Public Law 95-227
95th Congress

An Act

To impose an excise tax on the sale of coal by the producer, to establish a Black Lung Disability Trust Fund, and for other purposes.

Feb. 10, 1978
[H.R. 5322]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Black Lung Benefits Revenue Act of 1977.
26 USC 4121 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Black Lung Benefits Revenue Act of 1977".

SEC. 2. EXCISE TAX ON COAL.

(a) IN GENERAL.—Chapter 32 of the Internal Revenue Code of 1954 (relating to manufacturers excise taxes) is amended by inserting after subchapter A the following new subchapter:

"Subchapter B—Coal

"Sec. 4121. Imposition of tax.

"SEC. 4121. IMPOSITION OF TAX.

26 USC 4121.

"(a) TAX IMPOSED.—There is hereby imposed on coal sold by the producer a tax at the rates of—

"(1) 50 cents per ton in the case of coal from underground mines located in the United States, and

"(2) 25 cents per ton in the case of coal from surface mines located in the United States.

"(b) LIMITATION ON TAX.—The amount of the tax imposed by subsection (a) with respect to a ton of coal shall not exceed 2 percent of the price at which such ton of coal is sold by the producer.

"(c) TAX NOT TO APPLY TO LIGNITE.—The tax imposed by subsection (a) shall not apply in the case of lignite.

"(d) DEFINITIONS.—For purposes of this subchapter—

"(1) COAL FROM SURFACE MINES.—Coal shall be treated as produced from a surface mine if all of the geological matter above the coal being mined is removed before the coal is extracted from the earth. Coal extracted by auger shall be treated as coal from a surface mine.

"(2) COAL FROM UNDERGROUND MINES.—Coal shall be treated as produced from an underground mine if it is not produced from a surface mine.

"(3) UNITED STATES.—The term 'United States' has the meaning given to it by paragraph (1) of section 638.

26 USC 638.

"(4) TON.—The term 'ton' means 2,000 pounds.".

(b) CONFORMING AMENDMENTS.—

26 USC 4218.

(1) Section 4218(a) of such Code (relating to use by manufacturer or importer considered sale) is amended by adding at the end thereof the following new sentence: "For the purpose of applying the first sentence of this subsection to coal taxable under section 4121, the words '(otherwise than as material in the manufacture or production of, or as a component part of, another article taxable under this chapter to be manufactured or produced by him)' shall be disregarded.".

Supra.

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26 USC 4221.
Ante, p. 11.

(2) Section 4221(a) of such Code (relating to certain tax-free sales) is amended by inserting "(other than under section 4121)" after "this chapter".

26 USC 4293.

(3) Section 4293 of such Code (relating to exemption for United States and possessions) is amended by inserting "(other than the tax imposed by section 4121)" after "chapters 31 and 32".

26 USC 6416.

(4) Subsection (b) of section 6416 (relating to special cases in which tax payments are considered overpayments) is amended—

(A) by inserting "(other than coal taxable under section 4121)" immediately after "in respect of any article" in paragraph (2), and

(B) by inserting "(other than coal taxable under section 4121)" immediately after "with respect to the sale of any article" in paragraph (3).

(c) CLERICAL AMENDMENT.—The table of subchapters for chapter 32 of such Code is amended by inserting after the item relating to subchapter A the following new item:

"SUBCHAPTER B. Coal.".

26 USC 4121 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to sales after March 31, 1978.

SEC. 3. TRUST FUND AND OPERATOR LIABILITY.

Black Lung Disability Trust Fund.
30 USC 934a.

(a) ESTABLISHMENT OF FUND.—

(1) There is hereby established on the books of the Treasury of the United States a trust fund to be known as the Black Lung Disability Trust Fund (to which reference is made elsewhere in this section as the "fund"). The fund shall remain available without fiscal year limitation and shall consist of such amounts as may be appropriated to it or deposited in it as provided in subsection (b).

Trustees.

(2) The trustees of the fund shall be the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare. The Secretary of the Treasury shall be the managing trustee and shall hold, operate, and administer the fund.

(b) APPROPRIATIONS; OTHER RECEIPTS.—

(1) There are hereby appropriated to the fund, out of any money in the Treasury not otherwise appropriated, amounts equivalent to the taxes received in the Treasury under section 4121, and by operation of section 4952, of the Internal Revenue Code of 1954. The amounts appropriated by this paragraph shall be transferred monthly from the general fund of the Treasury to the fund on the basis of estimates made by the Secretary of the amounts of such taxes received in the Treasury. Proper adjustment shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of, or less than, the amounts required to be transferred.

Post, p. 21.
Funds, transfer.

(2) There are authorized to be appropriated to the fund, as repayable advances, such sums as may from time to time be necessary to meet obligations incurred under subsection (a) of section 424 of the Federal Coal Mine Health and Safety Act of 1969. Advances made pursuant to this paragraph shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary of the Treasury determines that moneys are available in the fund for such repayments. Interest on such advances shall be at a rate equal to the average rate of inter-

Post, p. 13.

Interest rate.

est, computed as of the end of the calendar month next preceding the date of any such advance, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt. When such average rate is not a multiple of one-eighth of 1 percent, the rate of interest on such advances shall be the multiple of one-eighth of 1 percent nearest such average rate.

(3) Amounts paid into the fund by a trust described in section 501(c)(21) of the Internal Revenue Code of 1954 (other than amounts paid under subsection (b) of section 424 of the Federal Coal Mine Health and Safety Act of 1969) shall be covered into the fund.

Post, p. 15.

Infra.

(4) Amounts repaid or recovered under subsection (b) of section 424 of the Federal Coal Mine Health and Safety Act of 1969 shall be covered into the fund as repayments of amounts erroneously paid out.

(5) Amounts paid as fines or penalties, or interest thereon, under section 423, 431, or 432 of such Act shall be covered into the fund as miscellaneous receipts.

30 USC 933, 941.

(c) DUTIES OF THE SECRETARY OF THE TREASURY.—

Post, p. 101.

(1) The Secretary of the Treasury shall hold the fund and (after consultation with the other trustees of the fund) shall report to the Congress not later than the last day of March of 1979, and of each succeeding year, on the financial condition and the results of the operations of the fund during the preceding fiscal year (including a detailed statement of the expenses paid out of the fund under subsection (a)(4) of section 424 of the Federal Coal Mine Health and Safety Act of 1969) and on its expected condition and operations during the fiscal year in which the report is made. The report shall be printed as a House document of the session of the Congress to which the report is made.

Report to Congress.

Infra.

(2) It is the duty of the Secretary of the Treasury to invest such portion of the fund as is not, in his judgment, required to meet current withdrawals, including the repayment of advances made under subsection (b)(2). Such investments shall be made in public debt securities with maturities suitable for the needs of the fund and bearing interest at prevailing market rates. The income on such investments shall be credited to and form a part of the fund.

Investments.

(d) PAYMENTS FROM FUND.—Section 424 of the Federal Coal Mine Health and Safety Act of 1969 is amended to read as follows:

30 USC 934.

"SEC. 424. (a) Amounts in the Black Lung Disability Trust Fund (referred to in this section as the 'fund') established under section 3 of the Black Lung Benefits Revenue Act of 1977 shall be available, as provided by appropriation Acts, for—

Ante, p. 12.

"(1) the payment of benefits under section 422 in any case in which the Secretary determines that—

30 USC 932.

"(A) the operator liable for the payment of such benefits—

"(i) has not commenced payment of such benefits within 30 days after the date of an initial determination of eligibility by the Secretary, or

"(ii) has not made a payment within 30 days after that payment is due,

"(B) there is no operator who is required to secure the payment of such benefits,

"(2) the payment of obligations incurred by the Secretary with respect to all claims of miners or their survivors in which the

miner's last coal mine employment was before January 1, 1970,

"(3) the repayment into the Treasury of the United States of an amount equal to the sum of the amounts expended by the Secretary for claims under this part which were paid before April 1, 1978, except that the fund shall not be obligated to pay or reimburse for benefits paid attributable to periods of eligibility before January 1, 1974.

"(4) the repayment of, and the payment of interest on, advances to the fund under subsection (b)(2) of section 3 of the Black Lung Benefits Revenue Act of 1977,

Administrative expenses.

"(5) the payment of all expenses of operation and administration on and after the effective date of the Black Lung Benefits Reform Act of 1977 (or any other Act determined by the Secretary to contain substantially the same provisions) under this part (other than under section 427(a) or 433), including the administrative expenses incurred by the Department of Labor under this part, the administrative expenses incurred by the Department of the Treasury in administering subchapter B of chapter 32 of the Internal Revenue Code of 1954 and in carrying out its responsibilities with respect to the fund, and any expenses incurred by the Department of Health, Education, and Welfare in connection with the administration of this part, and

30 USC 937.
Post, p. 101.

Ante, p. 11.

"(6) the reimbursement of operators for amounts paid by such operators (other than as penalties or interest) before April 1, 1978, in satisfaction (in whole or in part) of claims of miners whose last employment in coal mines was terminated before January 1, 1970.

"(b)(1) If—

"(A) an amount is paid out of the fund to an individual entitled to benefits under section 422, and

30 USC 932.

"(B) the Secretary determines, under the provisions of sections 422 and 423, that an operator was required to secure the payment of all or a portion of such benefits,

30 USC 932, 933.

then the operator is liable to the United States for repayment to the fund of the amount of such benefits the payment of which is properly attributed to him. No operator or representative of operators may bring any proceeding, or intervene in any proceeding, held for the purpose of determining claims for benefits to be paid by the fund, except that nothing in this section shall affect the rights, duties, or liabilities of any operator in proceedings under section 422 or section 423. In a case where no operator responsibility is assigned pursuant to sections 422 and 423, a determination by the Secretary that the fund is liable for the payment of benefits shall be final.

Lien.

"(2) If any operator liable to the fund under paragraph (1) refuses to pay, after demand, the amount of such liability (including interest), then there shall be a lien in favor of the United States for such amount upon all property and rights to property, whether real or personal, belonging to such operator. The lien arises on the date on which such liability is finally determined, and continues until it is satisfied or becomes unenforceable by reason of lapse of time.

"(3)(A) Except as otherwise provided under this subsection, the priority of the lien shall be determined in the same manner as under section 6323 of the Internal Revenue Code of 1954. That section shall be applied for such purposes—

26 USC 6323.

"(i) by substituting 'lien imposed by section 424(b)(2) of the Federal Coal Mine Health and Safety Act of 1969' for 'lien imposed by section 6321'; 'operator liability lien' for 'tax lien';

'operator' for 'taxpayer'; 'lien arising under section 424(b)(2) of the Federal Coal Mine Health and Safety Act of 1969' for 'assessment of the tax'; 'payment of the liability is made to the Black Lung Disability Trust Fund' for 'satisfaction of a levy pursuant to section 6332(b)'; and 'satisfaction of operator liability' for 'collection of any tax under this title' each place such terms appear; and

Ante, p. 13.

26 USC 6332.

"(ii) by treating all references to the 'Secretary' as references to the Secretary of Labor.

"(B) In the case of a bankruptcy or insolvency proceeding, the lien imposed under paragraph (2) shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the Bankruptcy Act or section 3466 of the Revised Statutes (31 U.S.C. 191).

Post, p. 2549.

"(C) For purposes of applying section 6323(a) of the Internal Revenue Code of 1954 to determine the priority between the lien imposed under paragraph (2) and the Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

26 USC 6323.

"(D) For purposes of this subsection, notice of the lien imposed under paragraph (2) shall be filed in the same manner as under subsections (f) and (g) of section 6323 of the Internal Revenue Code of 1954.

"(4)(A) In any case where there has been a refusal or neglect to pay the liability imposed under paragraph (2), the Secretary may bring a civil action in a district court of the United States to enforce the lien of the United States under this section with respect to such liability or to subject any property, of whatever nature, of the operator, or in which he has any right, title, or interest, to the payment of such liability.

Civil action.

"(B) The liability imposed by paragraph (1) may be collected at a proceeding in court if the proceeding is commenced within 6 years after the date on which the liability was finally determined, or before the expiration of any period for collection agreed upon in writing by the operator and the United States before the expiration of such 6-year period. The running of the period of limitation provided under this subparagraph shall be suspended for any period during which the assets of the operator are in the custody or control of any court of the United States, or of any State, or the District of Columbia, and for 6 months thereafter, and for any period during which the operator is outside the United States if such period of absence is for a continuous period of at least 6 months.".

(e) EFFECTIVE DATE.—This section shall take effect on April 1, 1978.

30 USC 934 note.

SEC. 4. OPERATOR'S TRUST FOR THE PAYMENT OF BLACK LUNG BENEFITS.

(a) ESTABLISHMENT OF TRUST.—Section 501(c) of the Internal Revenue Code of 1954 (relating to list of exempt organizations) is amended by adding at the end thereof the following new paragraph:

26 USC 501.

"(21) A trust or trusts established in writing, created or organized in the United States, and contributed to by any person (except an insurance company) if—

"(A) the purpose of such trust or trusts is exclusively—

"(i) to satisfy, in whole or in part, the liability of such person for, or with respect to, claims for compen-

sation for disability or death due to pneumoconiosis under Black Lung Acts;

"(ii) to pay premiums for insurance exclusively covering such liability; and

"(iii) to pay administrative and other incidental expenses of such trust (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the trust and the processing of claims against such person under Black Lung Acts; and

"(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

"(i) the purposes described in subparagraph (A), or

"(ii) investment (but only to the extent that the trustee determines that a portion of the assets is not currently needed for the purposes described in subparagraph (A)) in—

"(I) public debt securities of the United States,

"(II) obligations of a State or local government which are not in default as to principal or interest, or

26 USC 581.

"(III) time or demand deposits in a bank (as defined in section 581) or an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act, 12 U.S.C. 1752(6)) located in the United States, or

"(iii) payment into the Black Lung Disability Trust Fund established under section 3 of the Black Lung Benefits Revenue Act of 1977, 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).

"Black Lung Acts."
30 USC 931.

For purposes of this paragraph the term 'Black Lung Acts' means part C of title IV of the Federal Coal Mine Health and Safey Act of 1969, and any State law providing compensation for disability or death due to pneumoconiosis.".

(b) ALLOWANCE OF DEDUCTION.—

(1) IN GENERAL.—Part VI of subchapter B of chapter 1 of such Code (relating to itemized deductions for individuals and corporations) is amended by adding at the end thereof the following new section:

26 USC 192.

"SEC. 192. CONTRIBUTIONS TO BLACK LUNG BENEFIT TRUST.

"(a) ALLOWANCE OF DEDUCTION.—There is allowed as a deduction for the taxable year an amount equal to the sum of the amounts contributed by the taxpayer during the taxable year to or under a trust or trusts described in section 501(c)(21).

Ante, p. 15.

"(b) LIMITATION.—

"(1) IN GENERAL.—The amount of the deduction allowed by subsection (a) for any taxable year with respect to any such trust shall not exceed the amount determined under paragraph (2) or (3), whichever is greater.

"(2) CURRENT YEAR OBLIGATIONS.—The amount determined under this paragraph for the taxable year is the amount which, when added to the fair market value of the assets of the trust as of the beginning of the taxable year, is necessary to carry out the purposes of the trust described in subparagraph (A) of section 501(c)(21) for the taxable year.

"(3) CERTAIN FUTURE OBLIGATIONS.—The amount determined under this paragraph for the taxable year is the sum of—

"(A) the amount which is necessary to meet the expenses of the trust described in clause (iii) of section 501(c)(21)(A) for the taxable year, and

Ante, p. 15.

"(B) the lesser of—

"(i) the amount which, when added to the fair market value of the assets of the trust as of the beginning of the taxable year, is necessary to provide all expected future payments with respect to black lung benefit claims which are approved, including any such claims which have been filed and which have not been disapproved, as of the end of the taxable year, or

"(ii) twice the amount which is necessary to provide all expected future payments with respect to the greater of—

"(I) black lung benefit claims filed during the taxable year or any one of the 3 immediately preceding taxable years, or

"(II) such claims approved during any one of those 4 taxable years.

"(c) SPECIAL RULES.—

"(1) DETERMINATION OF EXPECTED FUTURE PAYMENTS.—The amounts described in subsection (b) shall be determined by using reasonable actuarial assumptions which are not inconsistent with regulations prescribed by the Secretary.

"(2) BENEFIT PAYMENTS TAKEN INTO ACCOUNT.—In determining the amounts described in subsection (b), only those black lung benefit claims the payment of which is expected to be made from the trust shall be taken into account.

"(3) TIME WHEN CONTRIBUTIONS DEEMED MADE.—For purposes of this section, a taxpayer shall be deemed to have made a payment of a contribution on the last day of a taxable year if the payment is on account of that taxable year and is made not later than the time prescribed by law for filing the return for that taxable year (including extensions thereof).

"(4) CONTRIBUTIONS TO BE IN CASH OR CERTAIN OTHER ITEMS.—No deduction shall be allowed under subsection (a) with respect to any contribution to a trust described in section 501(c)(21) other than a contribution in cash or in items in which such trust may invest under clause (ii) of section 501(c)(21)(B).

"(d) CARRYOVER OF EXCESS CONTRIBUTIONS.—If the amount of the deduction determined under subsection (a) for the taxable year (without regard to the limitation imposed by subsection (b)) with respect to a trust exceeds the limitation imposed by subsection (b) for the taxable year, the excess shall be carried over to the succeeding taxable year and treated as contributed to the trust during that year.

"(e) DEFINITION OF BLACK LUNG BENEFIT CLAIM.—For purposes of this section, the term 'black lung benefit claim' means a claim for compensation for disability or death due to pneumoconiosis under part C of title IV of the Federal Coal Mine Health and Safety Act of 1969 or under any State law providing for such compensation.".

30 USC 931.

(2) CLERICAL AMENDMENT.—The table of sections for such part is amended by adding at the end thereof the following new item:

"Sec. 192. Contributions to black lung benefit trust.".

(c) EXCISE TAXES ON ACTS OF SELF-DEALING, TAXABLE EXPENDITURES, AND EXCESS CONTRIBUTIONS.—

(1) IN GENERAL.—Chapter 42 of such Code (relating to private foundations) is amended by adding at the end thereof the following new subchapter:

"Subchapter B—Black Lung Benefit Trusts

"Sec. 4951. Taxes on self-dealing.
"Sec. 4952. Taxes on taxable expenditures.
"Sec. 4953. Tax on excess contributions to black lung benefit trusts.

26 USC 4951.

"SEC. 4951. TAXES ON SELF-DEALING.

"(a) INITIAL TAXES.—

"(1) ON SELF-DEALER.—There is hereby imposed a tax on each act of self-dealing between a disqualified person and a trust described in section 501(c)(21). The rate of tax shall be equal to 10 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period. The tax imposed by this paragraph shall be paid by any disqualified person (other than a trustee acting only as a trustee of the trust) who participates in the act of self-dealing.

Ante, p. 15.

"(2) ON TRUSTEE.—In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any trustee of such a trust in an act of self-dealing between a disqualified person and the trust, knowing that it is such an act, a tax equal to 2½ percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any such trustee who participated in the act of self-dealing.

"(b) ADDITIONAL TAXES.—

"(1) ON SELF-DEALER.—In any case in which an initial tax is imposed by subsection (a)(1) on an act of self-dealing by a disqualified person with a trust described in section 501(c)(21) and in which the act is not corrected within the correction period, there is hereby imposed a tax equal to 100 percent of the amount involved. The tax imposed by this paragraph shall be paid by any disqualified person (other than a trustee acting only as a trustee of such a trust) who participated in the act of self-dealing.

"(2) ON TRUSTEE.—In any case in which an additional tax is imposed by paragraph (1), if a trustee of such a trust refused to agree to part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount involved. The tax imposed by this paragraph shall be paid by any such trustee who refused to agree to part or all of the correction.

"(c) JOINT AND SEVERAL LIABILITY.—If more than one person is liable under any paragraph of subsection (a) or (b) with respect to any one act of self-dealing, all such persons shall be jointly and severally liable under such paragraph with respect to such act.

"(d) SELF-DEALING.—

"(1) IN GENERAL.—For purposes of this section, the term 'self-dealing' means any direct or indirect—

"(A) sale, exchange, or leasing of real or personal property between a trust described in section 501(c)(21) and a disqualified person;

"(B) lending of money or other extension of credit between such a trust and a disqualified person;

"(C) furnishing of goods, services, or facilities between such a trust and a disqualified person;

"(D) payment of compensation (or payment or reimbursement of expenses) by such a trust to a disqualified person; and

"(E) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of such a trust.

"(2) SPECIAL RULES.—For purposes of paragraph (1)—

"(A) the transfer of personal property by a disqualified person to such a trust shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien;

"(B) the furnishing of goods, services, or facilities by a disqualified person to such a trust shall not be an act of self-dealing if the furnishing is without charge and if the goods, services, or facilities so furnished are used exclusively for the purposes specified in section 501(c)(21)(A); and

Ante, p. 15.

"(C) the payment of compensation (and the payment or reimbursement of expenses) by such a trust to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purpose of the trust shall not be an act of self-dealing if the compensation (or payment or reimbursement) is not excessive.

"(e) DEFINITIONS.—For purposes of this section—

"(1) TAXABLE PERIOD.—The term '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 earlier of—

"(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212, or

"(B) the date on which correction of the act of self-dealing is completed.

"(2) AMOUNT INVOLVED.—The term 'amount involved' means, with respect to any act of self-dealing, the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received; except that in the case of services described in subsection (d)(2)(C), the amount involved shall be only the excess compensation. For purposes of the preceding sentence, the fair market value—

"(A) in the case of the taxes imposed by subsection (a), shall be determined as of the date on which the act of self-dealing occurs; and

"(B) in the case of taxes imposed by subsection (b), shall be the highest fair market value during the correction period.

"(3) CORRECTION.—The terms 'correction' and 'correct' mean, with respect to 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.

"(4) CORRECTION PERIOD.—The term 'correction 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 90 days after the date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed by subsection (b)(1), extended by—

26 USC 6212.

"(A) any period in which a deficiency cannot be assessed under section 6213(a), and

26 USC 6213.

"(B) any other period which the Secretary determines is reasonable and necessary to bring about correction of the act of self-dealing.

"(5) DISQUALIFIED PERSON.—The term 'disqualified person' means, with respect to a trust described in section 501(c)(21), a person who is—

Ante, p. 15.

"(A) a contributor to the trust,

"(B) a trustee of the trust,

"(C) an owner of more than 10 percent of—

"(i) the total combined voting power of a corporation,

"(ii) the profits interest of a partnership, or

"(iii) the beneficial interest of a trust or unincorporated enterprise,

which is a contributor to the trust,

"(D) an officer, director, or employee of a person who is a contributor to the trust,

"(E) the spouse, ancestor, lineal descendant, or spouse of a lineal descendant of an individual described in subparagraph (A), (B), (C), or (D),

"(F) a corporation of which persons described in subparagraph (A), (B), (C), (D), or (E) own more than 35 percent of the total combined voting power,

"(G) a partnership in which persons described in subparagraph (A), (B), (C), (D), or (E), own more than 35 percent of the profits interest, or

"(H) a trust or estate in which persons described in subparagraph (A), (B), (C), (D), or (E), hold more than 35 percent of the beneficial interest.

For purposes of subparagraphs (C)(i) and (F), there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of an individual are only those individuals described in subparagraph (E) of this paragraph. For purposes of subparagraphs (C)(ii) and (iii), (G), and (H), the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are only those individuals described in subparagraph (E) of this paragraph.

26 USC 267.

"(f) PAYMENTS OF BENEFITS.—For purposes of this section, a payment, out of assets or income of a trust described in section 501(c)(21), for the purposes described in clause (i) of section 501(c)(21)(A) shall not be considered an act of self-dealing.

"SEC. 4952. TAXES ON TAXABLE EXPENDITURES. 26 USC 4952.

"(a) TAX IMPOSED.—

"(1) ON THE FUND.—There is hereby imposed on each taxable expenditure (as defined in subsection (d)) from the assets or income of a trust described in section 501(c)(21) a tax equal to 10 percent of the amount thereof. The tax imposed by this paragraph shall be paid by the trustee out of the assets of the trust. *Ante*, p. 15.

"(2) ON THE TRUSTEE.—There is hereby imposed on the agreement of any trustee of such a trust to the making of an expenditure, knowing that it is a taxable expenditure, a tax equal to 2½ percent of the amount thereof, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by the trustee who agreed to the making of the expenditure.

"(b) ADDITIONAL TAXES.—

"(1) ON THE FUND.—In any case in which an initial tax is imposed by subsection (a)(1) on a taxable expenditure and such expenditure is not corrected within the correction period, there is hereby imposed a tax equal to 100 percent of the amount of the expenditure. The tax imposed by this paragraph shall be paid by the trustee out of the assets of the trust.

"(2) ON THE TRUSTEE.—In any case in which an additional tax is imposed by paragraph (1), if a trustee refused to agree to a part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount of the taxable expenditure. The tax imposed by this paragraph shall be paid by any trustee who refused to agree to part or all of the correction.

"(c) JOINT AND SEVERAL LIABILITY.—For purposes of subsections (a) and (b), if more than one person is liable under subsection (a)(2) or (b)(2) with respect to the making of a taxable expenditure, all such persons shall be jointly and severally liable under such paragraph with respect to such expenditure.

"(d) TAXABLE EXPENDITURE.—For purposes of this section, the term 'taxable expenditure' means any amount paid or incurred by a trust described in section 501(c)(21) other than for a purpose specified in such section. "Taxable expenditure."

"(e) DEFINITIONS.—

"(1) CORRECTION.—The terms 'correction' and 'correct' mean, with respect to any taxable expenditure, recovering part or all of the expenditure to the extent recovery is possible, and where full recovery is not possible, contributions by the person or persons whose liabilities for black lung benefit claims (as defined in section 192(e)) are to be paid out of the trust to the extent necessary to place the trust in a financial position not worse than that in which it would be if the taxable expenditure had not been made. *Ante*, p. 16.

"(2) CORRECTION PERIOD.—The term 'correction period' means, with respect to any taxable expenditure, the period beginning with the date on which the taxable expenditure occurs and ending 90 days after the date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed by subsection (b)(1), extended by— 26 USC 6212.

"(A) any period in which a deficiency cannot be assessed under section 6213(a), and 26 USC 6213.

"(B) any other period which the Secretary determines is reasonable and necessary to bring about correction of the taxable expenditure.

26 USC 4953.

"SEC. 4953. TAX ON EXCESS CONTRIBUTIONS TO BLACK LUNG BENEFIT TRUSTS.

"(a) TAX IMPOSED.—There is hereby imposed for each taxable year a tax in an amount equal to 5 percent of the amount of the excess contributions made by a person to or under a trust or trusts described in section 501(c)(21). The tax imposed by this subsection shall be paid by the person making the excess contribution.

Ante, p. 15.

"Excess contribution."

"(b) EXCESS CONTRIBUTION.—For purposes of this section, the term 'excess contribution' means the sum of—

"(1) the amount by which the amount contributed for the taxable year to a trust or trusts described in section 501(c)(21) exceeds the amount of the deduction allowable to such person for such contributions for the taxable year under section 192, and

Ante, p. 16.

"(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

"(A) the excess of the maximum amount allowable as a deduction under section 192 for the taxable year over the amount contributed to the trust or trusts for the taxable year, and

"(B) amounts distributed from the trust to the contributor which were excess contributions for the preceding taxable year.

"(c) TREATMENT OF WITHDRAWAL OF EXCESS CONTRIBUTIONS.—Amounts distributed during the taxable year from a trust described in section 501(c)(21) to the contributor thereof the sum of which does not exceed the amount of the excess contribution made by the contributor shall not be treated as—

"(1) an act of self-dealing (within the meaning of section 4951),

"(2) a taxable expenditure (within the meaning of section 4952), or

"(3) an act contrary to the purposes for which the trust is exempt from taxation under section 501(a).".

(2) CLERICAL AMENDMENTS.—

(A) Chapter 42 of such Code is amended by striking out the chapter heading and inserting in lieu thereof the following:

"CHAPTER 42—PRIVATE FOUNDATIONS; BLACK LUNG BENEFIT TRUSTS

"SUBCHAPTER A. Private foundations.
"SUBCHAPTER B. Black lung benefit trusts.

"Subchapter A—Private Foundations".

26 USC 4946.

(B) Subsections (a)(1) and (b) of section 4946 of such Code are each amended by striking out "For purposes of this chapter" and inserting in lieu thereof "For purposes of this subchapter".

(C) The table of chapters for subtitle D of such Code is amended by striking out the item relating to chapter 42 and inserting in lieu thereof the following:

"CHAPTER 42. Private foundations, black lung benefit trusts.".

(d) TECHNICAL AMENDMENTS.—

(1)(A) Section 6213(e) of such Code (relating to suspension of filing period for certain excise taxes) is amended— 26 USC 6213.

(i) by inserting ", 4951 (relating to taxes on self-dealing), or 4952 (relating to taxes on taxable expenditures)" after "4945 (relating to taxes on taxable expenditures)",

(ii) by inserting "4951(e)(4), 4952(e)(2)," after "4945 (i)(2)," and

(iii) by striking out "4975(f)(4)" and inserting in lieu thereof "4975(f)(6)".

(2) Section 6213(f) of such Code is amended by striking out "or chapter 42 or 43" each place it appears and inserting in lieu thereof "or chapter 41, 42, 43, or 44".

(3) Section 6405(a) of such Code is amended by striking out "private foundations and pension plans under chapters 42 and 43" and inserting in lieu thereof "public charities, private foundations, operators' trust funds, pension plans, or real estate investment trusts under chapter 41, 42, 43, or 44". 26 USC 6405.

(4) Section 6501(e)(3) of such Code is amended by striking out "or 43" and inserting in lieu thereof "43, or 44". 26 USC 6501.

(5) Section 6501(n) of such Code is amended—

(A) by striking out "CHAPTER 42 TAXES" in the caption and inserting in lieu thereof "CHAPTER 42 AND SIMILAR TAXES", and

(B) by striking out the first sentence of paragraph (1) and inserting in lieu thereof the following: "For purposes of any tax imposed by chapter 42 (other than section 4940) or by section 4975, the return referred to in this section shall be the return filed by the private foundation, plan, or trust (as the case may be) for the year in which the act (or failure to act) giving rise to liability for such tax occurred.". 26 USC 4940 *et seq.* 26 USC 4975.

"(6)(A) Section 6503(g) of such Code is amended by striking "or section 507 or section 4971 or section 4975" and inserting in lieu thereof "or section 507, 4971, 4975, 4985, or 4986". 26 USC 6503.

(B) Section 6503(g) of such Code is amended by striking out "or 4975(f)(4)" and inserting in lieu thereof "4975(f)(6), 4985 (e)(4), or 4986(e)(2)".

(7) Section 7454(b) of such Code is amended by inserting "or whether the trustee of a trust described in section 502(c)(21) has 'knowingly' participated in an act of self-dealing (within the meaning of section 4951) or agreed to the making of a taxable expenditure (within the meaning of section 4952)," after "section 4945),". 26 USC 7454.

(e) PUBLICITY OF INFORMATION.—Section 6104 of such Code (relating to publicity of information required from certain exempt organizations and certain trusts) is amended— 26 USC 6104.

(1) by inserting "(other than in paragraph (21) thereof)" after "section 501(c)" in subsection (a)(1)(A), and

(2) by adding at the end of subsection (b) thereof the following sentence: "This subsection shall not apply to information required to be furnished by a trust described in section 501(c)(21).".

26 USC 192 note.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to contributions, acts, and expenditures made after December 31, 1977, in and for taxable years beginning after such date.

26 USC 4121 note.

SEC. 5. GENERAL EFFECTIVE DATE RESERVATION.

Notwithstanding any other provision of this Act to the contrary, no provision of this Act (including any amendment made by any such provision) shall take effect or apply unless an Act, enacted after the date of enactment of this Act, contains a provision, explicitly in satisfaction of the requirements of this section, which states that it is the intent of the Congress that the provisions of this Act shall take effect.

Approved February 10, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-438 (Comm. on Ways and Means).
SENATE REPORT No. 95-572 (Comm. on Finance).
CONGRESSIONAL RECORD:
Vol. 123 (1977): July 18, considered and passed House.
Dec. 15, considered and passed Senate, amended.
Vol. 124 (1978): Jan. 24, House concurred in Senate amendments.