

[COMMITTEE PRINT]

**DESCRIPTION OF S. 1538, TAX ASPECTS
OF BLACK LUNG LEGISLATION**

LISTED FOR A HEARING

BY THE

SUBCOMMITTEE ON TAXATION AND
DEBT MANAGEMENT

OF THE

COMMITTEE ON FINANCE

ON JUNE 17, 1977

PREPARED FOR THE USE OF THE
COMMITTEE ON FINANCE
BY THE STAFF OF THE
JOINT COMMITTEE ON TAXATION



JUNE 15, 1977

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1977

91-477

JCS-34-77

II. DESCRIPTION

S. 1538—Mr. Randolph

Tax Aspects of Black Lung Legislation

Present law

Present law does not include any Federal tax on coal extraction or sales, as such. (Profits are, of course, subject to income taxation and, in that context there are several provisions of particular application to coal.)

Present law also does not include any trust fund for financing black lung benefits.

The present black lung benefits program provides benefits to miners totally disabled by black lung disease (pneumoconiosis) and to their dependents and survivors. For claims filed on or before June 30, 1973, benefits are paid out of general revenues and administered by the Social Security Administration. This program (the "part B" program) is permanent; that is, a successful claimant under this program is entitled to benefits for life, or for as long as the claimant remains eligible. For claims filed after June 30, 1973, for payment on or after January 1, 1974 (the "part C" program, administered by the Department of Labor), benefits are payable by the responsible coal operator (as in traditional workers' compensation programs), if such an operator can be identified, and otherwise from the general revenues. Liability for claims under this latter program is, however, terminated after 1981. In practice, about 75 percent of the claims filed after June 30, 1973, are being paid from the general revenues. The Human Resources Committee has found that, although the Department of Labor has assigned responsibility for claims in about 25 percent of the cases, in effect the Department is paying a far higher percentage of the part C claims. Only about 200 claims are being paid by operators, as contrasted to some 4,000 being paid by the Department of Labor. Coal companies are controverting 97 percent of the black lung benefits claims for which they have been determined responsible by the Department of Labor.

Issues

The bill presents several related issues, as follows:

First, whether the black lung benefits program established under the Federal Coal Mine Health and Safety Act of 1969 should be revised.

Second, whether costs of the black lung benefits program should be financed in whole or in part by the coal industry, and, if so, whether this should be done through an excise tax on coal.

Third, if a tax is imposed, whether the tax should be dedicated to the black lung benefits program through the use of a trust fund, and, if so, what restrictions should be put on trust fund operations and the use of the money in the fund.

Explanation of the bill

Benefits program

S. 1538, as reported by the Committee on Human Resources and referred to the Committee on Finance, would liberalize a number of the eligibility criteria and evidentiary requirements with respect to benefits under the black lung program. For example, the meanings of the terms "pneumoconiosis," "miner," and "total disability" would be expanded. In certain cases, the bill would establish an entitlement for the survivors of miners who had worked 25 or more years in mining. Qualified radiologists' interpretations of chest X-rays would be required to be accepted as evidence under certain circumstances, and nonmedical evidence, such as affidavits, would be sufficient evidence to support a claim in the case of a deceased miner if no medical evidence is available. Each miner claimant would be provided an opportunity to substantiate a claim through a pulmonary evaluation.

The present rule establishing current employment as a bar to obtaining a benefit determination would be modified to permit a miner to receive benefits if he terminates his employment within a year after the determination is made. Whereas now miners who worked as such for 15 years by June 30, 1971, are presumed entitled to benefits if they have a totally disabling respiratory disease, even if their chest X-rays are negative, this bill would remove the limitation date of June 30, 1971. In addition, the current requirement that a survivor file a claim within 3 years after the miner's death would be eliminated.

Excise tax

The bill would impose a manufacturers excise tax upon the producer's sale of coal at a rate determined by the coal's British thermal unit (Btu) value per ton. The tax would be 30 cents per ton on coal which has a Btu value of 11,000 or more per pound, 15 cents per ton on coal which has a Btu value of more than 8,000 and less than 11,000 per pound, and 7.5 cents per ton on coal which has a Btu value of 8,000 per pound or less. The Btu value would be determined by the Bureau of Mines. The Committee on Human Resources has recommended that the tax rates be graduated in this manner because coal with a high Btu content is believed to be more likely to cause a black lung disease.

Most of the rules generally applicable to manufacturers excise taxes, including the collection provisions, would apply to this coal tax. However, the following exemptions which apply to other manufacturers excise taxes would not apply to this tax on coal: Sales for further manufacturing, for export, for use as supplies for vessels or aircraft, for the use of a State or local government or for the use of a non-profit educational organization. Discretionary authority now granted to the Secretary of the Treasury to exempt from manufacturers excise taxes, sales for the use of the United States, would not be available in the case of this tax.

Under the general rule applicable to manufacturers excise taxes, use by a producer is treated as a sale by that producer. The bill would modify this rule to impose a tax upon "the production" of coal by a producer for its own use (for example, coal mined by a steel company for its own use), thereby causing the taxable event to occur earlier than it would under the general rule.

Trust fund

The bill would establish a trust fund (the "Black Lung Disability Fund"). The bill would automatically appropriate to the trust fund amounts equal to the coal tax described above. Also, the bill would authorize appropriations of other sums necessary to meet the fund's obligations; these amounts would have to be repaid to the general fund of the Treasury. The fund would be required to pay benefits if there is no "responsible operator," or if the operator is in default, and would be required to pay benefits with respect to all claims in which the miner's last coal mine employment was before January 1, 1970. In cases in which the Government has already paid benefits for periods of eligibility since January 1, 1974, to or on account of miners whose last period of coal mine employment ended before January 1, 1970, the fund would have to reimburse the Government for these payments. This would, in effect, transfer those costs from the Government to the industry (by way of the trust fund revenues from the tax on coal) in accordance with the general intent of present law that liability for payment of black lung benefits should have been transferred from the Government to the coal industry as of January 1, 1974. The expenses of the operation of administration of the claims program to be financed through the fund, plus the expenses of administering the fund as such, would be paid by the fund.

Under the bill, if the Secretary of Labor were to determine that a coal mine operator was responsible for the payment of certain benefits, but those benefits have in fact been paid out of the fund, then the coal mine operator would be obligated to reimburse the fund. If the operator were to refuse to reimburse the fund, then a lien would arise in favor of the United States for the entire amount that the operator would be required to repay. This lien would attach to all the assets of the coal mine operator and would be given essentially the same status as a federal tax lien.

The trustees of the fund would be the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare; with the Secretary of the Treasury to be managing trustee. Receipts of the fund in excess of amounts needed to meet current withdrawals would be invested only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States, except that the fund would be permitted to purchase special Second Liberty Bond Act obligations if the purchase of regular obligations would not be in the public interest.

The fund also would be given standby authority to provide insurance for coal mine operators to cover their liabilities under the program.

Effective date

The excise tax on coal would apply to sales on and after October 1, 1977. The trust fund provisions would take effect on the same date. The other provisions of the bill would take effect on the date of the bill's enactment.

Revenue effect

Revenue to the trust fund resulting from the new tax is estimated at \$160 million for fiscal 1978; \$180 million for fiscal 1979; \$185 million for fiscal 1980; \$195 million for fiscal 1981; and \$205 million for fiscal 1982.

(The Congressional Budget Office has estimated the total increased cost to the Federal Government in carrying out the provisions of the bill would be \$76.8 million for fiscal 1978; \$269.0 million for fiscal 1979; \$125.0 million for fiscal 1980; \$132.3 million for fiscal year 1981; and \$139.9 million for fiscal 1982.)

Prior Committee action

In the 94th Congress, the Senate Finance Committee reported H.R. 10760 (S. Rept. 94-1303) to revise the black lung benefits program. That bill would have imposed a manufacturers excise tax on coal sold by producers. The tax would have been imposed at the rate of 10 cents per ton (15 cents in the case of anthracite from underground mines.) Under that bill, the revenues from the tax would have automatically been appropriated into a trust fund. The bill also would have authorized appropriation of additional funds to the trust fund to meet its obligations; these amounts were to be repaid by the trust fund.