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The Black Lung Excise Tax on Coal

Salvatore Lazzari
Specialist in Public Finance
Resources, Science, and Industry Division

Summary

The Black Lung Excise Tax (BLET) on coal has been in effect since 1978 and finances the Black Lung Disability Trust Fund. An estimated \$14,000 million in coal excise tax revenues have gone into the fund through FY2004. The fund compensates miners (as well as their survivors and dependents) afflicted with pneumoconiosis, or “black lung disease,” pays their medical costs, and finances the costs of administering the program. In 1998 a U.S. district court ruled that the black lung excise tax on coal exports violated the export clause of the U.S. Constitution. Of the estimated \$1,300 million of taxes collected on coal exports, an estimated \$270 million would have to be (or has been) refunded. The remainder, approximately \$1,000 million of unconstitutionally collected taxes, cannot be refunded due to statute of limitation of the filing of valid and timely claims. In the 108th Congress two bills have been introduced relating to the black lung excise tax. The President’s FY2005 budget proposes to repeal the scheduled reduction in tax rates for coal sales after December 31, 2014. In addition to the black lung tax, coal producers pay a federal Abandoned Mine Land Reclamation Fee — absent reauthorization, this is scheduled to expire on October 1, 2004 — and state severance taxes. This report will not be updated.

Internal Revenue Code (IRC) § 4121 imposes an excise tax, the black lung excise tax (BLET), on coal mined domestically and sold by the producer. The BLET was enacted as part of the Black Lung Benefits Revenue Act of 1977 (P.L. 95-227), but the effective date of the tax, April, 1, 1978, was contingent upon enactment of the trust fund, which was enacted under the Black Lung Benefits Reform Act (P.L. 95-239) on March 1, 1978. The Black Lung Disability Trust Fund was enacted by Congress to compensate miners afflicted with pneumoconiosis, or “black lung disease.” This disease is caused by inhaling coal dust for prolonged periods of time, usually at least 10 years. Eventually the disease causes respiratory impairment; death usually follows within a few years thereafter.

The original BLET rates were 50¢/ton for underground mines and 25¢/ton for surface mines, each not to exceed 2% of price. These rates were temporarily doubled under the Black Lung Benefits Revenue Act of 1981 (P.L. 97-119), effective on January 1, 1982. The tax rates were scheduled to revert to their original levels but were instead extended at higher rates as part of the Consolidated Omnibus Budget Reconciliation Act

of 1985 (P.L. 99-272). That law raised the BLET rates by 10% to \$1.10/ton for underground mines and \$0.55/ton for surface mines, subject to a 4.4% of price ceiling. These increases became effective from April 1, 1986, and were to last until December 31, 1995. The Revenue Act of 1987 (P.L. 100-203) extended the termination date of the excise taxes to the earlier of January 1, 2014, or the first January 1 when the trust fund achieves solvency. Due to high and rising medical costs, the trust fund has been in deficit every year since its inception in 1978. In order to maintain revenues for the Black Lung Disability Trust Fund, the President's FY2005 budget proposes to repeal the scheduled reduction in tax rates for coal sales after December 31, 2014.

Structure of the Tax

The BLET is imposed on the producer, and the taxable event is the sale of the coal. The statute does not define the producer, but IRS regulations treat the producer as the person who has the vested ownership interest in the coal immediately after the coal is severed from the ground.¹ Typically, the coal producer is the mining company that extracts the coal from the mine, but it could also be a landowner (who contracts the actual mining to an independent contractor), or a lessee operator (who leases the land from a landowner from which the coal is mined). Essentially, this means that the owner of the coal is liable for the tax rather than the contract miner that is hired to physically extract the coal.

The producer is liable for the BLET immediately after the coal is severed from the ground and sold. The taxable event, under the tax law, is the sale of the coal by the producer to the first purchaser, which occurs when the ownership of the coal passes or transfers from the producer to the buyer. Legally, a sale is the transfer of the title to, or the substantial incidence of ownership of, the coal for consideration of money, or money's worth (services or other goods). The BLET is collected by the producer, who must register with the IRS, file the required tax return (Form 720) to report the collections, and remit the funds to the Treasury. Returns are generally filed quarterly, but more frequent filing may be required if the producer fails to make the required deposits on a timely basis. Deposits are generally made twice a month and reported by the producer using a federal tax deposit form (Form 8109) unless deposits are made electronically.

The BLET statute is subsumed in Chapter 32 of the tax code, along with other "manufacturer excise taxes" such as the gas-guzzler tax, the taxes on petroleum products such as gasoline and diesel fuel, and the excise tax on vaccines. As such, the statutes and rules that apply to other manufacturers' excise taxes — for example, regarding the procedures for refunds and credits of tax overpayments (which will be discussed below) — also generally apply to the BLET. For purposes of these taxes, the manufacturer and producer are one and the same.

¹ 26 CFR 48.4121-1.

Rates of Tax

The BLET rate is \$1.10 per ton of coal produced from underground mines and \$0.55 per ton of coal produced from surface mines, subject to a maximum tax rate of 4.4% of the coal's sales price (free on board).² Therefore, coal will be taxed at the 4.4% rate if the selling price is less than \$25/ton for underground mines and \$12.50/ton for surface mines. For example, when average selling prices were \$17/ton for deep coal, the tax was \$0.748/ton, rather than \$1.10; with current coal prices well above \$25/ton, the BLET rate on deep coal is limited to \$1.10/ton.³

Tax Deductibility

The BLET is a cost of doing business for the coal producers and as such is deductible against the income tax. Tax deductibility reduces the income tax otherwise payable, which reduces the net cost of the excise tax to the producer as follows: If T is the BLET rate, and t_y is the marginal corporate income tax rate, then the after-tax cost to the coal producer would be:

$$T (1 - t_y)$$

To illustrate, for underground mines the gross BLET is \$1.10/ton. But for a corporate coal producer taxed at the 35% corporate tax rate, the after-tax cost is \$0.72/ton (65% of \$1.10). For a surface mine the comparable after-tax cost is 65% of \$0.55/ton (or \$0.36/ton).

The Three Exemptions

The BLET is imposed on the sale of all domestic coal with three exceptions.

Lignite

Lignite is statutorily exempt under subsection (c) of IRC § 4121. Lignite, also known as brown coal, is a low-grade coal of a variety intermediate between peat and bituminous coal; it has a high moisture and volatile matter content and a high ash content. It is a low-Btu coal and is used almost exclusively by the electric utility industry. It is produced primarily in two states: Texas (65% of production), and North Dakota (35% of production).⁴

² The "free on board" (f.o.b.) price of coal is the price of coal at the mine, excluding transportation (or shipping) and insurance costs. The f.o.b. price could include the cost of cleaning the coal (removing noncombustible materials such as rock, ash, and other refuse) if the cleaning occurs before the first sale (i.e., if the first purchaser is buying clean coal).

³ Spot coal prices recently approached \$60/ton. See Steven D. Jones, "Coal Is Red Hot, but for How Long?," *Wall Street Journal*, July 20, 2004.

⁴ Louisiana and Montana also produce small quantities of lignite. See CRS Report RL31819, *U.S. Coal: A Primer on the Major Issues*, coordinated by Marc Humphries.

Imported Coal

The BLET is also not imposed on coal imports. This exemption is implied by IRC § 4121, subsection (a)(1), which states that the tax is imposed on “coal mined in the United States.” Coal imports, which are a negligible fraction of domestic production (2%), come mostly from Colombia and Venezuela.

Exported Coal

Finally, on May 20, 2000, the IRS officially stopped collecting the BLET on exported coal (i.e., domestically produced coal sold and destined for export).⁵ IRS treats coal as being destined for export if it is “in the stream of export” when it is sold by the producer, and the coal is actually exported. Coal is defined as being in the stream of export if the sale is but one of the steps involved in the exportation process to its ultimate destination to a foreign purchaser.

The exemption for exported coal is not a statutory exemption; it was established in a 1998 federal district court ruling, *Ranger Fuel*, that found the tax on exports to be unconstitutional.⁶ Unlike most manufacturer excise taxes, which explicitly exempt export sales from federal taxation, the BLET statute (i.e., IRC § 4121) has never specifically exempted exported coal from tax. Further, other sections of the tax code concerning manufacturers’ excise taxes in Chapter 32, which apply equally to the coal tax, authorized — at least before the tax was ruled unconstitutional in 1998 — the imposition of the tax on coal exports. According to IRC § 4221:

No tax shall be imposed under this chapter (other than §4121) ... on the sale ... of an article ... for export, or for resale by the purchaser to a second purchaser for export.

Thus, this provision does not apply to the BLET, §4121, which is part of Chapter 32 of the tax code.⁷

The export clause of the U.S. Constitution (Article I, §9, clause 5) states, however, that:

No tax or duty shall be laid on Articles exported from any State.

In 1998, a group of coal producers *cum* exporters successfully argued that the BLET imposed on exported coal violated the export clause. In that case, *Ranger Fuel*, a U.S. district court agreed that the excise tax on exported coal was unconstitutional. The IRS acquiesced to the *Ranger Fuel* decision in Notice 2000-28, which was issued on May 20, 2000.

⁵ IRS Notice 2000-28, 2000-1 CB 1116.

⁶ *Ranger Fuel*, 33 F. Supp. 2d at 468.

⁷ Many of the exemptions that apply to other manufacturer’s taxes — such as sales to state and local government or nonprofit educational institutions, or on sales of the product used as a feedstock — also do not apply to coal.

Credits and Refunds

The *Ranger Fuel* decision established that (1) after 1998, all coal sales destined for export would be tax exempt up front; and (2) all BLET imposed on exports which were inappropriately (or unconstitutionally) collected constituted overpayments and would have to be refunded by the IRS if a valid and timely claim was made.⁸

The unconstitutionally collected excise taxes covered all those amounts collected from the inception of the BLET and up to the 1998 ruling, but also included any taxes collected up to the time the IRS issued Notice 2000-28, which was May 20, 2000.⁹ However, under the general excise tax statutes, a refund claim is timely if made within three years from the time the tax return reporting the liability (Form 720) is filed or two years from the time the tax monies are actually paid, whichever is later. Assuming coal producers stopped paying the BLET in 1998, and with the three-year statute of limitations on coal producers could claim refund of taxes paid from 1995 to 1998, producers making a claim in 1998 could reach back to taxes paid in 1995; similarly, producers that paid taxes in 1999 would have had until 2002 to file a claim for a refund.

Table 1 shows the estimated amount of BLET collected on coal exports from the tax's inception to its being ruled unconstitutional in December 1998 (column 5). Column 2 shows annual total BLET revenues collected. Columns 3 and 4 show the total amount of coal exports and the estimated average effective tax rates. Average effective tax rates are calculated by dividing total revenues by total taxable production. The product of the estimated average effective tax rate (column 4) and the magnitude of coal exports from 1978 to 1998 (column 3) yields the estimated coal export tax revenues in column 5. Note that the estimated total tax burden on coal exports through 1999 — what the IRS collected — is \$1,305.22 million. But, owing to the time limitations on the claiming of tax refunds or credits, the maximum amount of the potential refunds is estimated at approximately \$270 million, assuming the IRS stopped collecting the tax in 1998.¹⁰ The \$970 million in taxes collected prior to 1995, which cannot be refunded because of the three-year statute of limitations, represents the amount of inappropriately or unconstitutionally collected BLET.

⁸ Presumably, coal not originally destined for export but eventually exported would be taxed up front, and taxpayers would not be able to claim a refund (or a tax credit) since the coal was not “destined for export.”

⁹ The plaintiffs for *Ranger* filed their case in 1998, but it was not officially known whether the IRS would appeal the decision to the Supreme Court until the IRS promulgated Notice 2000-28 on May 20, 2000. Thus, in the intervening time it is possible that some coal companies continued to collect the BLET and remit the monies to the treasury.

¹⁰ In reality the estimate could be somewhat higher if producers paid taxes during 1999 and 2000 which the aggregate receipts data in **Table 1** show. This is possible because producers were unsure whether the IRS would appeal the *Ranger* decision to the Supreme Court. As noted, it was not until IRS decision 2000-28 on May 28, 2000, that the IRS made it official that it would not appeal the decision, although there is information that it stopped collecting the tax sometime after 1998, but before the 2000-28 decision.

Table 1. Estimated Potential Refund Claims

Year	Total Tax Receipts (\$mil.)	Coal Exports (mil. tons)	Effective Tax Rate (\$/ton)	Est. Tax on Coal Exports (\$mil.)
1978	92.10	40.70	0.145	8.14
1979	221.60	66.00	0.300	13.20
1980	272.30	91.70	0.348	18.34
1981	236.60	112.50	0.306	22.50
1982	490.70	106.30	0.625	74.41
1983	493.70	77.80	0.682	54.46
1984	518.00	81.50	0.631	57.05
1985	548.40	92.70	0.676	73.23
1986	561.20	85.50	0.690	67.55
1987	547.80	79.60	0.652	62.88
1988	601.30	95.00	0.695	75.05
1989	588.00	100.80	0.657	79.63
1990	649.50	105.80	0.690	83.58
1991	630.70	109.00	0.693	86.11
1992	630.60	102.50	0.695	80.98
1993	605.00	74.50	0.707	58.86
1994	597.20	71.40	0.632	56.41
1995	601.80	88.50	0.636	69.92
1996	615.10	90.50	0.630	71.50
1997	624.60	83.50	0.622	65.97
1998	620.30	78.00	0.601	61.62
1999	568.90	58.50	0.561	32.82
2000	525.10	58.50	0.531	0
2001	548.80	48.70	0.524	0
2002	548.50	39.60	0.542	0
2003	506.00	43.00	N.A.	0
Totals	13,451.20	2,082.10		1,274.19

Sources: Energy Information Administration, *Coal Industry Annual*, various issues; U.S. Treasury Department, *Statistics of Income Bulletin*, various issues; Office of Management and Budget, *Composition of Social Insurance and Retirement Receipts and of Excise Taxes: 1940-2009*.

Notes: N.A. denotes "not available." An estimate for this year is not possible due to lack of data.