

Audit Technique Guide – Black Lung Benefit Trusts, IRC Section 501(c)(21)

Introduction

This section contains detailed technical information and specific audit guidelines for an IRC Section 501(c)(21) tax exempt organization. It provides effective audit techniques to identify and develop issues found during audits of IRC Section 501(c)(21) organizations. See IRM 7.25.22, Black Lung Benefit Trusts for additional technical information. These guidelines are not all-inclusive. Agents aren't restricted from identifying issues or using audit techniques not included here. See [IRM 4.75.11](#), On-Site Audit Guidelines for general field audit guidelines.

This section frequently references these forms and publications:

- Form 870-E, Waiver of Restrictions on Assessments and Collection of Deficiency and Acceptance of Overassessment
- Form 886-A, Explanation of Items
- Form 990-BL, Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons
- Form 1041, U.S. Income Tax Return for Estates and Trusts
- Form 4621-A, Report of Examination-Exempt Organizations
- Form 4883, Exempt Organizations Excise Tax Audit Changes
- Form 6018-A, Consent to Proposed Action-Non Declaratory Judgment
- Form 6069, Return of Excise Tax on Excess Contributions to Black Lung Benefit Trust Under Section 4953 and Computation of Section 192 Deduction
- Form 14017, Application for Fast Track Settlement
- Pub 5092, Fast Track Settlement: A Process for Prompt Resolution of Tax Exempt and Government Entities (TE/GE) Tax Issues

Background

In 1981, coal mining and related activities started to be regulated. Congress enacted a series of public laws throughout the decades governing mine safety, health of miners, and benefits paid to miners.

Coal miners and those working with coal commonly encounter coal dust, leading to a respiratory condition medically referred to as coal workers' pneumoconiosis, or more commonly known as black lung. The laws restrict black lung disease diagnoses to only those working with coal.

The Federal Black Lung Benefit Act (also known as the Federal Coal Mine Health and Safety Act of 1969 (P.L. 91-173)) added IRC Section 501(c)(21) and obligates coal mine operators to provide certain benefits to employees stricken with black lung disease due to exposure to coal dust during their employment.

The Black Lung Benefits Revenue Act of 1977 (BLBRA) (P.L. 95-227), amended the Code to establish a trust fund (the Black Lung Disability Trust Fund) funded by the coal tax and certain other revenues. The funds are for medical benefits expenses when these benefits aren't paid by the appropriate mine operator. The act required that mine operators are liable to the fund, for benefits the fund paid, for which they are liable.

The BLBRA limited tax deductions for amounts the operator contributed to the trust. The act also imposes taxes under IRC Section 4951 for engaging in the acts of self-dealing, and IRC Section 4952 for making taxable expenditures, and IRC Section 4953 for making excess contributions to black lung benefit trusts.

P.L. 95-488 amended the Code to allow an additional income tax deduction for contributions to a tax-exempt black lung disability trust for the funding of future liabilities an employer incurs. This law limited the amount of the deduction to an amount:

- determined per sound actuarial methods,
- necessary to fund the remaining taxpayer's unfunded liability
- for black lung claims that the taxpayer's past or present employees filed (or expected to be filed), or
- an amount necessary to pay all black lung benefits for the current taxable year.

P.L. 95-488 also requires that deductions for this estimated unfunded liability be taken over a funding period, which is the greater of:

- the average remaining working life of miners of the taxpayer's present employees, or
- 10 tax years.

The law also disallowed ordinary and necessary business expense deductions for direct payments outside the trust for black lung benefit liabilities.

The final aspect of P.L. 95-488 was to open for public inspection the exemption application and tax returns of a black lung disability trust, while prohibiting the disclosure of black lung trust contributors.

In the Deficit Reduction Act of 1984 (P.L. 98-369), Congress imposed the rules of IRC Section 501(c)(21) upon Nuclear Decommissioning Trust Funds described in IRC 468A(e), possibly subjecting them to an excise tax under IRC Section 4951. These trusts file Form 1120-ND, Return for Nuclear Decommissioning Funds and Certain Related Persons, and are under LB&I Division's jurisdiction.

Exemption Requirements

A trust must be created or organized in the United States and established per a written instrument (IRC Section 501(c)(21)). An oral trust is insufficient, even if valid under state law. The trust's terms must specify that no part of its assets may be used for, or diverted to any purpose not specified in IRC Section 501(c)(21)(A). There's no particular form required for the trust instrument.

IRC Section 501(c)(21)(A) sets the this trust's purpose as exclusively to:

- Satisfy, in whole or in part, the coal mine operator's (or other person subject to IRC Section 501(c)(21)) liability for, or with respect to, claims for compensation for disability or death due to pneumoconiosis under Black Lung Acts.
- Pay premiums for insurance exclusively covering this liability.
- Pay administrative and other incidental expenses of this trust connected to the trust operation and claim processing (against the coal mine operator (or other person subject to IRC Section 501(c)(21)) under Black Lung Acts).
- Pay accident or health benefits for retired miners, their spouses and dependents (including administrative and other incidental expenses of this trust) or premiums for insurance exclusively covering these benefits.
- Invest in qualified investments (but only those exceeding current year obligations).
- Pay into the Black Lung Disability Trust Fund (established under IRC Section 9501) or into the general fund of the United States Treasury (other than in satisfaction of

any tax or other civil or criminal liability of the person who established or contributed to the trust).

A black lung trust's diversion of assets may result in excise taxes under IRC Section 4951, IRC Section 4952, and IRC Section 4953.

An operator may use more than one trust.

Example: A trust may be established only for state or only for federal claims. The trust doesn't need to make direct payments itself, as it may purchase, in whole or in part, insurance exclusively covering liability for black lung benefits.

Insurance companies can't establish trusts described in IRC Section 501(c)(21) because their liabilities arise from contractual obligations rather than the operation of a mine.

The trust may pay its administrative and incidental costs from its assets. These costs may include any excise tax imposed on a taxable expenditure under IRC Section 4952 and reasonable expenses connected to a claim against the trust for liability as a taxable expenditure (Treas. Reg. 1.501(c)(21)-1).

Also, the trust can't cover excise taxes imposed on the trustee or other disqualified person for acts of self-dealing (IRC Section 4951) or making excess contributions (IRC Section 4953) (Treas. Reg. 1.501(c)-21).

A trust may purchase insurance covering the trustee's liability for excise taxes if the insurance cost and any other trustee compensation is reasonable. A trust may also indemnify a trustee for reasonable expenses from a successful defense in an administrative proceeding on excise taxes. This indemnification is also subject to reasonable compensation limitations.

A trust may invest its assets but only those that exceed current year obligations. These investments must be limited to United States public debt securities (obligations guaranteed as to principal and interest by the United States), obligations of a state or local government, which aren't in default as to principal and interest, or time-demand deposits in a bank or an insured credit union in the United States.

A trust seeking recognition of exemption from federal income tax under IRC Section 501(c)(21) should write to:

Internal Revenue Service
P.O. Box 12192
Covington, KY 41012

There's no specific application form. However, the trustee should submit a letter requesting a ruling on exempt status and a copy of the trust instrument.

Excise Taxes

Black lung benefit trusts are subject to excise taxes on:

- certain acts of self-dealing, IRC Section 4951
- taxable expenditures, IRC Section 4952
- excess contributions to these trusts, IRC Section 4953.
- self-dealing and taxable expenditures per Treas. Regs. 53.4951-1(a) and 53.4952-1(a).

Regulations and rulings under IRC Section 4941, IRC Section 4945, and IRC Section 4946 apply where appropriate.

A person's liability for tax as a self-dealer or trustee under IRC Section 4951 and IRC Section 4952 is joint and several. If more than one person is liable for tax on an act of self-dealing as a self-dealer or trustee, they may prorate the tax among themselves. The IRS can assess a deficiency against one or more self-dealers or trustees liable for the tax under IRC Section 4951 or IRC Section 4952, regardless of the apportionment of tax shown on the return, if the amount that all those who are liable for a particular transaction paid is less than the total tax due for that transaction.

Self-disclosure of the first tier taxes under IRC Section 4951 and IRC Section 4952 is listed on Form 990-BL Schedule A.

Excise Taxes: IRC Section 4951

IRC Section 4951(a)(1) imposes an initial tax of 10 percent of the amount involved for each act of self-dealing between a disqualified person and a IRC Section 501(c)(21) trust, for each year (or part of a year) in the taxable period. Any disqualified person (other than a trustee acting only as a trustee) who participated in the act of self-dealing pays the tax.

When a tax is imposed on an act of self-dealing, any trustee who knowingly participated in that act must pay a tax of 2.5 percent of the amount involved in the act of self-dealing for each year or part of a year in the taxable period unless participation in the act wasn't willful and was due to reasonable cause. (IRC Section 4951(a)(2)).

IRC Section 4951(b)(1) imposes a tax equal to 100 percent of the amount involved on the self-dealer if the initial tax of 10 percent was imposed, and the act isn't corrected within the taxable period. Any disqualified person (other than a trustee acting only as a trustee of that trust) who participated in the act of self-dealing pays the 100 percent tax.

IRC Section 4951(b)(2) imposes a tax equal to 50 percent of the amount involved on a trustee in a case in which the 100 percent tax is imposed on the self-dealer, if a trustee of that trust refused to agree to part or all of the correction. Any trustee who refuses to agree to part or all of the correction pays the 50 percent tax. (IRC Section 4951(b)(2)).

"Self-dealing" under IRC Section 4951 means any direct or indirect:

- Sale, exchange, or leasing of real or personal property between a trust described in IRC Section 501(c)(21) and a disqualified person.
- Lending of money or other extension of credit between such a trust and a disqualified person.
- Furnishing of goods, services, or facilities between such a trust and a disqualified person.
- Payment of compensation (or payment or reimbursement of expenses) by such a trust to a disqualified person.
- Transfers to, or use by or for the benefit of, a disqualified person of the income or assets of such a trust.

Self-dealing also includes the following:

- A disqualified person's transfer of personal property to the trust is treated as a sale or exchange if the property is subject to a mortgage or similar lien.

- If a bank or an insured credit union is a trustee of the trust or otherwise is a “disqualified person” with respect to the trust, any amount invested in checking accounts, savings accounts, certificates of deposit, or other time or demand deposits in that banker credit union constitutes a lending of money.

Self-dealing excludes the following:

- The furnishing of goods, services, or facilities by a disqualified person to a trust is treated as a sale or exchange if the property is subject to a mortgage or similar lien.
- The trust’s payment of compensation (and payment or reimbursement of expenses) to a disqualified person for personal services that are reasonable and necessary to carry out the trust’s exempt purposes if the compensation/payment/reimbursement isn’t excessive.

“Disqualified person” means, for a trust described in IRC Section 501(c)(21), a person who is a/an:

- a) Contributor to the trust.
- b) Trustee of the trust.
- c) Owner of more than 10 percent of the total combined voting power of a contributing corporation.
- d) Owner of more than 10 percent of the profits interest of a contributing partnership.
- e) Owner of more than 10 percent the beneficial interest of a contributing trust or contributing unincorporated enterprise.
- f) Officer, director, or employee of a person contributing to the trust.
- g) Spouse, ancestor, lineal descendant, or spouse of a lineal descendant of an individual described in a, b, c, d, e or f above.
- h) Corporation of which persons described in a, b, c, d, e, f, or g, own more than 35 percent of the total combined voting power.
- i) Partnership in which persons described in a, b, c, d, e, f, or g own more than 35 percent of the profits interest.
- j) Trust or estate in which persons described in a, b, c, d, e, f, or g hold more than 35 percent of the beneficial interest.

“Amount involved” means, for any act of self-dealing, the greater of:

- the amount of money and the fair market value (FMV) of the other property given, or
- the amount of money and the FMV of the other property received. In the case of services involving payment of compensation (IRC Section 4951(d)(2)(C)), the amount involved is only the excess compensation.

Determine the FMV for property by using:

- The date on which the act of self-dealing occurs for the initial taxes imposed by IRC Section 4951(a).
- The highest FMV during the taxable period for additional taxes imposed by IRC Section 4951(b).

“Taxable period” means, with respect to any act of self-dealing, the period beginning with the date on which the act of self-dealing occurs and ending on the earliest of the date:

- IRS mails a Statutory Notice of Deficiency (90-day letter) for the tax imposed by IRC Section 4951(a)(1).
- IRS assesses the IRC Section 4951(a)(1) tax.

- The disqualified person corrects the act of self-dealing.

“Correction” and “correct” mean, for any act of self-dealing, undoing the transaction to the extent possible, but in any case, placing the trust in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards.

As IRC Section 4951 and IRC Section 4941 share the same statutory framework, compute the taxes for IRC Section 4951 the same way as for IRC Section 4941, just with different tax rates.

Excise Taxes: IRC Section 4952

IRC Section 4952(a)(1) imposes an initial tax of 10 percent of the amount of the taxable expenditure from the assets of a IRC Section 501(c)(21) trust. The trustee pays the tax out of the assets of the trust.

Any trustee who agreed to the expenditure, knowing it was taxable, must pay a tax of 2.5 percent of the amount of the taxable expenditure unless his agreement wasn't willful and was due to reasonable cause. The trustee who agreed to making the expenditure pays the 2.5 percent tax. (IRC Section 4952(a)(2))

IRC Section 4952(b)(1) imposes a tax equal to 100 percent of the taxable expenditure on the trust, if the initial tax of 10 percent is imposed, and if the taxable expenditure isn't corrected within the taxable period. The trustee pays the 100 percent tax out of the trust assets.

IRC Section 4952(b)(2) imposes a tax equal to 50 percent of the taxable expenditure on a trustee in a case in which the 100 percent tax is imposed on the trust, and the trustee refuses to agree to a part or all of the correction. Any trustee who refuses to agree to part or all of the correction pays the 50 percent tax.

For IRC Section 4952, “taxable expenditure” means any amount the trust under IRC Section 501(c)(21) paid or incurred other than for a purpose specified in that section.

“Taxable period” means, for any taxable expenditure, the period beginning with the date on which the taxable expenditure occurs and ending on the earlier of:

- The date IRM mails a Statutory Notice of Deficiency (90-day letter) for the IRC Section 4952(a)(1).
- The date IRS assesses the IRC Section 4952(a)(1) tax.

The terms “correction” and “correct” mean, for any taxable expenditure, placing the trust in a financial position not worse than that in which it would've been if the taxable expenditure hadn't been made:

- By recovering all or part of the expenditure to the extent recovery is possible.
- When full recovery isn't possible, the person(s) whose liabilities for black lung benefit claims (as defined in IRC Section 192(e)) are paid from the trust, makes contributions.

As IRC Section 4952 and IRC Section 4945 share the same statutory framework, compute the taxes for IRC Section 4952 the same way as for IRC Section 4945, just with different initial tax rates.

Excise Taxes: IRC Section 4953

The contributor must pay a 5 percent tax on the excess contributions over the deductibility limits of IRC Section 192 (IRC Section 4953). Form 6069 computes this amount, so the computations explained below mirror the form.

Note: IRC Section 192 controls the deductions in question, so LB&I administers both IRC Section 192 and IRC Section 4953.

To determine the amount of excess contributions, the coal mine operator (contributor) must first determine the maximum allowable deduction under IRC Section 192. This requires the contributor to determine the amount necessary to fund (with level funding) the remaining unfunded liability for claims filed or expected to be filed by, or on behalf of, his past or present employees based on:

- The average remaining working life of miners currently employed (Amount A).
- 10 tax years (Amount B).
- Any other funding period the Secretary of the Treasury prescribed or approved (Amount C).

The contributor must also determine:

- The amount necessary to carry out the IRC Section 501(c)(21)(A) purposes for the tax year (Amount D).
- The trust's assets fair market value (Amount E).

The computation of the maximum allowable deduction under IRC Section 192 is as follows:

- Select the lesser of Amount A or Amount B.
- Compare this amount to Amount C. Select the greater of the two. Call this Amount F.
- Subtract Amount E from Amount D, with the result \$0 or greater (no negative amount). Call this Amount G.
- Compare Amount F to Amount G. The larger of the two amounts is the maximum allowable deduction under IRC Section 192. Call this Amount H.

To compute the excise tax under IRC Section 4953, you need another three amounts:

- The contributions made to the IRC Section 501(c)(21) trust for operator's tax year (Amount I).
- The amounts, if any, of excess contributions from the prior year (Amount J).
- The amount of the previous year's excess contributions, if any, returned to the contributor during the current tax year (Amount K).

Note: If this is the first year of the trust, there will be no prior year excess contributions (Amount J) and no prior year excess contribution return (Amount K).

Compute the tax as follows:

- Subtract Amount H from Amount I, and call this Running Total.
- Subtract Amount I from Amount H, with the result \$0 or greater. Call this Amount L.
- Add Amount J to the Running Total.
- Subtract Amount K and Amount L from the Running Total, with the result \$0 or greater.
- Multiply the Running Total by 5 percent to arrive at the tax.

There is no correction requirement for this type of violation and it isn't reportable to state officials under IRC Section 6104(c).

Large Business and International (LB&I)-Requests for Assistance

LB&I may have questions about an IRC Section 501(c)(21) Black Lung Benefit Trust's exempt status during their audit of a coal mine operator's income tax return.

LB&I asks EO for help through the Specialist Referral System (SRS). When LB&I agents submit an online request for an EO agent, SRS automatically notifies the appropriate EO Manager of the request. The system provides management information reports.

SRS referrals are automatically tracked and follow up with the EO manager if he/she doesn't respond.

EO's help can range from answering informal questions submitted via SRS to formal assistance on an LB&I case. Either way, the LB&I agent maintains control of the return and its management.

EO agent(s) assigned to the case should meet with the LB&I agent and the taxpayer (if appropriate) to discuss the:

- issue
- information required
- time for information to be presented
- estimated completion date of the report

Coordinate with the LB&I agent to ensure issues are material to the return and time charged is commensurate with the issue.

Elevate disagreements on proposed adjustments between LB&I and EO to your respective managers for resolution.

Formal Assistance

If LB&I request EO Exam's help on Black Lung Benefit Trusts, request a copy of Form 6069 and a copy of the trust instrument from the LB&I agent. If the coal mine operator didn't file or prepare the required Form 6069, LB&I obtains the required data.

After receipt of all necessary information, determine whether the Black Lung Benefit Trust involved is exempt under IRC Section 501(c)(21). Determine exempt status based on:

- Information provided by LB&I.
- Exempt Organization Business Master File (EOBMF).
- Audit, if necessary. If required, get the trust's Form 990-BL by opening the case on the Reporting Compliance Case Management System (RCCMS) using source code 70.

Note: If the LB&I agent requested the audit of an exempt trust, and believes it to fail either the organizational or operational aspects of IRC Section 501(c)(21), an audit is required.

For a trust determined non-exempt (and wasn't previously granted exemption):

- Secure Form 1041.
- Send Form 1041 to the appropriate service campus for processing.
- Give a copy of the Form 1041 to the LB&I agent.
- Provide assistance to develop any necessary information.

When you're finished considering the LB&I referred issues, return the determination and any supporting data to LB&I. Attach any additional reports necessary to show the results of actions you took.

LB&I is responsible for protecting the statute of limitations on the coal mine operator's income tax return while EO assists.

Form 990-BL

Generally, the information reported on or with Form 990-BL, including most attachments, is available for public inspection (IRC Section 6104(b)). This applies to information required by the form and to information furnished voluntarily.

Note: The public inspection rules don't apply to:

- Form 990-BL, Part IV, Statement With Respect to Contributors, etc.
- Schedule A (Form 990-BL)
- the trustee or disqualified person's SSN or EIN
- Form 990-BL and the attached Schedule A (Form 990-BL) a trustee or disqualified person files to report initial taxes on self-dealing or taxable expenditures

The Form 990-BL can be filed by:

- A black lung benefit trust as an information return, or tax return, or both
- A trustee for his/her liability for taxes under IRC Section 4951 or IRC Section 4952, or both
- A disqualified person liable for IRC Section 4951 tax only

If an individual files Form 990-BL using a Social Security Number, the return posts to Non-Master File (NMF). Individual Master File (IMF) displays only the Forms 1040 and civil penalties. Forms 990-BL aren't available on the Online Statistics of Income Exempt Organizations Return Image Net system (SEIN). Request them from files.

Preaudit Procedures

When you receive the case file, do IDRS research using codes BMFOLI and BMFOLT to determine the filing history and assessment statute expiration dates for the return under audit and the prior and subsequent years.

Discuss with your group manager whether to open the prior and subsequent years for audit, and/or whether to request them as reference returns ([IRM 4.5.3](#)). Due to the inability to view electronic images, request returns from files via RCCMS using source code 45 - Reference and Information Return.

Note: When you receive a reference return, make a copy, and close it off RCCMS within 30 days, unless you and your manager decide to convert the return to an open audit.

Review the return for large, unusual, and questionable items. Questionable items can include, but are not limited to, amounts reported as other income, other expenses, and other assets. IRC Section 501(c)(21) is very specific about what is permitted in each category (revenue, expenses, and assets).

Check Form 990-BL, Part IV, line 2 to see if excess contributions were marked "Yes." If so, check BMFOLT to verify the operator filed Form 6069.

Review Form 990-BL, Part III checklist items. Any disclosures of excise taxes under IRC Section 4951 and IRC Section 4952 will be declared here, and reported on the third page, Schedule A. The names of the responsible trustees and/or disqualified persons will be listed, but without any identifying numbers.

Before you initially contact the organization, request the determination file from Cincinnati using the Form 14264, Request for Employee Plans or Exempt Organizations Administrative File. You can request electronic copies, which Cincinnati will send on a CD or via secure e-mail.

Determine whether the organization has filed a determination application, based on the response from the EO Microfiche Unit. If there's no determination file, ask in the initial document request (IDR) for the trust instrument and any amendments to the trust instrument.

When you receive the determination file, examine the trust instrument to verify that the trust meets the exemption requirements detailed above.

Using these records, revise your initial interview accordingly. At a minimum, ask the following questions:

- Who are disqualified persons with respect to the trust?
- On behalf of which company (or companies), does the trust operate?
- With which insurance company (or companies) did the trust have black lung insurance policies during the year under audit, if any?
- What types of policies did the trust place with the insurance company (or companies)?
- Who is covered by the insurance policies?
- Which financial institutions hold the investment assets?
- What is the specific mix of investment assets (checking/savings accounts, certificates of deposit, government bonds)?
- Are there any other assets aside from the investment assets, and if yes, what are they?

If the trust didn't place insurance policies, request the organization to describe the process through which the trust determines and makes payments for black lung benefits.

Consider requesting the following items in your IDR to sample review, depending on whether the organization reports that they pay benefits directly:

- Medical claim reimbursement form
- Proof of payment of doctor visits
- Pharmacy bill receipts
- Medical travel refund requests
- Remittance vouchers (or other similar documents)
- Policy of permitted expenses
- List of reimbursed coal miners (and other recipients), providing the name, address, and employer (if multiple coal mine operators involved in the trust)

Request in the initial IDR the organization's actuarial computations for the amounts listed above under "Excise Taxes: 4953." Or, if they filed Form 6069, request a reference return via RCCMS using source code 45.

Field/Office Correspondence Procedures

Obtain any revised trust instruments not already included in the determination file, even if previously attached to Forms 990-BL.

Inspect all sources of income, such as cash receipts journal, bank statements, credit union statements, etc.

- Verify the accuracy of the amounts reported on the return.
- Identify any unusual sources of income.

Note: Consider income received from any source other than the employer or permitted investments unusual and meriting further investigation.

Review disbursement journals and supporting documents, including invoices and cancelled checks to:

- Verify the accuracy of the amounts reported on the return.
- Identify any unusual disbursements.

Note: Consider disbursements for other than benefits and administrative expenses, including legal, accounting, actuarial, and trustee expenses, unusual and meriting further investigation.

Test benefit payments to determine whether they are permitted benefits, using the documents you requested in the initial IDR above. The trust can't make benefit payments unrelated to black lung disease.

Example: Workers compensation payments for injuries or death resulting from coal mine accidents.

Verify that the trust used its assets for investments only to the extent that those assets exceed current year obligations.

Verify that the trust only invested its assets in the following types of permitted investments:

- "Public debt" securities of the United States, obligations guaranteed as to principal and interest by the United States (for example, Treasury bonds).
- Obligations of a state or local government which aren't in default as to principal or interest (for example, municipal bonds, Build America Bonds).
- Time or demand deposits in a bank or an insured credit union located in the United States (for example, checking accounts, savings accounts, certificates of deposit).

Get your manager's approval to expand the audit to multiple years if you determine an unreported liability for IRC Section 4951 and/or IRC Section 4952 excise taxes.

Concluding the Audit

Determine if the organization continues to qualify for exemption under IRC Section 501(c)(21). Prepare an audit report revoking the organization if:

- The organization's trust instrument, as amended, doesn't properly restrict use of the assets to IRC 501(c)(21) purposes.
Note: If this is the sole issue, secure an amendment to the trust instrument correcting the deficiency to remedy.
- The organization's trust instrument was created outside the United States.
- An insurance company established the trust.
- The investment assets aren't qualified investments.
- The trust made significant amounts of taxable expenditures or self-dealing transactions during the years under audit. Consult Counsel in these situations.

Example: If over 50 percent of the organization's expenditures were self-dealing transactions that also constituted taxable expenditures, the trust would likely merit revocation.

For an agreed revocation, close the case using the procedures in [IRM 4.75.31.2](#), Proposed Adverse Status Change.

For an unagreed revocation:

- If not otherwise excluded from Fast Track Settlement, issue an initial report ([IRM 4.75.15.9](#), Initial Reports of Examination). Include Form 886-A, Form 6018-A, and Form 14017. Issue with Pub. 5092. Allow 30 days for a response, then close the case using the procedures in [IRM 4.75.31.3](#), Converted Tax Return Secured.

Determine whether to impose excise taxes under IRC Section 4951 or IRC Section 4952 on a disqualified person and/or trustee. (For IRC Section 4953 adjustments, ask an LB&I engineer for help via the Specialist Referral System.)

For an agreed excise tax assessment (all parties):

- Discuss the issue with the taxpayers fully to verify that they will agree.
- Establish Forms 990-BL for each disqualified person and/or trustee liable for tax on NMF via RCCMS. See [IRM 4.75.22.7](#), Substitute For Return Procedures.
- Issue an initial report ([IRM 4.75.15.9](#)) with Form 870-E, Form 886-A, and Form 4883, to each responsible party. Allow the taxpayers 30 days to respond.
- When you receive the signed agreements and payments, prepare Form 3244-A to process the payments.
- Send the payments via overnight mail with Form 3210 and Form 9814. See [IRM 4.75.22.4.1](#), Payment Processing.
- For the closing letter, prepare Letter 3607 to be mailed with a copy of the signed Form 870-E, Form 886-A and Form 4883. See [IRM 4.75.15.9 \(14\)](#).
- Close each case as agreed on RCCMS.

For a partial agreement (trust agreed, disqualified person/trustee unagreed, or vice versa):

- Discuss the issue with the taxpayers fully to determine who will agree. For the agreed party(ies), follow the procedures above.
- Establish Forms 990-BL for each disqualified person and/or trustee liable for tax on NMF via RCCMS.
- If not otherwise excluded from Fast Track Settlement, issue an initial report ([IRM 4.75.15.9](#)). Include Form 870-E, Form 886-A, Form 4621-A, Form 4883, and Form 14017. Issue with Pub. 5092. Allow 30 days for a response.
- For cases not entered into the Fast Track Settlement process, issue the final report ([IRM 4.75.15.10](#), Formal Reports of Examination). Include Form 870-E, Form 886-A, Form 4621-A, and Form 4883. Provide the taxpayer with 30 days to respond.
- Close all unagreed cases (except formal protests to Appeals) to Mandatory Review via RCCMS. See [IRM 4.75.16.4.2](#), Statute Considerations and [IRM 4.75.17.2](#), Cases Subject to Mandatory Review.

For no change closings, see [IRM 4.75.15.5](#), No Issues and [IRM 4.75.16.4](#), Examined Closures.