

## Section 4121

riverbed by dredging operations is subject to the excise tax imposed by section 4121(a) of the Internal Revenue Code at the rate imposed on coal from surface mines.

In *Kanawha Dredging and Mineral Co., Ltd. v. United States*, Civil No. 2:85-1306 (S.D. W. Va. 1987), the court ruled that the taxpayer's sale of dredged coal was not subject to the tax imposed by section 4121(a) of the Code. In so ruling, it noted that 95 percent of the dredged coal had been previously taxed.

The Internal Revenue Service will follow the *Kanawha* decision in not taxing dredged coal to the extent that the taxpayer can demonstrate that such coal has previously been taxed under section 4121(a) of the Code.

### EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 87-21 is modified.

### Chapter 43.—Qualified Pension, Etc., Plans

#### Section 4972.—Tax On Nondeductible Contributions To Qualified Employer Plans

A procedure is provided whereby an employer and a trustee may request a closing agreement on the application of section 4972 of the Code to certain payments to a defined contribution plan that has assets invested in certain products of a life insurance company in state insurer delinquency proceedings. See Rev. Proc. 92-16, page 673.

#### Section 4975.—Tax On Prohibited Transactions

A procedure is provided whereby an employer and a trustee that request an exemption from the prohibited transaction rules from the Department of Labor may request a closing agreement pertaining to payments to a defined contribution plan that has assets invested in certain products of a life insurance company in state insurer delinquency proceedings. See Rev. Proc. 92-16, page 673.

#### Section 4980.—Tax On Reversion Of Qualified Plan Assets To Employer

A procedure is provided whereby an employer and a trustee may request a closing agreement on the application of section 4980 of the Code to the return of certain payments from a defined contribution plan that has assets invested in certain products of a life insurance company in state insurer delinquency proceedings. See Rev. Proc. 92-16, page 673.

### Subtitle E.—Alcohol, Tobacco, and Certain Other Excise Taxes

#### Chapter 54.—Greenmail

#### Section 5881.—Greenmail

26 CFR 156.5881-1: Imposition of excise tax on greenmail.

#### T.D. 8379

### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 156 and 602

#### Excise Tax Relating to Gain or Other Income Realized By Any Person on Receipt of Greenmail

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

**SUMMARY:** This document contains final regulations relating to the manner and method of reporting and paying the nondeductible 50 percent excise tax imposed with respect to the receipt of greenmail. This excise tax was added to the Internal Revenue Code of 1986 by the Revenue Act of 1987, as amended by the Technical and Miscellaneous Revenue Act of 1988. The regulations provide recipients of greenmail with the guidance necessary to comply with the reporting requirements for this excise tax.

**DATES:** The regulations are effective December 18, 1991, and apply to any consideration received after December 22, 1987.

#### SUPPLEMENTARY INFORMATION:

##### *Paperwork Reduction Act*

The collections of information contained in these regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545-1049. The estimated average annual burden per respondent/recordkeeper for filing Form 8725 is 6 hours and 55 minutes. The estimated average annual burden per respondent/recordkeeper for §§156.6081-1 and 156.6161-1 is .5 hours.

These estimates are an approximation of the average time expected to be necessary for the collections of information. It is based on such information as is available to the Internal Revenue Service.

Individual respondents/recordkeepers may require greater 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, Attention: IRS Reports Clearance Officer, T:FP, Washington, D.C. 20224, and to the Office of Management and Budget (1545-1049), Paperwork Reduction Project, Washington D.C. 20503.

#### *Background*

This document contains final regulations under subtitle E, chapter 54 of the Internal Revenue Code of 1986. The regulations provide guidance for the proper manner and method of reporting and paying the 50 percent excise tax imposed on a person with respect to the receipt of greenmail. The regulations reflect the addition to the Internal Revenue Code of chapter 54 and section 5881 by section 10228 of the Revenue Act of 1987 (Pub. L. 100-203, 101 Stat. 1330 [1987-3 C.B. 1, 137]), as amended by section 2004(o) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647, 102 Stat. 3608 [1988-3 C.B. 1, 268]). On June 10, 1991, the Federal Register published a notice of proposed rulemaking (56 FR 26631 [IA-7-88, 1991-2 C.B. 1027]) proposing a new part 156, Excise Tax on Greenmail, to title 26 of the Code of Federal Regulations. The Internal Revenue Service did not receive any comments on the proposed regulations. No public hearing was requested or held. For this reason, the final regulations adopt the proposed regulations without any substantive changes.

#### *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 Flexibility 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 comments on its impact on small business.

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*Adoption of Amendments to the Regulations*

Accordingly, title 26 of the Code of Federal Regulations is amended as follows:

Paragraph 1. A new part 156 is added to read as follows: Part 156—EXCISE TAX ON GREENMAIL

Subpart A—Tax on Greenmail

Sec.

156.5881-1 Imposition of excise tax on greenmail.

Subpart B—Procedure and Administration

156.6001-1 Notice or regulations requiring records, statements, and special returns.

156.6011-1 General requirement of return, statement, or list.

156.6061-1 Signing of returns and other documents.

156.6065-1 Verification of returns.

156.6071-1 Time for filing returns relating to greenmail.

156.6081-1 Extension of time for filing the return.

156.6091-1 Place for filing chapter 54 (Greenmail) tax returns.

156.6091-2 Exceptional cases.

156.6151-1 Time and place for paying of tax shown on returns.

156.6161-1 Extension of time for paying tax or deficiency.

156.6165-1 Bonds where time to pay tax or deficiency has been extended.

Authority: Sections 6001, 6011, 6061, 6071, 6091, 6161, and 7805 of the Internal Revenue Code of 1986 (26 U.S.C. 6001, 6011, 6061, 6071, 6091, 6161, and 7805), unless otherwise noted.

Subpart A—Tax on Greenmail

§156.5881-1 Imposition of excise tax on greenmail.

(a) *In general.* Section 5881 of the Code imposes a tax equal to 50 percent of the gain or other income realized by any person on the receipt of greenmail, whether or not the gain or other income is recognized.

(b) *Transactions occurring on or after March 31, 1988.* For transactions occurring on or after March 31, 1988, greenmail is defined as any consideration transferred by a corporation (or any person acting in concert with the corpora-

tion) to directly or indirectly acquire stock of the corporation from any shareholder if:

(1) The transferring shareholder has held the stock (as determined under section 1223) for less than two years before entering into the agreement to transfer the stock.

(2) The shareholder, any person acting in concert with the shareholder, or any person related to the shareholder or to a person acting in concert with the shareholder made or threatened to make a public tender offer for stock of the corporation at some time during the two-year period ending on the date of the acquisition of the stock by the corporation, and

(3) The acquisition is pursuant to an offer that was not made on the same terms to all shareholders.

(c) *Transactions occurring before March 31, 1988.* For transactions occurring before March 31, 1988, greenmail has the same meaning as in paragraph (b) of this section, except that it does not include any consideration transferred by any person acting in concert with the corporation described in that paragraph.

(d) *Effective date.* Generally, section 5881 of the Code applies to consideration received after December 22, 1987, in taxable years ending after that date. However, section 5881 does not apply to any acquisition of stock pursuant to a written binding contract in effect on December 15, 1987, and at all times thereafter before the acquisition.

Subpart B—Procedure and Administration

§156.6001-1 Notice or regulations requiring records, statements, and special returns.

(a) *In general.* Any person subject to tax under chapter 54 (Greenmail) of the Code shall keep such complete and detailed records as are sufficient to enable the district director to determine accurately the amount of liability under chapter 54.

(b) *Notice by district director requiring returns, statements, or the keeping of records.* The district director may require any person, by notice served upon him, to make such returns, render such statements, or keep such specific records as will enable the district director to determine whether or not the person is liable for tax under chapter 54 of the Code.

(c) *Retention of records.* The records required by this section shall be kept at all times available for inspection by

authorized internal revenue officers or employees, and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

§156.6011-1 General requirement of return, statement, or list.

Every person liable for tax under section 5881 of the Code shall file a return with respect to the tax on the form prescribed by the Internal Revenue Service (Form 8725). Each such person shall include therein the information required by the form and the instructions issued with respect thereto.

§156.6061-1 Signing of returns and other documents.

Any return, statement, or other document required to be made with respect to a tax imposed by chapter 54 (Greenmail) of the Code or the regulations thereunder shall be signed by the person required to file the return, statement, or other document, or by the persons required or duly authorized to sign in accordance with the regulations, forms, or instructions prescribed with respect to such return, statement, or document. An individual's signature on such a return, statement, or other document shall be prima facie evidence that the individual is authorized to sign the return, statement, or other document.

§156.6065-1 Verification of returns.

If a return, statement, or other document made under the provisions of chapter 54 (Greenmail) or of subtitle F of the Code, or the regulations thereunder with respect to any tax imposed by chapter 54, or the form and instructions issued with respect to such return, statement, or other document, requires that it shall contain or be verified by a written declaration that it is made under the penalties of perjury, it must be so verified by the person or persons required to sign such return, statement, or other document. In addition, any other statement or document submitted under any provision of chapter 54 or of subtitle F of the Code, or the regulations thereunder with respect to any tax imposed by chapter 54 may be required to contain or be verified by a written declaration that is made under the penalties of perjury.

§156.6071-1 Time for filing returns relating to greenmail.

(a) *In general.* Returns required by §156.6011-1 (relating to liability for tax

## Section 5881

on greenmail under section 5881) shall be filed on or before the ninetieth day following receipt of any portion of the greenmail. Greenmail is considered to be received when gain or other income is realized, as determined according to the taxpayer's method of accounting, with-out regard to any provision of the Code providing for deferral of recognition.

(b) *Returns relating to greenmail received before the date these regulations become final.* Returns required by §156.6011-1 that relate to greenmail received on or before December 18, 1991, shall be filed on or before March 18, 1992.

### §156.6081-1 Extension of time for filing the return.

(a) *Authority to grant extension.* District directors and directors of service centers are authorized to grant a reasonable extension of time for filing any return, statement, or other document that relates to any tax imposed by chapter 54 (Greenmail) of the Code and that is required under the provisions of chapter 54 or the regulations thereunder. However, except in the case of taxpayers who are abroad, such an extension of time shall not be granted for more than 6 months. An extension of time for filing a return shall not extend the time for the payment of the tax or any part thereof unless specified to the contrary in the grant of extension.

(b) *Application for extension.* The application for an extension of time for filing the return shall be addressed to the district director or the director of the service center with whom the return is to be filed and must contain a full recital of the causes for the delay. It should be made before the expiration of the time within which the return otherwise must be filed, and failure to do so may indicate negligence and constitute sufficient cause for denial. It should, where possible, be made sufficiently early to permit consideration of the matter and reply before what otherwise would be the due date of the return.

(c) *Filing of return.* If an extension of time for filing the return is granted, a return shall be filed before the expiration of the period of extension.

### §156.6091-1 Place for filing chapter 54 (Greenmail) tax returns.

Except as provided in §156.6091-2 (relating to exceptional cases):

(a) *Individuals, estates, and trusts.* In general, tax returns under chapter 54 of the Code of individuals, estates, and

trusts shall be filed with the district director for the internal revenue district in which is located the legal residence or the principal place of business of the person required to make the return.

(b) *Corporations.* In general, tax returns under chapter 54 of the Code of corporations shall be filed with the district director for the internal revenue district in which is located the principal place of business or the principal office or agency of the corporation.

(c) *Partnerships.* In general, tax returns under chapter 54 of the Code of partnerships shall be filed with the district director for the internal revenue district in which is located the principal place of business or the principal office or agency of the partnership.

(d) *Returns of taxpayers outside the United States.* The return of a person (other than a partnership or a corporation) outside the United States having no legal residence or principal place of business or agency in any internal revenue district, or the return of a partnership or a corporation having no principal place of business or principal office or agency in any internal revenue district, shall be filed with the Assistant Commissioner (International), Internal Revenue Service, 950 L'Enfant Plaza South, SW, Washington, D.C. 20224, unless the principal place of business or the legal residence of such person, or the principal place of business or principal office or agency of the partnership or corporation, is located in the Virgin Islands or Puerto Rico, in which case the return shall be filed with the Assistant Commissioner (International), Internal Revenue Service, Hato Rey, Puerto Rico 00918.

(e) *Returns filed with service centers or by hand carrying.* Notwithstanding paragraph (a), (b), (c), or (d) of this section, unless a return is filed by hand carrying, whenever instructions applicable to tax returns under chapter 54 of the Code provide that the returns be filed with a service center, the returns must be so filed in accordance with the instructions. Returns that are filed by hand carrying shall be filed with the district director (or with any person assigned the administrative supervision of an area, zone, or local office constituting a permanent post of duty within an internal revenue district of such director) in accordance with paragraphs (a), (b), (c), or (d) of this section.

### §156.6091-2 Exceptional cases.

Notwithstanding the provisions of §156.6091-1, the Commissioner may

permit the filing of any tax return under chapter 54 (Greenmail) of the Code with any internal revenue district.

### §156.6151-1 Time and place for paying of tax shown on returns.

The tax under chapter 54 (Greenmail) of the Code shown on any return shall, without notice of assessment and demand, be paid to the internal revenue officer with whom the return is filed at the time and place for filing such return (determined without regard to any extension of time for filing the return). For provisions relating to the time and place for filing such return, see §§156.6071-1 and 156.6091-1. For provisions relating to the extension of time for paying the tax, see §156.6161-1.

### §156.6161-1 Extension of time for paying tax or deficiency.

(a) *In general—(1) Tax shown or required to be shown on return.* A reasonable extension of the time for payment of the amount of any tax imposed by chapter 54 (Greenmail) of the Code and shown or required to be shown on any return may be granted by the appropriate district director at the request of the taxpayer. The period of such extension shall not exceed 6 months from the date fixed for payment of such tax.

(2) *Deficiency.* The time for payment of any amount determined as a deficiency in respect of tax imposed by chapter 54 of the Code may, at the request of the taxpayer, be extended by the internal revenue officer to whom the tax is required to be paid. The extension may be for a period not to exceed 18 months from the date fixed for payment of the deficiency, as shown on the notice and demand. In exceptional cases, a further extension for a period not in excess of 12 months may be granted. No extension of time for payment of a deficiency shall be granted if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(3) *Extension of time for filing distinguished.* The granting of an extension of time for filing a return does not operate to extend the time for the payment of the tax or any part thereof unless so specified in the extension.

(b) *Certain rules relating to extensions of time for paying income tax to apply.* The provisions of §1.6161-1 (b), (c), and (d) of this chapter (relating to a requirement for undue hardship, to the application for extension, and to pay-

ment pursuant to an extension) shall apply to extensions of time for payment of the tax imposed by chapter 54 of the Code.

*§156.6165-1 Bonds where time to pay tax or deficiency has been extended.*

If an extension of time for payment is granted under section 6161 of the Code, the district director or the director of the service center may, if he deems it necessary, require a bond for the payment of the amount in respect to which the extension is granted in accordance with the terms of the extension. However, the bond shall not exceed double the amount with respect to which the extension is granted. For provisions relating to form of bonds, see the regulations under section 7101 of the Code contained in part 301 of title 26 (Regulations on Procedure and Administration).

Par. 2. The authority citation of 26 CFR part 602 continues to read as follows:

Authority: (26 U.S.C. 7805)

Par. 3. Section 602.101(c) is amended by adding in the appropriate place in the table:

§156.6001-1 .....	1545-1049
§156.6011-1 .....	1545-1049
§156.6081-1 .....	1545-1049
§156.6161-1 .....	1545-1049

Michael J. Murphy,  
Acting Commissioner of  
Internal Revenue.

Approved November 21, 1991.

Kenneth W. Gideon,  
Assistant Secretary of  
the Treasury.

(Filed by the Office of the Federal Register on December 17, 1991, 8:45 a.m., and published in the issue of the Federal Register for December 18, 1991, 56 F.R. 65684)

**Subtitle F.—Procedure and Administration**  
**Chapter 61.—Information and Returns**  
**Subchapter A.—Returns and Records**  
**Part II.—Tax Returns or Statements**  
**Subpart A.—General Requirements**

**Section 6011.—General Requirement of Return, Statement or List**

Printing of substitutes for Form W-2, Wage and Tax Statement, and Form W-3, Transmittal of Income and Tax Statements. See Rev. Proc. 92-37, page 843.

*26 CFR 301.6011-2: Required use of magnetic media.*

Participants in the Magnetic Media Filing Program for Form 1040NR, U.S. Nonresident Alien Income Tax Return, are informed of their obligations to the Internal Revenue Service, taxpayers, and other participants. See Rev. Proc. 92-40, page 865.

**Subpart B.—Income Tax Returns**

**Section 6012.—Persons Required to Make Returns of Income**

*26 CFR 1.6012-5: Composite return in lieu of specified form.*

Participants in the Magnetic Media Filing Program for Form 1040NR, U.S. Nonresident Alien Income Tax Return, are informed of their obligations to the Internal Revenue Service, taxpayers, and other participants. See Rev. Proc. 92-40, page 865.

**Part III.—Information Returns**

**Subpart A.—Information Concerning Persons Subject to Special Provisions**

**Section 6031.—Return of Partnership Income**

An agreement between an owner of coin-operated amusements and an owner of a business establishment may be a lease or a partnership depending upon the particular facts. See Rev. Rul. 92-49, page 433.

**Subpart B.—Information Concerning Transactions with Other Persons**

**Section 6041.—Information at Source**

*26 CFR 1.6041-1: Return of information as to payments of \$600 or more.*

Specifications for paper substitutes for Forms 1096, 1098, 1099, 5498, and W-2G. See Rev. Proc. 92-30, page 754.

*26 CFR 1.6041-1: Return of information as to payments of \$600 or more.*

Printing of substitutes for Form W-2, Wage and Tax Statement, and Form W-3; Transmittal of Income and Tax Statements. See Rev. Proc. 92-37, page 843.

*26 CFR 1.6041-2: Return of information as to payments of \$600 or more.*

Printing of substitutes for Form W-2, Wage and Tax Statement, and Form W-3; Transmittal of Income and Tax Statements. See Rev. Proc. 92-37, page 843.

*26 CFR 1.6041-3: Payments for which no return of information is required under section 6041.*

An agreement between an owner of coin-operated amusements and an owner of a business establishment may be a lease or a partnership depending upon the particular facts. See Rev. Rul. 92-49, page 433.

*26 CFR 7.6041-1: Return of information as to payments of winnings from bingo, keno, and slot machines (temporary).*

Specifications for paper substitutes for Forms 1096, 1098, 1099, 5498, and W-2G. See Rev. Proc. 92-30, page 754.

**Section 6041A.—Returns Regarding Payments of Remuneration for Services and Direct Sales**

Specifications for paper substitutes for Forms 1096, 1098, 1099, 5498, and W-2G. See Rev. Proc. 92-30, page 754.

**Section 6042.—Returns Regarding Payments of Dividends and Corporate Earnings and Profits**

*26 CFR 1.6042-2: Returns of information as to dividends paid in calendar years after 1962.*

Specifications for paper substitutes for Forms 1096, 1098, 1099, 5498, and W-2G. See Rev. Proc. 92-30, page 754.

**Section 6043.—Returns Regarding Liquidation, Dissolution, Termination, or Contraction**

Specifications for paper substitutes for Forms 1096, 1098, 1099, 5498, and W-2G. See Rev. Proc. 92-30, page 754.

**Section 6044.—Returns Regarding Payments of Patronage Dividends**

*26 CFR 1.6044-2: Returns of information as to payments of patronage dividends with respect to patronage occurring in taxable years beginning after 1962.*

Specifications for paper substitutes for Forms 1096, 1098, 1099, 5498, and W-2G. See Rev. Proc. 92-30, page 754.

*26 CFR 1.6044-5: Statements to recipients of patronage dividends.*

Specifications for paper substitutes for Forms 1096, 1098, 1099, 5498, and W-2G. See Rev. Proc. 92-30, page 754.

**Section 6045.—Returns of Brokers**

*26 CFR 1.6045-1: Returns of information of brokers and barter exchanges.*

Specifications for paper substitutes for Forms 1096, 1098, 1099, 5498, and W-2G. See Rev. Proc. 92-30, page 754.