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DEPARTMENT OF THE TREASURY  
Internal Revenue Service

26 CFR Parts 1 and 602

57 FR 19253

Minimum Tax -- Tax Benefit Rule

T.D. 8416

**DATE:** May 5, 1992

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the application of the tax benefit rule to the minimum tax. Changes to the applicable law were made by the Tax Reform Act of 1976. The regulations provide taxpayers with guidance necessary to determine the amount of tax preference items that do not provide a current tax benefit because of available credits and thus are not subject to minimum tax.

**DATES:** These regulations are effective May 5, 1992. They are applicable only as they affect items of tax preference that are subject to the minimum tax imposed by section 56 of the Internal Revenue Code of 1954 and arise in taxable years beginning after December 31, 1975, and before January 1, 1987. Display Classification Information Display Classification Information Display Classification Information Display Classification Information Display Classification Information

**ADDRESSES:**

FOR FURTHER INFORMATION CONTACT: Kelly R. Berg of the Office of Assistant Chief Counsel (Income Tax and Accounting), (202) 566-3861 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545-1093. The estimated annual burden per respondent is .2 hours.

This estimate is an approximation of the average time expected to be necessary for a collection of information. It is based on such information as is available to the Internal Revenue Service. Individual respondents may require more or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

**Background**

This document contains final regulations amending the Income Tax Regulations (26 CFR part 1) under section 58(h) of the Internal Revenue Code of 1954 (Code). This Treasury Decision will conform the regulations to section 301(d)(3) of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1553) and is issued under the authority contained in sections 58(h) and 7805 of the Code (90 Stat. 1553 and 68A Stat. 917; 26 U.S.C. 58(h), 7805).

These regulations are effective May 5, 1992. They are applicable only as they affect tax preference items that are subject to the minimum tax imposed by section 56 of the Internal Revenue Code of 1954 and arise in taxable years beginning after December 31, 1975, and before January 1, 1987. Except to the extent that they affect taxpayers' credit carryforwards, the regulations do not apply for purposes of determining alternative minimum tax liability imposed by section 55 for any individual's taxable year beginning after December 31, 1978, or for any corporation's taxable year beginning after December 31, 1986.

On May 5, 1989, the Internal Revenue Service published in the Federal Register a Notice of Proposed Rulemaking (54 FR 19409). The Service received three comment letters in response to that notice. A public hearing was not requested. After consideration of the written comments, the proposed regulations are adopted as revised in this Treasury Decision.

### **Explanation of Provisions**

An Explanation of Provisions was included in the preamble to the temporary regulations. See 54 FR 19363.

The final regulations are substantially unchanged, except as noted below.

### **Public Comments**

Section 1.58-9(e)(2) of the proposed regulations provides that the adjustments of § 1.58-9 generally apply in assessing deficiencies and refunding any overpayment of tax for all years for which the period of limitations has not expired regardless of whether the period of limitations has expired for the taxable year in which the non-beneficial preferences arose. One commenter suggested that, in view of the delay in the issuance of proposed regulations under section 58(h), the regulations should be applied without regard to limitation periods to all years to which 58(h) applies.

The Service and the Treasury Department believe that it is not appropriate to adjust tax liability for a year for which the period of limitations has expired. Thus, the final regulations retain the approach of the proposed regulations. Where the taxpayer paid minimum tax on non-beneficial preferences, did not make a claim for a credit or refund of the minimum tax paid, and the period of limitations for claiming a credit or refund under section 6511 has expired for the year in which the non-beneficial preferences arose, the taxpayer is not required to reduce its freed-up credits. In addition, if the taxpayer did not pay minimum tax attributable to non-beneficial preferences, used credits that were freed up by those preferences to reduce tax liability for a taxable year for which the period of limitations has expired, and the credits so used exceed the amount of credits that would have been available for use if the credit reduction described in the regulations had been made, then the taxpayer is liable for minimum tax equal to the amount of credits so used only if the period of limitations has not expired for the taxable year in which the non-beneficial preferences arose. Thus, the rules of § 1.58-9(e)(2) do not result in unfair treatment of taxpayers.

Section 1.58-9(c)(2) of the proposed regulations provides that the first step in computing the amount of freed-up credits is to determine the regular tax that would have been imposed if preference items had not been allowed in computing taxable income (the "non-preference regular tax"). A second comment letter pointed out that this statement, as well as all of the examples given in the regulations, assumes that all items of tax preference reduced taxable income. However, during the years affected by these regulations, the corporate capital gain preference was not based on a reduction to taxable income but instead was based on a lower rate of tax on capital gains under section 1201. In response to this comment, the final regulations clarify that a corporation's non-preference regular tax is computed without regard to section 1201.

The proposed regulations calculate the amount of preferences that provides no tax benefit in the current year by determining the amount of unused credits that would have been used in the absence of preferences and converting these "freed-up credits" into a preference amount. The second commenter pointed out that because the proposed regulations assume that more credits would have been used against non-preference regular tax than are used against the actual regular tax, the regulations fail to address certain situations in which section 904 of the Code would allow fewer foreign tax credits against non-preference regular tax than the credits allowed against the actual regular tax. The commenter was concerned that the proposed regulations do not provide for these "negative freed-up credits" to be taken into consideration in determining the net credit reduction amount. No change to the final regulations was necessary to address this comment. The "netting" that the commenter requested is already built into the regulations because in computing a taxpayer's total

freed-up credits for the taxable year, "negative freed-up credits" will automatically reduce (but not below zero) the total amount of freed-up credits computed under § 1.58-9(c)(2) of the regulations.

A third comment letter argued that the proposed regulations are in clear and direct conflict with both the statutory language and the Congressional purpose of section 58(h). The commenter's position is that section 58(h) gives the Secretary authority to issue regulations under which "items of tax preference shall be properly adjusted" where no tax benefit results from the preferences for any taxable year, but does not empower the Secretary to adopt a credit reduction mechanism like the one set forth in the proposed regulations. Consistent with section 58(h) and the holding in *First Chicago Corp. v. Commissioner*, 842 F.2d 180 (7th Cir. 1988), *aff'g* 88 T.C. 663 (1987), the regulations provide that taxpayers will not currently incur minimum tax on preference items arising in a taxable year for which the availability of excess credits in effect denies the taxpayer a current benefit from such preferences. Neither the statute nor the legislative history, however, suggests that minimum tax, which would otherwise have been due absent such excess credits, should be forgiven. In this respect, the regulations, by way of the credit reduction mechanism, ensure that minimum tax will in effect be imposed only if, and to the extent that, a taxpayer ultimately realizes a tax benefit from the preference items through the application of the freed-up credits carried back or over to reduce tax liability.

Because the statute and legislative history are silent about how the regulations should deal with a situation where a tax benefit is realized in a year after the year in which the preferences arose, the Secretary is free to adopt a reasonable approach to address this situation. The credit reduction approach of the regulations, which in effect postpones the tax until the freed-up credits would be utilized, is reasonable. Furthermore, the approach is quite similar to the suspended minimum tax regime that Congress used to deal with a similar situation under section 56(b) of the add-on minimum tax. We believe that this approach is a valid exercise of the authority granted to the Secretary by Congress under section 58(h). We also believe that the approach of the proposed regulations is easier to apply than alternative approaches that we considered. For example, the credit reduction approach does not allow subsequent changes in the minimum tax to alter the effect of suspended preferences, and does not require complex stacking rules to determine the order in which suspended preferences are deemed to be utilized. Therefore, the credit reduction method of the proposed regulations is adopted without change in the final regulations.

#### **Other Matters**

The final regulations clarify that the determination of freed-up credits is made for each taxable year independent of other taxable years. Thus, credits that are freed up in one taxable year may be carried over or carried back (after being reduced under paragraph (c)(5) of § 1.58-9) and used to determine non-beneficial preferences in the carryover or carryback year.

The final regulations continue to reserve on rules relating to the application of the tax benefit rule in cases where tax preference items provide no tax benefit in the current taxable year because available net operating loss carryovers would have reduced or eliminated tax liability if the preference items had not been allowed in computing taxable income.

#### **Special Analyses**

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Impact Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### **Drafting Information**

The principal author of these regulations is Kelly R. Berg of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Service and the Treasury participated in their development.

#### **List of Subjects**

##### ***26 CFR Parts 1.56-0 Through 1.58-9***

Income taxes, Reporting and recordkeeping requirements.

##### ***26 CFR Part 602***

Reporting and recordkeeping requirements

### **Adoption of Amendments to the Regulations**

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

#### **PART 1 -- INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953**

Paragraph 1. The authority citation for part 1 is amended by removing the entry for "1.58-9T" and adding the following citation:

Authority: 26 U.S.C. 7805 \* \* \* Section 1.58-9 is also issued under 26 U.S.C. 58(h).

Par. 2. A new § 1.58-9 is added to read as set forth below:

§ 1.58-9 Application of the tax benefit rule to the minimum tax for taxable years beginning prior to 1987.

(a) *In general.* For purposes of computing the minimum tax liability imposed under section 56 of the Internal Revenue Code of 1954 (Code), taxpayers are not liable for minimum tax on tax preference items that do not reduce the taxpayer's tax liability under subtitle A of the Code for the taxable year. In general, tax preference items that do not reduce tax liability under subtitle A for the taxable year are those from which no current tax benefit is derived because available credits would have reduced or eliminated the taxpayer's regular tax liability if the preference items had not been allowed in computing taxable income. However, any credits that, because of such preference items, are not needed for use against regular tax ("freed-up credits"), are required to be reduced under the rules of paragraph (c) of this section. For purposes of this section, a taxpayer's regular tax is the Federal income tax liability under subchapter A of chapter 1 of the Code, not including the minimum tax imposed by section 56. Unless otherwise noted, all references to Internal Revenue Code sections refer to the Internal Revenue Code of 1954.

(b) *Effective date.* The rules of this section are effective May 5, 1992, but only as they affect tax preference items that arise in taxable years beginning after December 31, 1976, and before January 1, 1987.

(c) *Adjustment of carryover credits -- (1) In general.* A taxpayer's freed-up credits must be reduced by the additional minimum tax that would have been imposed if a current tax benefit had been derived from preference items that did not actually produce a current tax benefit. The amount of this reduction shall be calculated in the following manner --

(i) Determine the amount of freed-up credits;

(ii) Determine the amount of tax preference items (if any) from which a current tax benefit was derived for the taxable year ("beneficial preferences"), and the amount of preferences from which no current tax benefit was derived for the taxable year ("non-beneficial preferences"); and

(iii) Determine the portion of the total minimum tax on all tax preference items for the taxable year that is attributable to the non-beneficial preferences.

The freed-up credits are then reduced by an amount equal to such portion of the minimum tax.

(2) *Determine freed-up credits.* (i) To determine the freed-up credits for the taxable year, first determine the regular tax that would have been imposed for the taxable year if preference items had not been allowed in computing taxable income ("non-preference regular tax"). In the case of a taxpayer with the capital gain preference described in section 57(a)(9)(B), non-preference regular tax is computed without regard to section 1201 and without adding the section 57(a)(9)(B) preference amount to taxable income. Second, compute the amount of credits that would have been allowed to reduce the non-preference regular tax. The credits available to reduce non-preference regular tax shall include any freed-up credits from other taxable years, as reduced under paragraph (c)(5) of this section, that are carried to the current taxable year. Third, subtract the amount of credits that were actually allowed to reduce the regular tax for such taxable year from the amount of credits that would have been allowed to reduce non-preference regular tax. The result is the amount of the freed-up credits.

(ii) The following examples illustrate the determination of freed-up credits. The first two examples assume that the foreign tax credits being used do not exceed the limitation under section 904.

*Example 1.* In 1982 Corporation B has \$17.6 million dollars in foreign tax credits available for the taxable year. If preference items were not allowed in determining regular tax, the regular tax would have been \$10.2 million and foreign tax credits used to reduce regular tax would have been \$10.2 million. Because of tax preference items, however, B's

regular tax is \$6.3 million and the amount of foreign tax credits actually used to reduce the regular tax is \$6.3 million. The amount of freed-up foreign tax credits is \$3.9 million (\$10.2 million minus \$6.3 million).

*Example 2.* Assume the same facts as in *Example 1* of paragraph (c)(2)(ii) of this section except that Corporation B has \$7.2 million dollars in foreign tax credits. If preference items were not allowed, the non-preference regular tax would have been \$10.2 million and the foreign tax credits used to reduce the regular tax would have been \$7.2 million. Because of tax preference items, however, B's regular tax is \$6.3 million, and the amount of foreign tax credits actually used to reduce the regular tax is \$6.3 million. The amount of freed-up foreign tax credits is \$.9 million (\$7.2 million minus \$6.3 million).

*Example 3.* In 1983 Corporation C has \$500,000 of investment tax credits available. If preference items were not allowed, non-preference regular tax would have been \$690,000 and all \$500,000 of investment tax credits would have been allowed to reduce non-preference regular tax liability. Because of tax preferences, however, C's actual regular tax is \$439,750. As a result of the limitation under section 38(c), only \$377,537 of the investment tax credits are allowed to reduce the actual regular tax. Freed-up credits are \$122,463 (\$500,000 minus \$377,537).

*Example 4.* In 1984 Corporation B has ordinary income of \$20,000 and net section 1201 gain of \$300,000, none of which is attributable to foreign sources. B has no other items of tax preference in 1984. B's non-preference regular tax for 1984 is \$126,950, the amount of tax that would be imposed without regard to section 1201.

(3) *Determination of beneficial and non-beneficial preferences* -- (i) *In general.* The amount of tax preferences from which a current tax benefit is derived ("beneficial preferences") and the amount from which no current tax benefit is derived ("non-beneficial preferences") for the taxable year are determined as set forth below.

(ii) *Regular tax liability is the same regardless of preference items.* (A) If the taxpayer's tax liability (after credits) would be the same regardless of whether preference items were allowed to reduce taxable income, then all of the taxpayer's preference items are non-beneficial preference items.

(B) The following example illustrates the rule set forth in paragraph (c)(3)(ii)(A) of this section. This example assumes that foreign tax credits being used do not exceed the limitation under section 904.

*Example.* (i) In 1982 Corporation B has \$17.6 million dollars in foreign tax credits available for the taxable year. If preference items were not allowed in determining regular tax, the regular tax would have been \$10.2 million and foreign tax credits used to reduce regular tax would have been \$10.2 million. Because of tax preference items, however, B's regular tax is \$6.3 million and the amount of foreign tax credits actually used to reduce the regular tax is \$6.3 million. The amount of freed-up foreign tax credits is \$3.9 million (\$10.2 million minus \$6.3 million).

(ii) The total amount of B's tax preference items is \$8.4 million. B's non-preference regular tax is \$10.2 million and, reduced by foreign tax credits, is zero. B's actual regular tax is \$6.3 million and, reduced by foreign tax credits, is zero. Since the amount of credits that would have been allowed to offset the non-preference regular tax would have reduced such tax to an amount (\$0) equal to the actual regular tax liability (\$0), B received a tax benefit from none of the \$8.4 million of tax preferences and therefore all of these preferences are non-beneficial preferences.

(iii) *Regular tax liability differs because of preference items.* If tax liability (after credits) is less because preference items are allowed to reduce taxable income, then some of these preference items have provided a current tax benefit. In such cases, the amount of beneficial and non-beneficial preferences are determined as follows:

(A) *Non-beneficial preferences.* (1) The non-beneficial preferences are determined by converting the freed-up credits for such taxable year into an amount of taxable income. To make this conversion, freed-up credits are "grossed up" (*i.e.*, divided by the regular tax marginal rate at which such credits would have offset non-preference regular tax) to determine the amount of tax preferences that freed up such credits. For purposes of this calculation, the 5-percent addition to tax provided by section 11(b) shall be included in determining the marginal rate. The aggregate of these grossed-up amounts is the total amount of non-beneficial preferences for the taxable year.

(2) The freed-up credits shall be grossed up beginning at the lowest marginal tax rate that would have applied to the additional taxable income arising if tax preferences were not allowed. Thus, the marginal tax rates at which the actual regular tax was imposed shall not be taken into account in grossing up freed-up credits, even if all or a portion of such tax is not offset by credits because of limitations on the allowance of such credits (such as the section 904 limit on foreign tax credits or the section 38(c) limit on investment tax credits). For example, if the first dollar of additional non-preference taxable income would have been taxed at a rate of 46 percent, then freed-up credits shall be grossed up at 46 percent, even

if regular tax imposed on taxable income at a 40-percent rate was not offset by credits because of the limitations on investment tax credits under section 38(c). *See Examples 1 and 2* in paragraph (d) of this section for illustrations of the gross up of freed-up credits in cases where limitations apply to the amount of credit allowed to offset actual regular tax.

(3) The following example illustrates the gross up of freed-up credits to determine non-beneficial preferences. This example assumes that foreign tax credits being used do not exceed the limitation under section 904.

*Example.* (i) Corporation L has the following items for the 1985 taxable year:

Actual taxable income		\$90,000
Regular tax		21,750
Available credits:		
Foreign tax credits for 1985	\$15,000	
Foreign tax credits carried forward from 1984	25,000	
Investment tax credits carried forward from 1984	20,000	
		60,000
Credit allowed to offset actual regular tax:		
Foreign tax credits for 1985	15,000	
Foreign tax credits carried forward from 1984	6,750	
		21,750
Actual regular tax liability		0
Preferences		110,000
Taxable income for 1985 determined as though preferences were not allowed		200,000
Non-preference regular tax		71,750
Credits allowed to offset non-preference regular tax:		
Foreign tax credits for 1985	15,000	
Foreign tax credits carried forward from 1984	25,000	
Investment tax credits carried forward from 1984	20,000	
		60,000
Non-preference regular tax liability		11,750

(ii) The freed-up credits for 1985 are \$38,250 (\$60,000 minus \$21,750). The non-preference regular tax of \$71,750 is determined by applying the regular tax rates set forth in section 11(b) to the \$200,000 of taxable income as follows:

Taxable income		Rate		Tax
\$25,000	X	.15	=	\$3,750
25,000	X	.18	=	4,500
25,000	X	.30	=	7,500
25,000	X	.40	=	10,000
100,000	X	.46	=	46,000
\$200,000				\$71,750

(iii) Thus, for purposes of determining the non-beneficial preferences, freed-up credits are grossed up as follows: The credits allowed against the regular tax and the freed-up credits are treated as offsetting non-preference regular tax in the same order as such credits would have been allowed to offset such tax, beginning at the lowest marginal tax rate. The

freed-up credits are grossed up beginning at the lowest marginal tax rate at which additional taxable income would have been taxed if preferences were not allowed. Thus, in this example freed-up credits are grossed up beginning at 40 percent, and the amount of L's non-beneficial preferences for the 1985 taxable year is \$84,456.

Type	Credit allowed against regular tax	Freed-up credit	Divided by tax rate		Non-beneficial preferences
FTC (85)	\$3,750		.15		
Do	4,500		.18		
Do	6,750		.30		
FTC (84)	750		.30		
Do	6,000		.40		
Do		\$4,000	.40	=	\$10,000
Do		14,250	.46	=	30,978
ITC (84)		20,000	.46	=	43,478
	\$21,750	\$38,250			\$84,456

Foreign tax credit = FTC (year)

Investment tax credit = ITC (year)

(B) *Beneficial preferences.* The amount of beneficial preferences for the taxable year is computed by subtracting the non-beneficial preferences for the taxable year from the total amount of tax preferences for such year. This rule may be illustrated by the following example:

*Example.* Assume the same facts as in the *Example* in paragraph (c)(3)(iii)(A)(3) of this section. The amount of L's beneficial preferences for 1985 is \$25,544 (total preferences of \$110,000, minus non-beneficial preferences of \$84,456).

(4) *Determine the minimum tax attributable to non-beneficial preferences.* (i) The portion of the minimum tax that is attributable to the non-beneficial preferences is computed as follows --

(A) Compute the minimum tax that would be imposed on all tax preference items for the taxable year if all of the preferences had produced a tax benefit.

(B) Compute the minimum tax that would be imposed on the beneficial preferences if these were the taxpayer's only preferences. (This is the amount of minimum tax actually imposed for the taxable year.)

(C) Subtract the amount computed in paragraph (c)(4)(i)(B) of this section from the amount computed in paragraph (c)(4)(i)(A) of this section. The result is the minimum tax attributable to the non-beneficial preferences for the taxable year. This amount is sometimes referred to hereinafter as the "credit reduction amount".

(ii) The following examples illustrate determination of the credit reduction amount. These examples assume that foreign tax credits being used do not exceed the limitation under section 904.

*Example 1.* (i) In 1982 Corporation B has \$17.6 million dollars in foreign tax credits available for the taxable year. If preference items were not allowed in determining regular tax, the regular tax would have been \$10.2 million and foreign tax credits used to reduce regular tax would have been \$10.2 million. Because of tax preference items, however, B's regular tax is \$6.3 million and the amount of foreign tax credits actually used to reduce the regular tax is \$6.3 million. The amount of freed-up foreign tax credits is \$3.9 million (\$10.2 million minus \$6.3 million).

(ii) The total amount of B's tax preference items is \$8.4 million. B's non-preference regular tax is \$10.2 million and, reduced by foreign tax credits, is zero. B's actual regular tax is \$6.3 million and, reduced by foreign tax credits, is zero. Since the amount of credits that would have been allowed to offset the non-preference regular tax would have reduced



such tax to an amount (\$0) equal to the actual regular tax liability (\$0), B received a tax benefit from none of the \$8.4 million of tax preferences and therefore all of these preferences are non-beneficial preferences.

(iii) Since B has \$8.4 million in total preference items and no regular tax liability, the minimum tax on that amount would be \$1,258,500 ((\$8.4 million minus \$10,000) multiplied by .15). None of the preference items is a beneficial preference. Thus, the minimum tax attributable to non-beneficial preferences (and therefore, the credit reduction amount) is \$1,258,500.

*Example 2.* (i) Corporation L has the following items for the 1985 taxable year:

Actual taxable income		\$90,000
Regular tax		21,750
Available credits:		
Foreign tax credits for 1985	\$15,000	
Foreign tax credits carried forward from 1984	25,000	
Investment tax credits carried forward from 1984	20,000	
		\$60,000
Credit allowed to offset actual regular tax:		
Foreign tax credits for 1985	\$15,000	
Foreign tax credits carried forward from 1984	6,750	
		\$21,750
Actual regular tax liability		0
Preferences		110,000
Taxable income for 1985 determined as though preferences were not allowed		200,000
Non-preference regular tax		71,750
Credits allowed to offset non-preference regular tax:		
Foreign tax credits for 1985	\$15,000	
Foreign tax credits carried forward from 1984	25,000	
Investment tax credits carried forward from 1984	20,000	
		\$60,000
Non-preference regular tax liability		11,750

(ii) The freed-up credits for 1985 are \$38,250 (\$60,000 minus \$21,750). The non-preference regular tax is \$71,750. The amount of L's non-beneficial preferences for the 1985 taxable year is \$84,456.

(iii) The minimum tax on L's total preference items of \$110,000 would be \$15,000 ((\$110,000 minus \$10,000) multiplied by .15). Since the amount of non-beneficial preferences is \$84,456, the amount of L's beneficial preferences for 1985 is \$25,544 (\$110,000 minus \$84,456). The minimum tax on L's beneficial preferences of \$25,544 is \$2,332 ((\$25,544 minus \$10,000) multiplied by .15). (This is the amount of minimum tax imposed for 1985.) The minimum tax attributable to non-beneficial preference items (and therefore, the credit reduction amount) is \$12,668 (\$15,000 minus \$2,332).

(5) *Reduction of freed-up credits -- (i) In general.* The freed-up credits are reduced by an amount equal to the minimum tax attributable to the non-beneficial preferences ("credit reduction amount"). If the taxpayer has only one type of freed-up credit (*i.e.*, only investment tax credit or only foreign tax credit) and that credit was earned in only one year (the current year or a carryover year), then the credit is reduced by the credit reduction amount. This rule may be illustrated by the following example. This example assumes that foreign tax credits being used do not exceed the limitation under section 904.

*Example.* (i) In 1982 Corporation B has \$17.6 million dollars in foreign tax credits available for the taxable year. If preference items were not allowed in determining regular tax, the regular tax would have been \$10.2 million and foreign

tax credits used to reduce regular tax would have been \$10.2 million. Because of tax preference items, however, B's regular tax is \$6.3 million and the amount of foreign tax credits actually used to reduce the regular tax is \$6.3 million. The amount of freed-up foreign tax credits is \$3.9 million (\$10.2 million minus \$6.3 million).

(ii) The total amount of B's tax preference items is \$8.4 million. B's non-preference regular tax is \$10.2 million and, reduced by foreign tax credits, is zero. B's actual regular tax is \$6.3 million and, reduced by foreign tax credits, is zero. Since the amount of credits that would have been allowed to offset the non-preference regular tax would have reduced such tax to an amount (\$0) equal to the actual regular tax liability (\$0), B received a tax benefit from none of the \$8.4 million of tax preferences and therefore all of these preferences are non-beneficial preferences.

(iii) Since B has \$8.4 million in total preference items and no regular tax liability, the minimum tax on that amount would be \$1,258,500 ((\$8.4 million minus \$10,000) multiplied by .15). None of the preference items is a beneficial preference. Thus, the minimum tax attributable to nonbeneficial preferences (and therefore, the credit reduction amount is \$1,258,500.

(iv) All of the \$3.9 million of freed-up credits are foreign tax credits that arise in the same year and that otherwise would be carried forward. Since the entire amount of B's tax preferences are non-beneficial preferences, the minimum tax of \$1,258,500 that would be imposed on the total tax preferences is the credit reduction amount. Thus, B's \$3.9 million of freed-up foreign tax credits is reduced by \$1,258,500. The foreign tax credit carryforward from 1982 is \$10,041,500. This amount is the sum of \$2,641,500 (the freed-up foreign tax credit of \$3,900,000, reduced by the credit reduction amount of \$1,258,500), plus \$7.4 million (the foreign tax credit that would have been carried over even if tax preference items had not been allowed).

**However, if the taxpayer has more than one type of freed-up credit, or the taxpayer's freed-up credits are from more than one taxable year, then the credit reduction amount must be allocated under the exact method described in paragraph (c)(5)(ii) of this section, unless an election is made under paragraph (c)(5)(iii) of this section to use the simplified method.**

(ii) *Exact method.* For each type of freed-up credits and for each taxable year within such type from which any such credits are earned, the amount of credit reduction shall be equal to the amount of minimum tax attributable to the non-beneficial preferences that freed up the credits for that type and taxable year. The amount of the credit reduction is computed by multiplying the amount of non-beneficial preferences which freed up credits for each type and taxable year by the minimum tax rate. For purposes of this computation, if the amount of the taxpayer's minimum tax exemption for the taxable year (as determined under section 56(a)) exceeds the amount of the taxpayer's beneficial preferences, such excess exemption shall reduce the amount of non-beneficial preferences to be multiplied by the minimum tax rate. The non-beneficial preferences shall be reduced by any such excess exemption in the same order in which the credits that were freed up by such preferences would have been allowed to offset tax. Thus, for example, any excess exemption shall first reduce non-beneficial preferences that freed up foreign tax credits. Any such excess exemption remaining after reducing non-beneficial preferences that freed up foreign tax credits to zero would then be used to reduce the non-beneficial preferences that freed up investment tax credits.

(iii) *Simplified method -- (A) Description of method.* In lieu of the exact credit reduction method described in paragraph (c)(5)(ii) of this section, taxpayers may elect to use the simplified credit reduction method. Under the simplified credit reduction method, the amount of freed-up credits for each type of credit and for each taxable year in which such credit is earned is multiplied by a fraction. The numerator of the fraction is the total credit reduction amount as determined in paragraph (c)(4)(i)(C) of this section. The denominator is the total amount of freed-up credits as determined in paragraph (c)(2)(i) of this section. The product of this multiplication is the amount of credit reduction for each type and taxable year of freed-up credit.

(B) *Election to use simplified method.* A taxpayer may elect to use the simplified credit reduction method for all taxable years to which this section applies by attaching a statement indicating such an election on the amended Federal income tax return or returns applying the adjustments of this section. If an election is made for any taxable year, it must be made for all taxable years. Once an election has been made, it can be revoked only with the permission of the Commissioner. Similarly, once returns have been filed applying the exact credit reduction method, an election to apply the simplified method can be made only with the consent of the Commissioner.

(iv) *Effect of credit reduction on credit carryovers.* Under both the exact method and the simplified method, the determination of credit carryovers to other taxable years is made on the basis of freed-up credits remaining after such reduction, plus any other unused credits. Thus, an amount of freed-up credits that is equal to the credit reduction amount

shall not be allowed to reduce tax liability in any taxable year. Such disallowance is without regard to whether such credits would otherwise be allowed as a carryover. The freed-up credits, as reduced under this paragraph (c)(5), shall be carried over or carried back in applying this section in a carryover or carryback year. No minimum tax liability shall be due with respect to the non-beneficial preferences for any taxable year.

(v) *Examples.* The following examples illustrate reduction of freed-up credits.

*Example 1.* (i) Corporation L has the following items for the 1985 taxable year:

Actual taxable income		\$90,000
Regular tax		21,750
Available credits:		
Foreign tax credits for 1985	\$15,000	
Foreign tax credits carried forward from 1984	25,000	
Investment tax credits carried forward from 1984	20,000	
		60,000
Credit allowed to offset actual regular tax:		
Foreign tax credits for 1985	\$15,000	
Foreign tax credits carried forward from 1984	6,750	
		21,750
Actual regular tax liability		21,750
Preferences		110,000
Taxable income for 1985 determined as though preferences were not allowed		200,000
Non-preference regular tax		71,750
Credits allowed to offset non-preference regular tax:		
Foreign tax credits for 1985	\$15,000	
Foreign tax credits carried forward from 1984	\$25,000	
Investment tax credits carried forward from 1984	20,000	
		60,000
Non-preference regular tax liability		11,750

(ii) The freed-up credits for 1985 are \$38,250 (\$60,000 minus \$21,750). The non-preference regular tax is \$71,750. The amount of L's non-beneficial preferences for the 1985 taxable year is \$84,456.

(iii) The credit reduction amount for 1985 is \$12,668, the amount of minimum tax attributable to L's non-beneficial preferences. This amount is allocated to reduce each category of freed-up credit and to each year from which such credit is carried over. L's \$38,250 of freed-up credits consists of \$18,250 of foreign tax credits carried forward from 1984, which were freed up by \$40,978 of non-beneficial preferences, and \$20,000 of investment tax credits carried forward from 1984, which were freed up by \$43,478 of non-beneficial preferences.

(iv) The apportionment of this credit reduction amount to each category of freed-up credit and each taxable year from which such credits are carried over is determined as follows under the exact credit reduction method:

(A) Foreign tax credits carried forward from 1984:

**Non-beneficial preferences that freed up 1984 FTC X .15=Credit reduction of 1984 FTC**  
**\$40,978 X .15=\$6,146**

(B) Investment tax credits carried forward from 1984:

**Non-beneficial preferences that freed up 1984 ITC X .15=Credit reduction of 1984 ITC**

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$$\$43,478 \times .15 = \$6,522$$

Thus, the foreign tax credits from 1984 that are carried forward to 1986 are \$12,104 (\$18,250 minus \$6,146). The investment tax credits from 1984 that are carried forward to 1986 are \$13,478 (\$20,000 minus \$6,522).

(v) The reduction of the freed-up credit under the simplified credit reduction method is as follows:

(A) Foreign tax credit carried forward from 1984:

Freed-up foreign tax credits from 1984	X	Credit reduction amount
		Total freed-up credit

=Credit reduction allocated to freed-up foreign tax credits carried forward from 1984

$$\begin{array}{rclcl}
 \$18,250 & \times & \$12,668 & = & \$6,044 \\
 & & \$38,250 & & 
 \end{array}$$

(B) Investment tax credits carried forward from 1984:

Freed-up investment tax credits from 1984	X	Credit reduction amount
		Total freed-up credit

=Credit reduction allocated to freed-up investment tax credit carried forward from 1984

$$\begin{array}{rclcl}
 \$20,000 & \times & \$12,668 & = & \$6,624 \\
 & & \$38,250 & & 
 \end{array}$$

Thus, under the simplified credit reduction method, L has \$12,206 of foreign tax credits for 1984 (\$18,250 minus \$6,044) that are carried forward to 1986, and \$13,376 of investment tax credits for 1984 (\$20,000 minus \$6,624) that are carried forward to 1986.

*Example 2.* Assume the same facts as in *Example 1* of this paragraph (c)(5)(v), except that the foreign tax credits available for use in 1985 include \$10,750 in credits carried forward from 1980 and \$14,250 in credits carried forward from 1984, rather than \$25,000 carried forward from 1984. Thus, \$4,000 of the freed-up foreign tax credit is carried over from 1980. The other \$14,250 of freed-up foreign tax credit is carried over from 1984. The non-beneficial preferences that freed up the 1980 foreign tax credit are \$10,000. The non-beneficial preferences that freed up the 1984 foreign tax credit are \$30,978. Under the exact credit reduction method, the credit reduction amounts for each of these credits are determined as follows:

(i) Foreign tax credit carried forward from 1980:

$$\mathbf{\$10,000 \times .15 = \$1,500}$$

(ii) Foreign tax credit carried forward from 1984:

$$\mathbf{\$30,978 \times .15 = \$4,646}$$

**Thus, the foreign tax credit from 1984 that is carried forward to 1986 is \$9,604 (\$14,250 minus \$4,646). Since the foreign tax credit from 1980 expires after 1985, none of that credit is carried forward to 1986.**

(d) *Examples.* The following examples are comprehensive illustrations of the adjustments described in paragraph (c) of this section:

*Example 1.* (i) This example illustrates the operation of the credit reduction adjustment when the amount of foreign tax credit allowed is subject to the overall limitation under section 904. For purposes of this example, assume that Corporation X has the following items for the 1984 taxable year:

**Taxable income (determined as though preferences were not allowed) . . . \$140,000**

**From foreign sources . . . 70,000**

**Foreign tax credits from 1984 . . . 5,000**

**Foreign tax credits from 1983 . . . 7,000**

**Actual taxable income . . . 50,000**

**From foreign sources . . . 25,000**

(ii) The credit reduction adjustment and minimum tax liability for the taxable year are determined as follows:

1. Taxable income (determined as though preferences were not allowed)	\$140,000
2. Tax preferences for 1984	90,000
3. Taxable income (line 1 minus line 2)	50,000
4. Regular tax on line 3 amount (actual regular tax) before credits:	
\$25,000 X .15=\$3,750	
25,000 X .18=4,500	8,250
5. Foreign tax credits allowed against regular tax (limited to 50% of actual regular tax under sec. 904) -- 1984 foreign tax credits	4,125
6. Regular tax after credits (line 4 minus line 5)	4,125
7. Regular tax on line 1 amount (non-preference regular tax) before credits	
25,000 X .15=\$3,750	
25,000 X .18=4,500	
25,000 X .3=7,500	
25,000 X .4=10,000	

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40,000 X .46=18,400			44,150
8. Foreign tax credits allowed against non-preference regular tax:			
\$5,000 (1984 foreign tax credits)			
7,000 (1983 foreign tax credits)			12,000
(the allowed credits do not exceed the section 904 limitation of \$22,075)			
9. Non-preference regular tax after credits (line 7 minus line 8)			32,150
10. Freed-up credits (line 8 minus line 5):			
1984 foreign tax credits	\$5,000		
	(4,125)		
		\$875	
1983 foreign tax credits	\$7,000		
	0		
		7,000	
Total		\$7,875	

11. Non-beneficial preferences are computed as set forth in the table below. Under this computation, non-beneficial preferences are considered to free up credits that would have offset non-preference regular tax beginning at the lowest tax rates at which income that was offset by tax preferences otherwise would have been subject to regular tax. In this case, income that was offset by tax preferences would have been taxed beginning at the 30 per cent marginal tax rate.

Type	Freed-up credit	Divided by tax rate	Non-beneficial preferences
FTC (84)	\$875	.30	\$2,917
FTC (83)	6,625	.30	22,083
Do	375	.40	938
	7,875		25,938
Total non-beneficial preferences			25,938

12. Beneficial preferences (line 2 minus line 11)	64,062
13. Minimum tax on total tax preferences ((line 2 minus the greater of line 6 or \$10,000) X .15)	12,000
14. Minimum tax on beneficial preferences ((line 12 minus the greater of line 6 or \$10,000) X .15)	8,109
15. Credit reduction amount (line 13 minus line 14)	3,891
16. Reduction of freed-up credits under the exact method	

(subtotals of line 11 multiplied by .15):

(a) 1984 foreign tax credits:

\$2,917 X .15=\$438

(b) 1983 foreign tax credits:

(\$22,083+\$938) X .15=\$3,453

(c) Total credit reduction

3,891

Note: If X had elected to use the simplified credit reduction method, the amount of credit reduction would be determined by multiplying the amount of freed-up credit in each category and taxable year by the following ratio:

credit reduction amount	=	\$3,891	=.494
total freed-up credit		\$7,875	

(d) Under this method, the 1984 freed-up foreign tax credits would be reduced by \$433 (\$875 X .494) and the 1983 freed-up foreign tax credits would be reduced by \$3,458 (\$7,000 X .494).

17. Freed-up credits after reduction under the exact method (line 10 subtotal minus line 16 subtotals):

(a) 1984 foreign tax credits (\$874 minus \$438)

437

(b) 1983 foreign tax credits (\$7,000 minus \$3,453)

3,547

Thus, assuming that Corporation X did not elect to use the simplified method, Corporation X will carryover \$437 of 1984 foreign tax credits to 1985 and \$3,547 of 1983 foreign tax credits to 1985. Had Corporation X elected to use the simplified method, freed-up credits after reduction would be as follows:

(a) 1984 foreign tax credits (\$875 minus \$433)

442

(b) 1983 foreign tax credits (\$7,000 minus \$3,458)

3,542

*Example 2.* (i) Corporation X has the following items for its 1985 taxable year:

Taxable income (determined as though preferences were not allowed)

\$1,500,000

1984 investment tax credits

400,000

1985 investment tax credits

100,000

Actual taxable income

1,000,000

(ii) The credit reduction and minimum tax of X for 1985 are determined as follows:

1. Taxable income determined as though

\$1,500,000

2. Tax preferences for 1985

500,000

3. Taxable income (line 1 minus line 2)

1,000,000

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4. Regular tax on line 3 amount (actual regular tax) before credits:	
\$25,000 X .15=\$3,750	
25,000 X .18=4,500	
25,000 X .30=7,500	
25,000 X .40=10,000	
900,000 X .46=414,000	439,750
5. Investment tax credits allowed (limited under section 38 (c) to \$25,000 of net tax liability, plus 85 percent of net tax liability in excess of \$25,000)	377,537
6. Regular tax after credits (line 4 minus line 5)	62,212
7. Regular tax on line 1 amount (non-preference regular tax) before credits:	
25,000 X .15=\$3,750	
25,000 X .18=4,500	
25,000 X .30=7,500	
25,000 X .40=10,000	
900,000 X .46=414,000	
405,000 X .51=206,550	
95,000 X .46=43,700	690,000
8. Investment tax credits allowed against non-preference regular tax	500,000
9. Non-preference regular tax after credits (line 7 minus line 8)	190,000
10. Freed-up credits (line 8 minus line 5):	
1984 investment tax credit	\$400,000
	(377,537)
	22,463
1985 investment tax credit	\$100,000
	-- 0 --
	100,000
Total	\$122,463

11. Non-beneficial preferences are computed as set forth in the table below. Under this computation, non-beneficial preferences are considered to free up credits that would have offset non-preference regular tax beginning at the lowest tax rates at which income that was offset by tax preferences otherwise would have been subject to regular tax. In this case, income that was offset by tax preferences would have been taxed beginning at the 51 percent marginal tax rate. Although some of the income offset by preferences would be taxed at the 46 percent marginal rate (because taxable income in excess of \$1,405,000 is not subject to the 5 percent addition to tax on taxable income in excess of \$1 million), the 51 percent marginal rate is taken into account first.

Type	Freed-up credit	Divided by tax rate	Non-beneficial preferences
ITC (84)	\$22,463	.51	\$44,045
ITC (85)	100,000	.51	196,078
	122,463		240,123



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Type	Freed-up credit	Divided by tax rate	Non-beneficial preferences
Total non-beneficial preferences	240,123		
12. Beneficial preferences (line 2 minus line 11)			259,877
13. Minimum tax on total tax preferences ((line 2 minus the greater of line 6 or \$10,000) X .15)			65,668
14. Minimum tax on beneficial preferences ((line 12 minus the greater of line 6 or \$10,000) X .15)			29,650
15. Credit reduction amount (line 13 minus line 14)			36,018
16. Reduction of freed-up credits under the exact method (subtotals of line 11 multiplied by .15):			
(a) 1984 investment tax credits: \$44,045 X .15=\$6,607			
(b) 1985 investment tax credits: \$196,078 X .15=\$29,411			
(c) Total credit reduction			36,018
17. Fixed-up credits after reduction (assuming that Corporation X does not elect the simplified method):			
(a) 1984 investment credit (\$22,463 minus \$6,607)			15,856
(b) 1985 investment credit (\$100,000 minus \$29,411)			70,589

(e) *Miscellaneous rules -- (1) Investment Credit Recapture.* If during any taxable year property to which section 47 applies is disposed of, then for purposes of determining any increase in tax under section 47 for such year, the amount of any reduction under this section of freed-up section 38 credit which was earned in the year the property was placed in service shall be treated as a credit that was allowed in a prior taxable year.

*Example.* Corporation D places property in service in 1983 that generates investment tax credits of \$10,000. D earns no other investment tax credits in 1983. None of the investment tax credits are used to reduce tax liability in 1983 or any prior years. In 1984, D uses \$1,000 of this credit to reduce regular tax liability. In addition, D has items of tax preferences in 1984. However, under section 58(h), D is not liable for minimum tax on any of these preference items because none of these preference items produces a tax benefit in 1984. As a result, an adjustment is made under the provisions of § 1.58-9 and the investment tax credit carryforward from 1983 is reduced by \$4,000. Thus, D has an investment tax credit carryforward of \$5,000 that is attributable to the property placed in service in 1983. In 1986, the property is disposed of and the investment tax credits earned in 1983 are recomputed as required under section 47. This recomputation results in a reduction of \$6,000 of the investment tax credits earned in 1983. D must now adjust its 1983 investment tax credit carryforward under section 47(a)(6) by reducing this carryforward to zero. In addition, D has an additional tax liability of \$1,000 for 1986.

(2) *Period of limitations; adjustments to tax liability.* The adjustments described in this section shall, in general, apply for purposes of assessing deficiencies or claiming refunds of tax for any taxable year for which the tax liability is affected by the adjustments of this section, provided that the period of limitations under section 6501 has not expired for such taxable year. Therefore, these adjustments generally apply for purposes of assessing deficiencies and refunding any

overpayment of tax for all years for which the period of limitations has not expired regardless of whether the period of limitations has expired for the taxable year in which the non-beneficial preferences arose. However, the adjustments of this section do not apply to reduce otherwise allowable credits that were freed up by such non-beneficial preferences where:

(i) The taxpayer paid minimum tax on all tax preference items arising in the taxable year in which the non-beneficial preferences arose.

(ii) The taxpayer has not made a claim for a credit or refund for such minimum tax; and

(iii) The period of limitations for claiming a credit or refund under section 6511 has expired for such taxable year.

(A) Further, if --

(1) the taxpayer never paid minimum tax attributable to non-beneficial preferences;

(2) credits that were freed up by such preferences were used to reduce tax liability for a taxable year for which the period of limitations has expired; and

(3) credits so used exceed the amount of credits that would have been available if the credit reduction required under this section with respect to such preferences had been made,

(B) Then, the taxpayer shall be liable for the minimum tax equal to the amount of credits so used, provided the period of limitations has not expired for the taxable year in which preferences arose.

(3) *Claims for credit or refund.* A taxpayer may claim a credit or refund of minimum tax that was made on non-beneficial preferences. However, such a claim for a credit or refund shall be disallowed to the extent that the taxpayer has reduced tax liability in a taxable year for which the period of limitations has expired by using freed-up credits in excess of the amount that would have been available if the credit reduction required under this section had been made. Such claim must be made by filing an amended return for the taxable year for which such minimum tax was paid. Further, if a claim for credit or refund is filed, amended returns must also be filed for any taxable year for which tax liability would be affected as a result of the reduction, under this section, of credits freed up by such non-beneficial preferences. See section 6511 and the regulations thereunder regarding the period of limitations for claiming a credit or refund.

(4) *Carryovers of foreign tax credit to taxable years after 1986.* In the case of foreign tax credit carryforwards to taxable years beginning after December 31, 1986, reductions in such credits required under this section shall apply for purposes of computing the alternative minimum tax foreign tax credit under section 59(a) of the Internal Revenue Code of 1986 as well as for purposes of computing the foreign tax credit for regular tax purposes.

(5) *Credit Carrybacks.* If credit carrybacks increase the amount of credits for a taxable year, the adjustments described in this section shall be recomputed taking into account the additional credits. This rule may be illustrated by the following examples:

*Example 1.* (i) In 1981 corporation D has actual taxable income of \$72,500 and regular tax before credits of \$15,000. In computing actual regular taxable income, D made use of \$36,739 of tax preference items, so that D's taxable income determined as though preference were not allowed would be \$109,239. D's non-preference regular tax before credits is \$30,000. D earns \$25,000 of foreign tax credits in 1981, none of which exceed the limitation under section 904 determined using either actual regular taxable income or the non-preference taxable income. These credits reduce actual regular tax to zero (\$0) and would have reduced non-preference regular tax to \$5,000 (\$30,000 minus \$25,000). Thus, D has freed-up foreign tax credits from 1981 of \$10,000 (\$25,000 minus \$15,000). Pursuant to the adjustments required under this section, D determines that its credit reduction amount is \$3,843 and reduces its freed-up credit (and its credit carryover) from 1981 to \$6,157 (\$10,000 minus \$3,843). D also pays minimum tax of \$167 on \$11,114 of beneficial preferences ((\$11,114 minus \$10,000) multiplied by .15).

(ii) In 1982 D earns additional foreign tax credits. After application of the foreign tax credit carryback rules, D would have \$5,000 of 1982 foreign tax credits available for use in 1981. D must recalculate the adjustments required under this section by treating \$5,000 of foreign tax credit from 1982 as carried back and (assuming that these credits do not exceed the limitation under section 904) used to reduce non-preference regular tax liability in 1981 to zero (\$0). That is, \$5,000 of the foreign tax credits earned in 1982 are treated as credits freed up because of D's tax preference items in 1981. Pursuant to the rules set forth herein, D must take into account the foreign tax credits from both 1981 and 1982 in determining to what extent a tax benefit was derived from the preference items used to determine actual regular tax liability in 1981 and

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in computing the credit reduction amount. When the \$5,000 of foreign tax credits from 1982 are considered, all preferences become non-beneficial preferences, and the credit reduction amount is \$4,010. Assuming that D elects the simplified method, the 1981 freed-up credits and the 1982 freed-up credits will each be reduced by the following percentage:

$$\frac{\$4,010 \text{ (credit reduction amount)}}{\$15,000 \text{ (total freed-up credits)}} = .2673$$

**The 1981 freed-up foreign tax credits of \$10,000 are thus reduced by \$2,673 (\$10,000 multiplied by .2673), to \$7,327 and the 1982 freed-up foreign tax credits of \$5,000 are reduced by \$1,334 (\$5,000 multiplied by .2673) to \$3,666. D also files a claim for credit or refund of the \$167 of minimum tax paid in 1981.**

*Example 2.* In 1985 corporation E's non-preference regular taxable income was \$25,000. E had no available credits. It paid zero in regular tax, however, because of \$25,000 in preference items. E paid \$2,250 of minimum tax on these preferences (((\$25,000 minus \$10,000) multiplied by .15). In 1986, E has additional investment tax credits. After application of the investment tax credit carryback rules, E would have \$1,000 investment tax credit from 1986 available for use in 1985. E must recompute the adjustments required under this section by treating \$1,000 of these 1986 investment tax credits as carried back and used to reduce non-preference regular tax liability for 1985. Pursuant to the rules of this section, all of these \$1,000 of credits are freed-up credits. Non-beneficial preferences are \$6,667 (\$1,000 grossed up at a 15 percent regular tax rate). Beneficial preferences are \$18,333 (\$25,000 minus \$6,667). Minimum tax on all preferences would be \$2,250 (((\$25,000 minus \$10,000) multiplied by .15); minimum tax on beneficial preferences would be \$1,250 (((\$18,333 minus \$10,000) multiplied by .15). Minimum tax attributable to the non-beneficial preferences is thus \$1,000 (\$2,250 minus \$1,250), which is the credit reduction amount. E thus reduces the \$1,000 of credits carried back to 1985 to zero. Under the rules of this section, the amount of minimum tax due for 1985 is redetermined. It is equal to the minimum tax on beneficial preferences, which, as described above, is \$1,250. Because E paid minimum tax of \$2,250 in 1985, E files a claim for credit or refund for \$1,000 of the minimum tax paid in 1985.

(f) *Treatment of net operating losses.* [Reserved]

Par. 2a. Section 1.58-9T is removed.

#### PART 602 -- OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. Section 602.101(c) is amended removing the entry for "1.58-9T" and by adding the following entries in the table:

§ 602.101 OMB control numbers under the Paperwork Reduction Act.

\* \* \* \* \*

(c) \* \* \*

CFR part or section where identified or described

Current OMB  
control No.

\* \* \* \* \*

1.58-9(c)(5)(iii)(B)

1545-1093

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CFR part or section where identified or described

Current OMB  
control No.

1.58-9(e)(3)

1545-1093

\* \* \* \* \*

**Shirley D. Peterson,**

Commissioner of Internal Revenue.

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