



Black Lung Disability Trust Fund: Expired Coal Tax Shifts Liabilities to Taxpayers

On January 1, 2019, Congress allowed the coal excise tax, used to pay health benefits to miners afflicted with black lung disease, to decrease by more than 50 percent. By failing to extend the higher excise tax, Congress is shifting billions of dollars in liabilities from coal companies to taxpayers. This is effectively another taxpayer subsidy for one of the most subsidized industries in history.

Creation of the Black Lung Program

With passage of the Federal Coal Mine Health and Safety Act of 1969, Congress created the federal Black Lung Program to provide benefits to coal miners and their families for disability and death caused by coal workers' pneumoconiosis (CWP), or black lung disease, caused by the inhalation of coal dust.

Originally, Congress envisioned the Black Lung Program would be a cooperative effort between the federal government and the states. It passed the Black Lung Benefits Act of 1972 (BLBA) to establish standards for state workers' compensation systems' payment of CWP benefits, and required each system be approved by the Department of Labor (DOL). If the state did not meet these standards, then each coal miner's employer would be required to pay CWP benefits. If no such employer could pay, then benefits would be paid by the federal government.

However, no state workers' compensation system has ever met the benefit standards set forth in the BLBA.¹ Therefore, every operator of an underground coal mine is theoretically responsible for the payment of benefits to affected miners. Over time, enough operators could not pay CWP benefits, and Congress soon recognized the need to create a specific funding mechanism to pay for the program.

Federal CWP benefits were originally paid out of general revenue, until Congress passed the Black Lung Benefits Revenue Act of 1977. This created the Black Lung Disability Trust Fund (Trust Fund), which would be financed by amending the Internal Revenue Code to impose a two percent manufacturers excise tax on the sale of coal by the producer.

¹ Congressional Research Service, The Black Lung Program, the Black Lung Disability Trust Fund, and the Excise Tax on Coal: Background and Policy Options, R45261, January 18, 2019, available at <https://fas.org/sgp/crs/misc/R45261.pdf>

In 1977, Congress created the Trust Fund for the express purpose of shifting the burden of CWP disability payments back to the coal industry.² At the time, Congress considered several options for funding the Trust Fund, including different taxes on the coal industry as well as proposals to retain the existing system of funding CWP benefits not covered by coal operators with appropriations from the general treasury (i.e. by taxpayers). But Congress ultimately chose to tax the coal industry as a whole, and since then it has repeatedly affirmed this original intent of ensuring the coal industry—not taxpayers—bear the social costs of black lung disease.

Funding the Trust Fund

Because revenue from the excise tax has historically not been enough to fund all the claims paid by the Trust Fund, Congress has increased the coal excise tax several times. In fact, the Trust Fund has run a deficit every year since its inception and has had to borrow billions from the Treasury to meet its obligations. Congress has also been forced to forgive and refinance significant portions of the Trust Fund's debt to taxpayers.

In 1977, when BLBRA was enacted, the tax was set at \$0.50 per ton for coal from underground mines, and \$0.25 per ton for coal from surface mines, and limited to 2% of the sales price. Congress doubled this to \$1.00 per ton for coal

from underground mines, and \$0.50 per ton for coal from surface mines, not to exceed 4% of the sales price, with passage of Black Lung Benefits Revenue Act of 1981. By this point the Trust Fund had already accumulated significant debt, and one of the goals of the 1981 legislation was to eliminate this debt.³

Congress temporarily increased the coal excise tax again in 1985 to \$1.10 per ton for underground-mined coal, and \$0.55 for surface-mined coal, not to exceed 4.4% of the sales price, and then extended these rates in 1987 and again in 2008. In its explanation for this last extension, the Joint Committee on Taxation writes:

*Trust fund financing of benefits under the Federal Black Lung Benefits Act was established in 1977 to reduce reliance on the Treasury and to recover costs from the mining industry. The expenses of the program covered by the Trust Fund (benefits, administration, and interest) have exceeded revenues, with advances from the General Fund making up the difference. It appears that the Trust Fund will not be able to pay off its debt to the Treasury Department by December 31, 2013. Therefore, the Congress believes that it is appropriate to continue the tax on coal at the increased rates beyond the expiration date. (emphasis added)*⁴

The 2008 extension expired on January 1, 2019, and because Congress did not extend the higher rates again, the excise tax rates have returned to their original level of \$0.50 per ton for underground mines, and \$0.25 per ton for surface mines set in the 1977. Due to inflation, those rates are now worth roughly a quarter of their original value.

² See U.S. Congress, Senate Committee on Finance, Tax Aspects of Black Lung Legislation, committee print, prepared by Joint Committee on Taxation and Committee on Finance, 95th Cong., June 21, 1977, JCS-35-77, available at <https://www.jct.gov/publications.html?func=startdown&id=4028>.

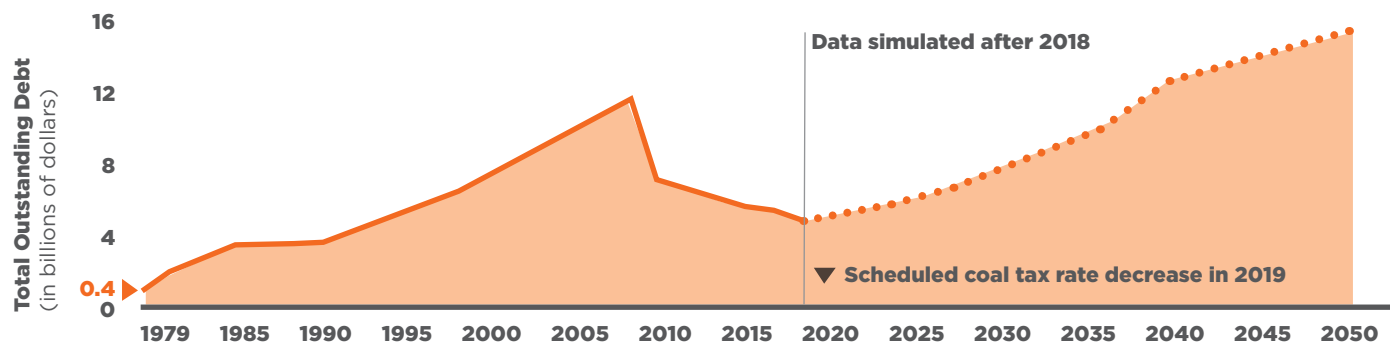
³ Background information in CRS Report 82-59 EW, Summary and Legislative History of P.L. 97-119, "Black Lung Benefits Revenue Act of 1981," by Barbara McClure (out of print; available from the author).

⁴ U.S. Congress, Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 110th Congress, 110th Cong., March 2009, JCS-1-09, p. 302.



Colorado coal mine. Source: Colorado Division of Reclamation and Safety

Figure 1. Trust Fund Actual and Simulated Outstanding Debt, Fiscal Years 1979 Through 2050



Source: GAO analysis of data from the Departments of Labor and Treasury (actual data) and GAO simulation | GAO-18-351

Trust Fund Borrowing and Debt

Congress has increased coal excise taxes repeatedly, but Trust Fund benefit payments and administrative costs have exceeded revenues almost every year since its creation. As a result, the Trust Fund has had to borrow from the Treasury, year after year, and it has accumulated a massive debt to taxpayers.

In an effort to slow the growth of the Trust Fund’s debt, Congress enacted a five-year forgiveness of interest on debt owed to the Treasury from 1985 to 1990. When Congress last extended the excise taxes in 2008, it also forgave about \$6.5 billion in Trust Fund debt and restructured the remaining debt, bringing the total amount owed taxpayers down from \$10.4 billion at the end of FY2008 to \$6.2 billion at the end of FY2009. Since then, Trust Fund debt has been on a general downward trend. The total owed to taxpayers in FY2019 was about \$4.2 billion.⁵

Given the reduction in excise tax rates by more than 50 percent at the beginning of 2019, however, the Government Accountability Office (GAO) estimates Trust Fund revenue may decrease from about \$485 million in FY2018 to about \$298 million in FY2019. In addition to significantly lower excise tax rates, a general decline in domestic coal production and bankruptcies in the coal sector will also hurt future Trust Fund revenues. The GAO estimates Trust Fund revenues will continue to decrease through FY2050.⁶

Meanwhile, future Trust Fund expenses may increase because the prevalence of black lung disease appears to be increasing,⁷ and more will be needed to cover interest payments for existing debt. Based on current projections, the GAO now estimates the Trust Fund will owe taxpayers more than \$15 billion and as much as \$27 billion by FY2050, depending on changes in production and the number of CWP beneficiaries.⁸

According to the FY2020 Congressional Budget Justification request submitted by the Department of Labor for the Trust Fund:

Based on current excise coal tax revenue estimates, in FY 2019 revenue will cover the definite appropriation for administration, and indefinite amounts for benefits payments and approximately 16 percent of the amounts of interest payments on bonds and advances. In FY 2020, the estimates project that excise tax receipts will cover

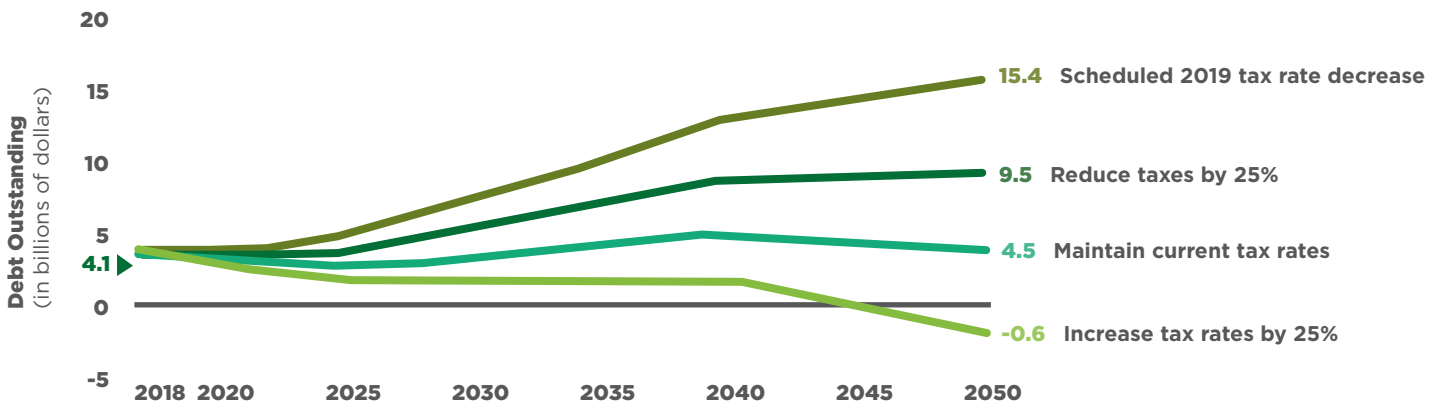
⁵ U.S. Government Accountability Office, Black Lung Benefits Program: Options for Improving Trust Fund Finances, GAO-18-351, May 2018, available at <https://www.gao.gov/products/GAO-18-351>.

⁶ U.S. Government Accountability Office, Financing and Oversight Challenges Are Adversely Affecting the Trust Fund, GAO-19-622T, Jun 20, 2019, available at <https://www.gao.gov/products/GAO-19-622T>.

⁷ David J. Blackley, Cara N. Halldin, and A. Scott Laney, “2018: Continued Increase in Prevalence of Coal Workers’ Pneumoconiosis in the United States”, 1970-2017, American Journal of Public Health 108, 1220_1222, available at <https://doi.org/10.2105/AJPH.2018.304517>.

⁸ GAO-19-622T, p. 8.

Figure 2. Simulated Effects of Adjusting the Coal Tax on Black Lung Disability Trust Fund Principal Amount of Outstanding Debt to Treasury’s General Fund Based on Moderate Case Assumptions, Fiscal Years 2018 Through 2050



Source: GAO simulation based on data from the Departments of Labor and Treasury, the Energy Information Administration, and the Office of Management and Budget. | GAO-18-351

the definite appropriation for administration and approximately 80 percent of the indefinite appropriation amount for benefits payments, with no revenue left to cover interest payments on bonds and advances. As this trend continues, advances to the BLDTF from short term borrowing authority will be necessary to cover the balance of amounts necessary for the obligations of the indefinite appropriation for benefits and interest, and for bond payments and repayment of advances to service the debt. These advances with interest repayment are projected to increase at an unsustainable rate. (emphasis added)⁹

When the GAO ran simulations to estimate future Trust Fund revenue and spending, it found that excise tax rates would need to **increase** by 25 percent from their 2018 levels, to a maximum tax rate of 5.5 percent of the sale price, to finally eliminate all Trust Fund debt by FY2050. Instead, Congress allowed the excise taxes to **decrease** by 55 percent from the 2018 levels.

⁹ Department of Labor, FY2020 Congressional Budget Justification, Black Lung Disability Trust Fund, CBJ-2020-V2-08 available at <https://www.dol.gov/sites/dolgov/files/general/budget/2020/CBJ-2020-V2-08.pdf>.

Recent Legislative Proposals

Several pieces of legislation in the 116th Congress propose extending the tax that funds the Black Lung Disability Trust Fund at 2018 levels. In June, the House Ways and Means Committee passed the Taxpayer Certainty and Disaster Tax Relief Act of 2019 (H.R. 3301), which would reinstate the increased rates on coal through December 31, 2020, beginning the first day of the first calendar month beginning after the date of enactment.



A coal longwall shearer. Source: Centers for Disease Control and Prevention



Coal miners. Source: Bureau of Labor Statistics

(S.617) proposes extending the higher tax rate through 2019, beginning the first day of the first month beginning after the date of enactment. This provision would need to be changed to extend the higher rate through 2020 or apply the extension retroactively to have any effect.

Two other pieces of legislation propose extending the coal excise tax at the 2018 level for ten years, The American Miners Act of 2019 (S.27) introduced by Sen. Joe Manchin (D-WV), and the Black Lung Benefits Disability Trust Fund Solvency Act (H.R.3876) introduced by Rep. Robert C. “Bobby” Scott (D-VA). The American Miners Act is primarily focused on pension and health benefits for retired coal miners who have been affected by issues such as coal company bankruptcies. The Black Lung Benefits Disability Trust Fund Solvency Act simply changes the expiration of the higher rate to December 31, 2029.

Conclusion

Congress created the Black Lung Program to ensure coal miners received workers’ compensation for contracting the deadly lung disease. It created the Trust Fund to require the coal industry to bear some of the costs of providing these benefits, instead of relying on federal taxpayers. Since then, the Trust Fund has had to borrow billions of dollars from taxpayers because the coal excise tax has not generated enough revenue. Now, instead of increasing the excise tax to repay taxpayers, it has decreased the excise tax, and taxpayers—not the coal industry—will be on the hook for as much as \$15 billion or more.

The tax extender bill introduced by Senate Finance Committee Chairman Chuck Grassley (R-IA) and Ranking Member Ron Wyden (D-OR) called the Tax Extender and Disaster Relief Act of 2019



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