense preference in a subsequent year. In lieu of the above, in all cases, since there is no difference in tax consequence, the recomputation may be accomplished by recomputing the minimum tax liability of the taxable year in which the suspense preference arose without reduction of the minimum tax base for the tax carryovers which have been used as a reduction in the minimum tax base in intervening taxable years. If such method is used, the minimum tax liability of the intervening year is not

recomputed and any tax carryovers carried from the taxable year in which the suspense preference arose which remain as a carryover in the year of conversion are reduced, in the priority provided in paragraph (d) of this section, to the extent used to reduce an increase in the minimum tax base for the earlier year resulting from the conversion of the suspense preference.

(g) *Taxes imposed in a taxable year beginning in 1969 and ending in 1970.* In the case of a taxable year beginning in 1969 and ending in 1970 the amount of the carryover determined under paragraph (b) of this section is reduced to an amount equal to the amount of such carryover (without regard to this paragraph) multiplied by the following fraction:

Number of days in taxable year ending after December 31, 1969 ÷ Number of days in the entire taxable year.

(h) *Examples.* The provisions of this section may be illustrated by the following examples:

*Example 1.* A is a single individual who uses a June 30 fiscal year. For fiscal 1968-1969, A had income tax liability under chapter 1 in the amount of \$100,000. For fiscal 1969-1970, A had items of tax preference in the amount of \$212,500 and income tax liability under chapter 1 (other than taxes imposed under sections 56, 531, and 541) of \$365,000.

(a) The chapter 1 tax attributable to fiscal 1968-1969 is not available as a carryover under section 56(c) to reduce the amount subject to tax under section 56(a) since this tax arose in a taxable year ending on or before December 31, 1969.

(b) A portion of the excess of chapter 1 tax over the amount subject to tax under section 56(a) attributable to fiscal year 1969-1970 is available as a carryover as provided in section 56(c) to reduce the amount subject to tax under section 56(a). The amount of this carryover is \$91,000 computed as follows:

1. Carryover under paragraph (b) of this section:	
Chapter 1 taxes .....	\$365,000
Items of tax preference in excess of exemption .....	182,500
Total .....	182,500
2. Reduction pursuant to paragraph (g) of this section:	
$182/365 \times \$182,500 = \$91,000$	

*Example 2.* A is a calendar year taxpayer who is a single individual. In 1972, A had chapter 1 income tax liability (other than taxes imposed under sections 56, 531, and 541) of \$200,000 and \$50,000 of items of tax preference. In 1973, A had chapter 1 income tax

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liability (other than taxes imposed under sections 56, 531, and 541) of \$120,000 and \$40,000 of items of tax preference. In 1974, A had \$400,000 of items of tax preference and no liability for tax under chapter 1 other than under section 56(a). Under section 56(c), the excess of the taxes described in paragraph (1) of that section arising in an earlier taxable year not used to reduce the amount subject to tax under section 56(a) for such taxable year can be carried over as provided in section 56(c) to reduce the amount subject to tax under section 56(a).

(a) The amount of the carryover from 1972 is \$180,000 computed as follows:

Carryover under paragraph (b) of this section:	
Chapter 1 taxes .....	\$200,000
Items of tax preference in excess of exemption .....	20,000
<b>Total .....</b>	<b>180,000</b>

(b) The amount of the carryover from 1973 is \$110,000 computed as follows:

Carryover under paragraph (b) of this section:	
Chapter 1 taxes .....	\$120,000
Items of tax preference in excess of exemption .....	10,000
<b>Total .....</b>	<b>110,000</b>

(c) For 1974, the excess of taxes in the preceding taxable years is used to reduce the amount subject to tax under section 56(a). The amount of carryover attributable to excess taxes arising in 1972 is used before such excess arising in 1973. The amount of tax under section 56(a) is \$8,000 computed as follows:

1974 tax preferences .....	\$400,000
Less exemption .....	30,000
	<b>370,000</b>
Less 1972 carryover .....	180,000
	<b>190,000</b>
Less 1973 carryover .....	110,000
	<b>80,000</b>
1974 minimum tax base .....	80,000
1974 minimum tax (\$80,000x10%) .....	8,000

*Example 3.* The facts are the same as in example 2 except that in 1974 A had \$300,000 of items of tax preference. The amount of the carryover for taxable years after 1974 is computed as follows:

1974 tax preferences .....	\$300,000
Less exemption .....	30,000
	<b>270,000</b>
Less 1972 carryover .....	180,000
	<b>90,000</b>
Less 1973 carryover .....	90,000
	<b>0</b>
Minimum tax base .....	0
1973 carryover .....	110,000
Amount used in 1974 .....	90,000
Amount available for taxable years after 1974 ...	20,000

The \$20,000 remaining of the 1973 carryover is available to reduce the amount subject to tax under section 56(a) in 1975 or other future taxable years as provided in section 56(c).

*Example 4.* M Corporation is a calendar year taxpayer. N Corporation uses a June 30 fiscal year. For the fiscal year 1970-1971, N Corporation had excess chapter 1 tax liability as described in paragraph (a) of this section in the amount of \$75,000. On January 1, 1972, M Corporation acquired N Corporation in a reorganization described in section 368(a)(1)(A). N Corporation does not use any of such excess chapter 1 tax liability to reduce the amount subject to tax under section 56(a) for the short taxable year beginning on July 1, 1971, and ending on December 31, 1971. Thus, the excess chapter 1 tax liability is available to M Corporation as a carryover under paragraph (a) of this section to reduce the amount subject to tax for the next 6 succeeding taxable years beginning with taxable year 1972 as provided in this section. In applying the carryover to 1972 and succeeding taxable years, the carryover of N Corporation subject to the limitation of § 1.56A-5(e)(4) is combined with any carryovers originating with M Corporation in 1970.

[T.D. 7564, 43 FR 40468, Sept. 12, 1978. Redesignated and amended by T.D. 8138, 52 FR 15309, Apr. 28, 1987]

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