

J. BLACK LUNG BENEFIT TRUSTS UNDER IRC 501(c)(21)

Introduction

The Black Lung Benefits Revenue Act of 1977 provides tax exemption to black lung benefit trusts, which qualify under section 501(c)(21) of the Code, created by coal mine operators to provide benefits because of disability or death of coal miners caused by black lung disease. The law also allows tax deductions to coal mine operators for contributions to these trusts. This discussion is designed to provide the reader with a working knowledge of this recent addition to the list of exempt organizations. Copies of the Black Lung Benefit Trust information return (Form 990-BL), excise tax return (Form 6069), proposed regulations under IRC 501(c)(21), 4951, and 4952 and a sample favorable determination letter have been included as attachments.

1. Background

The Federal Coal Mine Health and Safety Act of 1969 (P.L. 91-173) provides that the operator of a coal mine is liable for the payment of benefits to miners who have contracted black lung disease. The operator may satisfy his liabilities by purchasing insurance or by qualifying as a self-insurer. Prior to the enactment of the Black Lung Benefits Revenue Act (P.L. 95-227) an operator who acted as a self-insurer was not allowed a business expense deduction for amounts set aside in a trust or reserve for the payment of future black lung benefits. A deduction was allowed only in the year in which the benefit was paid. However, the purchase of commercial insurance to cover contingent liabilities gave rise to a current deduction.

Under the Black Lung Benefits Revenue Act, coal mine operators have the option of establishing a trust and obtaining a current deduction for money or property that is permanently set aside and appropriated for the payment of black lung benefits, provided the trust meets the provisions of IRC 501(c)(21). This creates a fund that is protected against appropriation by the operator or others for any purpose other than the purpose for which the trust is created.

The Act originally provided that contributions to an operator's trust could be deducted currently based on actual benefit claims approved or filed during the taxable year. Along with the limitation on deductibility, IRC 4953 imposed an excise tax on excess contributions to a Black Lung Benefit Trust. However, this

limitation was amended in Public Law 95-488. It provides, in part, that an operator can deduct, currently, contributions to a trust that does not exceed the amount necessary to fund, on a sound actuarial basis, the operator's remaining unfunded liability for claims filed or expected to be filed in the future by past and present employees. It should be pointed out that IRC 192 controls the deductions in question, and both IRC 192 and 4953 will not be administered by EO personnel.

Further background material on the Black Lung Trust, including extracts from the Congressional Records of December 1977 and January 1978, may be found in the 1978 EOATRI textbook at page 283.

2. Requirements for Exemption

The trust, to qualify under IRC 501(c)(21), must be created or organized in the United States and must be established pursuant to a written instrument. An oral trust is insufficient, even if valid under state law. The terms of the trust must provide that no part of the assets of the trust may be used for, or diverted to, any purpose other than those specified in the Code. (IRC 501(c)(21)(B)). The trust instrument must definitely and affirmatively make it impossible for a diversion or use of trust assets to occur that is not permitted under IRC 501(c)(21)(B) or 4953(c), concerning excess contributions. (Proposed Regs. 1.501(c)(21)(B).) The trust must be irrevocable, with no right or possibility of reversion of either corpus or income to the coal mine operator, except for the recovery of excess contributions by the operator.

3. New Chapter 42 Excise Taxes

The Act imposes excise taxes on certain acts of self-dealing (IRC 4951) and upon taxable expenditures (IRC 4952). Proposed regulations under these sections were published in the Federal Register on November 29, 1978. These excise taxes are similar to those imposed upon private foundation self-dealing and taxable expenditures and, thus, regulations under IRC 4941, 4945 and 4946 generally apply to IRC 4951 and 4952. One difference from the foundation self-dealing rules involves the use of banking services. This will be discussed at greater length below.

4. Coverage

The Black Lung Benefits Reform Act of 1977 established liability for persons other than coal mine operators. Transportation construction workers may

be eligible for Black Lung Benefits if they work in or around a coal mine and are exposed to coal dust. Coal mine construction and transportation employers who are not also mine operators may be individually liable for the payment of approved claims in appropriate cases. These employers may be required to secure a bond or otherwise guarantee the payment of these claims once approved. Such an employer may be eligible to establish a trust in the same manner as coal mine operators.

In addition to persons who may be liable under the Federal Coal Mine Health and Safety Act, persons who may be liable for claims under state worker's compensation acts for black lung disability or death benefits may establish a trust.

A trust may not be established by an insurance company. Even though an insurance company may be liable for the payment of benefits, its liability stems from its contractual obligation to the mine operator and not from any mining activities it conducts.

As indicated above, the liability of the coal mine operator may arise under Federal or state statutes, however a liability arising under a state statute must be for or with respect to a claim for compensation for death or disability due to black lung disease (pneumoconiosis). Black lung disease is defined as a chronic dust disease of the lung arising out of coal mine employment.

5. Provisions

The use of the trust to fund the payment of black lung benefits is optional as the trust may be established to satisfy an operator's liability in whole or in part. In addition, an operator may use more than one trust. For example, a trust may be established only for state or only for Federal claims. The trust need not make direct payments itself, as it may purchase, in whole or in part, insurance exclusively covering liability for black lung benefits.

Administrative and incidental costs of the trust may be paid out of its assets, including legal, accounting, actuarial and trustee expenses.

Administrative and incidental expenses may also include any excise tax imposed on the trust by reason of a taxable expenditure as well as reasonable expenses incurred by the trust, such as legal expenses in connection with an assertion against the trust of liability for a taxable expenditure. However, an excise tax imposed on the trustee or other disqualified persons for acts of self-dealing or making excess contributions cannot be paid, nor may any expenses incurred in

connection with the assertion of these kinds of taxes be paid by the trust. However, the trust may purchase insurance covering the liability of a trustee for excise taxes to the extent that such purchases together with any other compensation to the trustee are reasonable, as well as pay expenses that the trustee reasonably incurs in defending himself in a judicial or administrative proceeding involving excise taxes or state laws relating to mismanagement of charitable assets, subject to the same reasonable compensation limit.

A trust may use its assets to make investments, but only to the extent that they exceed current year obligations. The kinds of investments the trust may make have been limited to "public debt" securities of the United States (obligations guaranteed as to principal and interest by the United States), obligations of a state or local government which are not in default as to principal or interest, or time or demand deposits in a bank or an insured credit union located in the United States. If a bank or credit union is a trustee of the trust or is a disqualified person, such as a bank that is owned by or that owns the coal mine operator, no part of the trust assets may be held or invested in deposits in that bank or credit union. In such a case, the deposit would constitute an act of self-dealing under IRC 4951. In the foundation area, similar self-dealing restrictions were interpreted to allow general banking services by banks who are disqualified persons. This rule does not apply to black lung benefit trusts.

A copy of the proposed regulations under IRC 501(c)(21), 4951, and 4952 follows the text of this topic as Attachment 3.

6. Application for Exemption

A trust seeking recognition of exemption from Federal income tax under IRC 501(c)(21) should write to the District Director of the key district for the trust's main office or place of business. No specific application form is required; however, a letter should be submitted requesting a ruling on exempt status along with a copy of its trust instrument. A sample determination letter follows the text of this topic as Attachment 4.

7. Returns and Documents

An annual information return, Form 990-BL, is required of exempt black lung benefit trusts that normally have gross receipts in excess of \$10,000 in each taxable year. This form was originally not subject to public inspection under IRC 6104(b). However, Public Law 95-488 provides, in part, that black lung benefit

trusts are subject to the same public disclosure requirements as apply to other exempt organizations. Thus, the exemption application documents and the annual return, Form 990-BL, are subject to public inspection, with the exception of certain confidential business information of a coal mine operator who establishes and contributes to an IRC 501(c)(21) trust.* Form 990-BL specifies which sections are open to public inspection. The excise taxes under IRC 4951 and 4952 are reported on Schedule A of Form 990-BL.

[Attachments 1-3 are not shown here]

* For more information on P.L. 95-488, see the Legislative Developments topic at p. 27.

Attachment 4 - Sample Determination Letter

Dear Applicant:

Based on information supplied, and assuming your operations will be as stated in your application for recognition of exemption, we have determined you are exempt from Federal income tax under the provisions of the Internal Revenue Code section indicated above.

Unless specifically excepted, you are liable for taxes under the Federal Insurance Contributions Act (social security taxes) for each employee who earns \$50 or more during a calendar quarter. And, unless excepted, you are also liable for tax under the Federal Unemployment Tax Act for each employee who earns \$50 or more during a calendar quarter if, during the current or preceding calendar year, you have one or more employees at any time in each of 20 calendar weeks or pay wages of \$1,500 or more in any calendar quarter. If you have any questions about excise, employment, or other Federal taxes, please address them to your key District Director.

If your purposes, character, or method of operations change, please let your key district know so that office can consider the effect of the change on your exempt status. Also, you should inform your key District Director of all changes in your name or address.

You are required to file Form 990 BL, Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons. If a return is required, it must be filed by the 15th day of the fifth month after the end of your annual accounting period. The law imposes a penalty of \$10 a day, up to a maximum of \$5,000, when a return is filed late, unless there is reasonable cause for the delay.

You need an employer identification number even if you have no employees. If an employer identification number was not entered on your application, a number will be assigned to you and you will be advised of it. Please use that number on all returns you file and in all correspondence with the Internal Revenue Service.

You are subject to the excise taxes under section 4951, section 4952, and section 4953.

We are informing your key District Director of this action. Because this letter could help resolve any questions about your exempt status, you should keep it in your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,