

110TH CONGRESS
1ST SESSION

S. 373

To facilitate and expedite direct refunds to coal producers and exporters of the excise tax unconstitutionally imposed on coal exported from the United States.

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2007

Mr. BUNNING (for himself and Mr. ROCKEFELLER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To facilitate and expedite direct refunds to coal producers and exporters of the excise tax unconstitutionally imposed on coal exported from the United States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SPECIAL RULES FOR REFUND OF THE COAL EX-**
4 **CISE TAX TO CERTAIN COAL PRODUCERS**
5 **AND EXPORTERS.**

6 (a) IN GENERAL.—Notwithstanding subsections
7 (a)(1) and (c) of section 6416 and section 6511 of the
8 Internal Revenue Code of 1986, if—

1 (1) a coal producer establishes that such coal
2 producer, or a party related to such coal producer,
3 exported coal produced by such coal producer to a
4 foreign country or shipped coal produced by such
5 coal producer to a possession of the United States,
6 the export or shipment of which was other than
7 through an exporter, or an exporter establishes that
8 such exporter exported coal to a foreign country or
9 shipped coal to a possession of the United States, or
10 caused such coal to be so exported or shipped,

11 (2) such coal producer or exporter filed a re-
12 turn on or after October 1, 1990, and on or before
13 the date of the enactment of this Act, and

14 (3) such coal producer or exporter files a claim
15 for refund not later than the close of the 30-day pe-
16 riod beginning on the date of the enactment of this
17 Act,

18 then the Secretary of the Treasury shall pay to such coal
19 producer an amount equal to the tax paid under section
20 4121 of such Code on such coal exported by the coal pro-
21 ducer or a party related to such coal producer, or to such
22 exporter in an amount equal to \$0.825 per ton of such
23 coal exported by the exporter or such coal that the ex-
24 porter caused to be exported. This section applies only to

1 claims on coal exported on or after October 1, 1990,
2 through the date of the enactment of this Act.

3 (b) LIMITATIONS.—Subsection (a) shall not apply
4 with respect to exported coal if a credit or refund of tax
5 imposed by section 4121 of such Code on such coal has
6 been allowed or made to, or if a settlement with the Fed-
7 eral Government has been made with and accepted by, the
8 coal producer, a party related to such coal producer or
9 the exporter, of such coal, as of the date that the claim
10 is filed under this section with respect to such exported
11 coal. For purposes of this subsection, the term “settlement
12 with the Federal Government” shall not include any settle-
13 ment or stipulation entered into as of the date of the en-
14 actment of this Act, the terms of which contemplate a
15 judgment concerning which any party has reserved the
16 right to file an appeal, or has filed an appeal.

17 (c) SUBSEQUENT REFUND PROHIBITED.—No refund
18 shall be made under this section to the extent that a credit
19 or refund of such tax on such exported coal has been paid
20 to any person.

21 (d) COAL PRODUCER DEFINED.—For purposes of
22 this section, the term “coal producer” means the person
23 in whom is vested ownership of the coal immediately after
24 the coal is severed from the ground, without regard to the
25 existence of any contractual arrangement for the sale or

1 other disposition of the coal or the payment of any royal-
 2 ties between the producer and third parties. The term in-
 3 cludes any person who extracts coal from coal waste refuse
 4 piles or from the silt waste product which results from
 5 the wet washing (or similar processing) of coal.

6 (e) EXPORTER DEFINED.—For purposes of this sec-
 7 tion, the term “exporter” means a person, other than a
 8 coal producer, who does not have a contract, fee arrange-
 9 ment, or any other agreement with a producer or seller
 10 of such coal to sell or export such coal to a third party
 11 on behalf of the producer or seller of such coal and—

12 (1) is indicated in the shipper’s export declara-
 13 tion or other documentation as the exporter of
 14 record, or

15 (2) actually exported such coal to a foreign
 16 country or shipped such coal to a possession of the
 17 United States, or caused such coal to be so exported
 18 or shipped.

19 (f) RELATED PARTY DEFINED.—For purposes of
 20 this section, the term “a party related to such coal pro-
 21 ducer” means a person who—

22 (1) is related to such coal producer through any
 23 degree of common management, stock ownership, or
 24 voting control,

1 (2) is related (within the meaning of section
2 144(a)(3) of such Code) to such coal producer, or

3 (3) has a contract, fee arrangement, or any
4 other agreement with such coal producer to sell such
5 coal to a third party on behalf of such coal producer.

6 (g) TIMING OF REFUND.—With respect to any claim
7 for refund filed pursuant to this section, the Secretary of
8 the Treasury shall determine whether the requirements of
9 this section are met not later than 180 days after such
10 claim is filed. If the Secretary determines that the require-
11 ments of this section are met, the claim for refund shall
12 be paid not later than 180 days after the Secretary makes
13 such determination.

14 (h) INTEREST.—Any refund paid pursuant to this
15 section shall be paid by the Secretary of the Treasury with
16 interest from the date of overpayment determined by using
17 the overpayment rate and method under section 6621 of
18 such Code.

19 (i) STANDING NOT CONFERRED.—

20 (1) EXPORTERS.—With respect to exporters,
21 this section shall not confer standing upon an ex-
22 porter to commence, or intervene in, any judicial or
23 administrative proceeding concerning a claim for re-
24 fund by a coal producer of any Federal or State tax,
25 fee, or royalty paid by the coal producer.

1 (2) COAL PRODUCERS.—With respect to coal
2 producers, this section shall not confer standing
3 upon a coal producer to commence, or intervene in,
4 any judicial or administrative proceeding concerning
5 a claim for refund by an exporter of any Federal or
6 State tax, fee, or royalty paid by the producer and
7 alleged to have been passed on to an exporter.

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