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I. INTRODUCTION

Section 4121(a) of the Internal Revenue Code (the Code)[1] imposes an excise tax upon coal taken from mines located in the United States that is subsequently sold by the producer of the coal. The purpose of the legislation imposing the excise tax is to finance payments of health benefits to coal miners disabled by pneumoconiosis, a life-shortening disease commonly known as "black lung."[2]

II. LEGISLATIVE BACKGROUND OF BLACK LUNG COAL TAX

It is fairly clear that Congress attempted to integrate the Black Lung Coal Tax with previously enacted manufacturers' excise taxes for ease of tax administration,[3] forcing miners and

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[1] § 4121 of the Internal Revenue Code of 1986, as amended (the Code), passed by the 95th Congress and signed by the President on February 10, 1978, P.L. 95-227, 92 Stat. 11 (enacted as part of legislation entitled the "Black Lung Benefits Revenue Act of 1977"). References made throughout are to either the 1954 or 1986 version of the Internal Revenue Code, Title 26 U.S.C., unless the context specifies otherwise.

[2] H.R. REP. No. 151, 95th Cong., 1st Sess. 1-2 (1977).

[3] *See* S. REP. No. 1303, 94th Cong., 2d Sess. 4 (1976) ("This excise tax is added to the manufacturer's excise tax provisions already existing in the Internal Revenue Code, and in general the same rules applicable to those taxes are to be applied to the new excise tax on coal."); S. REP. No. 336, 95th Cong., 1st Sess. 7 (1977) ("Most of the rules generally applicable to manufacturers' excise taxes, including the collection provisions, apply to this coal tax."); U.S. HOUSE OF REPRESENTATIVES COMM. ON EDUCATION AND LABOR, 96TH CONG., 2D SESS., BLACK LUNG BENEFIT REFORM ACT AND BLACK LUNG BENEFITS REVENUE ACT OF 1977 1134 (Comm. Print 1979) ("This amendment makes it clear that the revenue-raising provision is a tax and thus brings into play all of the regular procedures for manufacturers excise taxes. If it were not a tax, then corresponding rules would have to be developed from scratch in this Bill.").

producers to administer the tax instead of placing that burden on retailers or distributors. The legislative history implies that no additional exemptions or exceptions were to be added in implementing the new tax.[4] The rate of tax imposed varies, depending on the mining procedure used to extract the coal.[5] The tax is effectively imposed upon the producer of the coal and then passed on to the consumer of the coal in typical manufacturers' excise tax procedure. An earlier version of the legislation sought to fund the Black Lung Trust Fund through a "premium" to be paid by coal mining operations.[6] This provision was subsequently amended by the Senate to provide for the method of the tax levy currently used.[7]

Perhaps as a way to avoid disputes regarding the scope and coverage of the new tax, Congress seemingly sought to ensure that application, collection, and administration procedures that had been developed over time would be expressly applicable to the Black Lung Coal Tax.[8] This is most apparent when examining the comments of the principal force behind the bill, Senator Russell Long (D-LA):

> In contrast to the House Bill, *this amendment makes it clear that the provision is a tax and brings into effect all of the regular procedures for manufacturers excise taxes. For example, this provides rules for situations where the producer uses the coal rather than selling it*, such as in the case of integrated electric utilities and a number of steel companies; it provides rules for the time for payment of tax; and it gives the taxpayers the right to sue for refunds of overpayments of the tax. If this were not a tax, then corresponding rules would have to be developed from scratch in this bill.[9]

This commentary is parroted in the official committee reports of the tax.[10] Based on recent decisions, it is obvious that Con-

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[4] S. REP. No. 1303, 94th Cong., 2d Sess. 4 (1976); S. REP. No. 336, 95th Cong., 1st Sess. 7 (1977).

[5] § 4121(b)(1) of the Code taxes coal taken from underground mines at $1.10 per ton. § 4121(b)(2) of the Code imposes a $.55 per ton tax on coal from surface mines.

[6] H.R. 4544, 95th Cong., 1st Sess., Rep. No. 151 Sec. 9(c). (Reprinted in Black Lung Benefits Reform Act and Black Lung Benefits Revenue Act of 1977 at 482 (Comm. Print 1979)).

[7] S. REP. No. 336, 95th Cong., 1st Sess. 1-2 (1977).

[8] S. REP. No. 1301, 94th Cong., 2nd Sess. 5 (1976).

[9] 123 CONG. REC. 39126 (1977); U.S. HOUSE OF REPRESENTATIVES COMM. ON EDUCATION AND LABOR, 96TH CONG., 2D SESS., BLACK LUNG BENEFITS REFORM ACT AND BLACK LUNG BENEFITS REVENUE ACT OF 1977 at 1110 (Comm. Print 1979) (emphasis added).

[10] S. REP. No. 1303, 94th Cong., 2d Sess. 4-5 (1976).

gress' goal of simplicity in the application, collection, and administration of the Black Lung Coal Tax has not been met.

III. RECENT DECISIONS

In *Mulga Coal Co., Inc. v. United States*,[11] the Eleventh Circuit resolved an issue of great concern to coal-mining taxpayers. Mulga Coal Company was an underground mining company that processed[12] its mined coal prior to its sale to third parties. As part of this process, the taxpayer used its own previously processed coal as fuel for equipment used during the drying phase of processing its coal. The coal burned as fuel was not included within the total tonnage upon which the corporation computed and paid its Black Lung Coal Tax.

In its opinion affirming the United States District Court for the Northern District of Alabama, the Eleventh Circuit held that the actions of a coal producer in drying its own coal constituted a "mining process," as used within the governing regulation, Treasury Regulation section 48.4121-1.[13] This regulation explicitly provides that in addition to coal *sold* by a producer, coal *used* by a producer is subject to the Black Lung Coal Tax.[14] This requirement is similar to that of most manufacturers' excise taxes, which appears to have been a goal of Congress in enacting the tax.[15] The phrase "coal used by the producer" is defined as "any use by a producer in other than a mining process."[16] Most

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[11] 825 F.2d 1547, 61 A.F.T.R.2d (P-H) 88-1401 (11th Cir. 1987), *affirming*, Civil Action No. C-85-HM-2710J, 58 A.F.T.R.2d (P-H) 86-6407 (N.D. Ala. 1986).

[12] The processing of mined coal typically entails washing, drying, sizing, and blending the coal.

[13] *Mulga Coal*, 825 F.2d at 1548-1549.

[14] *See* Treas. Reg. § 48.4121-1(a)(1) (1980).

[15] S. REP. No. 1303, 94th Cong., 2d Sess. 5 (1976).

[16] Treas. Reg. § 48.4121-1(d)(3) (1980), stating in pertinent part:

> For purposes of this section, the term "coal used by the producer" means use by the producer in other than a mining process. A mining process is determined the same way it is determined for percentage depletion purposes. For example, a producer who mines coal does not "use" the coal and thereby becomes liable for the tax merely because, before selling the coal, the producer breaks it, cleans it, sizes it, or applies one of the other processes listed in section 613(c)(4)(A) of the Code. In such a case, the producer will be liable for the tax only when he sells the coal. On the other hand, a producer who mines coal does become liable for the tax when he uses the coal as fuel, as an ingredient in making coke, or in another process not treated as "mining" under section 613(c).

notably, the regulation provides an exemption from the tax for coal which is used in a mining process. The exemption is to be determined by reference to use of the coal in those mining processes described in the percentage depletion section of the Code, section 613(c)(4)(A).[17]

It is this reference to section 613(c)(4)(A) of the Code by the Treasury Regulation that caused the conflict in *Mulga Coal* with respect to self-mined coal and its taxable use by coal producers. The conflict arises from the last sentence of Treasury Regulation section 48.4121-1(d)(3), which states: "On the other hand, a producer who uses coal does become liable for the tax when he uses the coal as fuel, as an ingredient in making coke, or in another process not treated as 'mining' under section 613(c)."

The Eleventh Circuit in *Mulga Coal* reasoned that under section 613(c)(4)(A) of the Code, made expressly applicable by the aforementioned Treasury Regulation,[18] the drying of coal was a mining process; therefore, coal so used was exempt from the tax.[19] Examining the specific reference to coal used as fuel contained in the last sentence of Treasury Regulation section 48.4121-1(d)(3), the court determined that two readings of the Regulation were possible: (1) coal used as fuel is never exempted from the tax—which was the position argued by the government; or (2) coal used as a fuel is taxable only when it is used in a nonmining process—the position advanced by the company.[20] In adopting the second reading, the court reasoned that since the goal of the excise tax is to tax coal that is ultimately *sold*, and since the depletion provisions of the Code provide that coal used as fuel *is not sold*, the Regulation's reference to Section 613 of the Code represented an indication on the part of Treasury that the two areas of the Code should be interpreted similarly. Accordingly, the court ruled that if the coal used as fuel is not "sold" for depletion purposes, it should not be treated as "sold" for Black Lung Coal Tax purposes either.[21]

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[17] *Id.*

[18] Treas. Reg. § 48.4121-1(d)(3) (1980), *supra* note 16.

[19] *Mulga Coal*, 825 F.2d at 1548-49.

[20] *Id.* at 1549.

[21] Even more directly, the court stated, "When the Internal Revenue Service has, by its own regulations, incorporated percentage depletion principles, its attempt to disown the percentage depletion case law must be rejected." *Id.* (Referring to Roundup Coal Mining v. Comm'r, 20 T.C. 388 (1953)).

In *Island Creek Coal Co. v. United States*,[22] the United States District Court for the Eastern District of Kentucky relied upon the Eleventh Circuit's analysis in *Mulga Coal*. *Island Creek* was a consolidated action which involved four coal mining corporations[23] seeking refunds from the IRS for Black Lung Coal Tax previously paid. The basis for the refunds was that each respective coal company had overpaid its Black Lung Coal Tax by erroneously including self-mined coal which it had used as fuel in mining processes (*e.g.*, the drying of coal) as coal sold and thereby subject to the tax.

In holding that the taxpayer's position was correct, the district court, like the Eleventh Circuit in *Mulga Coal*, relied upon the reference in Treasury Regulation section 48.4121-1(d)(3) to section 613(c)(4)(A) of the Code in defining a "mining" process for Black Lung Coal Tax purposes.[24] Noting that "drying to remove free water" is deemed a "mining" process under the Treasury Regulations for depletion,[25] the court granted summary judgment to the taxpayer.[26] In response to the government's arguments that *Mulga Coal* "was incorrectly reasoned and should not be adopted" and that "use," as used within Treasury Regulation section 48.4121-1(d)(3) should be construed narrowly, the court stated:

> While this Court may be of the opinion that the applicable regulations define many activities which by any common sense definition are clearly not mining, such as washing and drying coal, as being part of the "mining process," the statutes and regulations governing the question before the Court are not ambiguous. The Court will not strain to reach an interpretation which may be more consistent with legislative intent when the language of the regulation is clear. If "clarification" is in order, that is a task left to Congress and the Treasury Department.[27]

Is congressional clarification needed? Notwithstanding the arguments espoused by the government in *Mulga Coal* and *Island*

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[22] 91-2 USTC ¶ 70,012, No. 89-539 (July 12, 1991) *appeal docketed*, Civil Action No. 91-6046 (6th Cir., filed Sept. 6, 1991).

[23] Island Creek Coal Company, Garden Creek Pocahontas Company, Virginia Pocahontas Company and Beatrice Pocahontas Company.

[24] *Island Creek*, No. 89-539 at 2-3.

[25] Treas. Reg. § 1.613-4(f)(5)(iii) (1972), which provides in pertinent part, "Drying to remove free water, provided that such drying does not change the physical or chemical identity or composition of the mineral. . . ."

[26] *Island Creek*, No. 89-539 at 3, 6.

[27] *Id.* at 5-6.

Creek,[28] longstanding case law and published rulings clearly support the thesis that the drying of a mineral, including coal, constitutes a mining process under Section 613 of the Code. Therefore, pursuant to the reference in Treasury Regulation section 48.4121-1(d)(3) to section 613(c)(4)(A), the drying of a mineral is a "mining" process for purposes of the Black Lung Coal Tax. The leading cases and rulings on this point are discussed herein.

IV. THE DRYING OF MINERALS IS A "MINING" PROCESS

Section 613 of the Code provides a listing of various treatment processes which are considered "mining" processes for depletion purposes. Most pertinent for purposes herein is section 613(c)(4)(A) of the Code, which treats the following as "mining" processes for coal depletion purposes: "cleaning, sizing, dust allaying, treating to prevent freezing, and loading for shipment." Treasury Regulations promulgated to implement the depletion provisions essentially parrot this Code section.[29]

The implementing Treasury Regulations expound upon section 613(c)(4)(A) of the Code and expressly provide that the "cleaning" of coal constitutes a "mining process."[30] Although the term "drying" is not mentioned explicitly in these Treasury Regulations, a logical inference is that drying to remove water that is added to the coal during its cleaning constitutes a "cleaning" process as contemplated under section 613(c)(4)(A) of the Code.[31]

Regarding cases addressing the drying of minerals, *Zonolite Co. v. United States*[32] involved a taxpayer engaged in mining vermiculite.[33] The crude mineral was extracted from an open pit mine and transported to the taxpayer's cleaning and concentrat-

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[28] This same issue is pending before the United States District Court for the Eastern District of Pennsylvania. *See* Consolidation Coal Company, Consol Pennsylvania Coal Company and Itmann Coal Company v. United States, No. 88-1604 (W.D. Pa. filed Sept. 19, 1988) and USX Corporation (formerly United States Steel Corporation) v. United States, No. 89-1051 (W.D. Pa. filed May 16, 1989).

[29] *See* Treas. Reg. § 1.613-3(f)(2)(i)(a) (as amended in 1968) and § 1.613-4(f)(2)(i)(a) (1972).

[30] *Id.*

[31] This inference is supported by Treas. Reg. § 1.613-4(f)(5)(iii) (1972), *supra* note 25, cited in *Island Creek*, No. 89-539.

[32] 211 F.2d 508 (7th Cir. 1954).

[33] *Id.* at 509.

ing plant where it was crushed, dried, and screened.[34] The court determined that gross income for purposes of depletion includes the ordinary treatment processes (*e.g.* drying) normally applied by mine owners and operators to obtain the commercially marketable mineral products.[35]

United States v. Henderson Clay Products[36] involved a taxpayer miner/manufacturer of ball clay.[37] It mined its own clay from pits and converted the clay through grinding, blending, mixing, and drying into finished bricks, which the taxpayer sold nationwide.[38] The taxpayer argued that its depletion should be based on gross income computed at $10.50 per ton, since this was the market price for shredded ball clay had it been sold immediately after mining.[39] However, the taxpayer actually received only $8.75 per ton after the clay was processed into finished bricks.[40] The court held that since the taxpayer did not sell the clay at the first stage, but subsequently processed (*e.g.* dried) it into bricks, the taxpayer's actual gross income was never $10.50 per ton.[41]

In *Barton Mines Corp. v. Comm'r*,[42] a taxpayer mined and processed garnet ore.[43] In determining what treatments should be considered "mining" for purposes of computing percentage depletion, the court held that drying, standing alone, would in this instance be a nonmining process. But when considered in conjunction with the heavy media and flotation processes, the drying is necessary or incidental to those two mining processes.[44] In addition, the drying was not performed at such extreme temperatures as to change the chemical properties of the garnet. Accordingly, it was not "roasting," which is a nonmining process.[45] The court said that Congress did not mean for the courts to determine which of a group of technical descriptions fits

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[34] *Id.*
[35] *Id.* at 511.
[36] 324 F.2d 7 (5th Cir. 1963).
[37] *Id.* at 9.
[38] *Id.*
[39] *Id.* at 10.
[40] *Id.* at 8.
[41] *Id.* at 13, 16.
[42] 53 T.C. 241 (1969).
[43] *Id.* at 242.
[44] *Id.* at 255.
[45] *Id.* at 256.

within the statutory term.[46] Rather, it is necessary for the courts to look at the function served by each particular process.[47]

The issue presented in Revenue Ruling 67-227[48] was what constituted a treatment process, and thus mining, for percentage depletion purposes under section 613 of the Code.[49] Revenue Ruling 67-227 involved a sand and gravel producer who sold several sand and gravel products recovered in mining a deposit.[50] The products were separated from each other and from waste product by washing and screening.[51] The taxpayer then removed the added water by drying, which was necessary so that the fine sand product sizes could be screened and segregated.[52] Under the circumstances presented, the IRS held that washing, screening, and loading for shipment were treatment processes or processes considered to be part of "mining."[53] Drying, however, was not allowed as a separate treatment process, but merely as necessary or incidental in this case to the treatment processes of washing and screening.[54]

In Revenue Ruling 74-400,[55] the taxpayer mined two types of fullers earth, an absorbent clay.[56] In processing the first type, the taxpayer crushed and dried it to remove free water, then performed additional crushing, grinding, and pulverization.[57] The clay was then screened into various sizes and loaded for bulk shipment or bagged and loaded for shipment.[58] The IRS ruled that under section 613 of the Code and Treasury Regulation section 1.613, crushing and grinding (but not fine pulverization), drying to remove free water (but not including calcination), screening, and bulk loading for shipment were all considered "mining."[59]

The second type of fullers earth in Revenue Ruling 74-400 was also crushed and mixed with water. The IRS determined

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[46] *Id.* at 254.
[47] *Id.*
[48] Rev. Rul. 67-227, 1967-2 C.B. 223.
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] Rev. Rul. 67-227, 1967-2 C.B. 223.
[55] Rev. Rul. 74-400, 1974-2 C.B. 179.
[56] *Id.* at 180.
[57] *Id.*
[58] *Id.*
[59] *Id.* at 181.

that none of the processing except for the crushing was "mining" (necessary or incidental to sorting, concentrating, or sintering, as set forth in the Treasury Regulations).[60] The IRS stated that normally a process applied *subsequent* to a nonmining process is considered a nonmining process.[61] However, Treasury Regulation section 1.613-4(g)(2) provides an exception to this rule in those instances in which the rule would discriminate between similarly situated producers of the same mineral.[62] Such an exception is necessitated in this case because the end-result mineral is similar to that produced by other similarly situated producers who do not perform the extrusion (molding) or calcination process. Therefore, the further crushing and grinding (but not fine pulverization), screening, and bulk loading for shipment following extrusion (molding) or calcination are to be considered "mining" processes, while the blending with water, extrusion, calcination, fine pulverization, and bagging (and any other process *other than* screening or bulk loading for shipment after these last two processes) are *not* considered "mining."

Revenue Ruling 76-444[63] involved a taxpayer who mined and processed bentonite, which has an inherent moisture content of 30-40%.[64] Prior to processing, the bentonite may have three types of water associated with it: (1) Pore water—water in pores, on the surface, and around the edges; (2) Interlayered water—water between the plate-like layers of the mineral; or (3) Water of crystallization—water that is a chemically combined part of the mineral.[65] The treatment processes applied by the taxpayer included crushing, sizing, drying, and loading.[66] When drying to remove the moisture, pore water and interlayered water are expelled from the mineral at relatively low temperatures.[67] However, only about 90-94% of the interlayered water is removed, because 100% removal would cause a change in the natural physical properties of the bentonite (and possibly prevent the water of crystallization from being removed).[68] The water of

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[60] *Id.* at 180.
[61] Rev. Rul. 74-400, 1974-2 C.B. 179-80.
[62] Treas. Reg. § 1.613-4(g)(2) (1972).
[63] Rev. Rul. 76-444, 1976-2 C.B. 190.
[64] *Id.* at 191.
[65] *Id.*
[66] *Id.*
[67] *Id.*
[68] *Id.*

crystallization is removed by a second drying at a much higher temperature.[69] This second drying changes the physical and chemical properties of the bentonite.[70] Under section 613(c)(2) of the Code and Treasury Regulation section 1.613-4(f)(5)(iii), which provides that drying to remove "free water" (pore water and interlayered water) does not change the physical or chemical identity of the mineral, the IRS determined the first drying was a process recognized as "mining."[71] However, the second drying to remove water of crystallization changed the physical and chemical identity of the bentonite and was not a treatment process considered to be part of "mining."[72]

Most recently, in *Union Carbide Corp. v. Comm'r*,[73] a taxpayer mined vanadium and tungsten ore via a solvent extraction process, a separation process in which two or more fluids are brought into contact for the separation of components from one liquid to another. "Solvent extraction" does not appear as a listed mining process in section 613 of the Code.[74] However, "precipitation," which is the formation of a solid out of a liquid by evaporation, cooling, drying, and so forth, is listed.[75] The court agreed with the taxpayer that under section 613(c)(4)(D) of the Code the process was substantially equivalent to the precipitation process and should be treated as a "mining" process.[76]

Each of the respective cases and rulings addressed above holds that the drying of minerals constitutes a "mining" process for the depletion provisions of section 613 of the Code. Presumably, this principle also includes the drying of coal. The authors of a leading natural resource/mineral taxation treatise agree that the principle would include self-mined coal processed, dried, and then burned.[77] Given the specific cross-reference to section 613 of the Code in Treasury Regulation section 48.4121(d)(3), coupled with the aforementioned cases, is it any wonder coal-producing taxpayers are bringing these actions?

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[69] Rev. Rul. 76-444, 1976-2 C.B. 190-191.

[70] *Id.* at 192.

[71] *Id.* at 191-92.

[72] *Id.* at 192.

[73] 75 T.C. 220 (1980), *aff'd*, 671 F.2d 67 (2d Cir. 1982).

[74] *See* I.R.C. § 613(c)(4) (West 1986).

[75] I.R.C. § 613(c)(4)(D) (West 1986).

[76] *Union Carbide*, 75 T.C. at 248.

[77] *See* F. BURKE & R. BOWHAY, INCOME TAXATION OF NATURAL RESOURCES, ¶ 18.41, at 1850 (citing Treas. Reg. § 48-4121-1(d)(3) as authority).

Notwithstanding these decisions, the IRS continues to assert that its position on this issue is correct.[78] In the IRS action on decision for the Eleventh Circuit's decision in *Mulga Coal*,[79] the government stated that its position[80] should continue to be defended in all other circuits. A split in the decisions of the Circuit Courts of Appeal would make United States Supreme Court review a greater possibility.[81] The government's position is maintained in the IRS's leading taxpayer publication on federal excise taxes, in which the IRS states that "a producer does become liable for the tax, for example, when he uses the coal as fuel. . . ."[82] The IRS underscored its adherence to this position as recently as October, 1991, in a draft report by the Excise Tax Task Force, when it amplified Treasury Regulation section 48.4121 to state that coal used and consumed in thermal dryers to dry other coal would result in a taxable use of the consumed coal.[83]

V. CONCLUSION

Mining taxpayers may use the *Mulga Coal* and *Island Creek* decisions either as a basis for a refund claim,[84] seeking reim-

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[78] Evidenced by their filing an appeal in *Island Creek*, No, 89-539 (91-2 USTC ¶ 70,012, July 12, 1991) *appeal docketed*, No. 91-6046 (6th Cir., filed Sept. 6. 1991).

[79] Mulga Coal Co., Inc. v. United States, 825 F.2d 1547 (11th Cir. 1987), *action on decision*, 1987-024 (Nov. 10, 1987).

[80] *Id.* The reviewing attorney summarized the I.R.S. position:

> We do not deny that the drying of coal is a mining process, but we disagree with the court's conclusion that the coal used as fuel was "used in a mining process" and is excluded from taxation. We maintain that only the coal being dried was being "used in a mining process" and such use is not a taxable event; the coal burned in the dryer was used as fuel and that use is a taxable event. Our interpretation is consistent with the definition of "taxable use" set forth in section 4218. That section provides that the use of a taxable article that removes it from the reach of the excise tax upon sale, either by being incorporated into a nontaxable article or by being consumed in the manufacturing process so it is not a physical part of the manufactured product, is a "taxable use." Section 4218 thus ensures that the manufacturer pays an excise tax on every taxable article manufactured by him from which he derives value.

[81] A split in the circuits is possible: *Mulga Coal* was heard by the Eleventh Circuit; *Island Creek* will be heard by the Sixth Circuit. The cases pending in Pennsylvania would be appealable to the Third Circuit.

[82] IRS Publication 510, "Excise Taxes for 1990" at 11 (Rev. Nov. 1989).

[83] IRS Publication 191, "Excise Tax Task Force," Strategy #3, Action Item #9, June 28, 1991, published in B.N.A. Daily Tax Report at L-1 - L-25. The I.R.S. noted the change was in response to the Eleventh Circuit's decision in *Mulga Coal*.

[84] Given the IRS position on this issue, the claim for a refund would likely be denied. *See Mulga Coal*, 825 F.2d 1547.

bursement of taxes previously paid on coal used as fuel, or as a planning opportunity when contemplating decisions regarding expansion or modernization of processing facilities.[85] Nonetheless, it is evidently the law that self-mined coal used as fuel in drying coal is exempt from the Black Lung Coal Tax.

[85] Obviously, this is a cost/benefit question. However, as *USX*, No. 89-1051 (W.D. Pa. filed May 16, 1989), involves approximately $275,000 in tax, *Consolidation Coal*, No. 88-1604 (W.D. Pa. filed Sept. 19, 1988), involves approximately $168,000, and *Island Creek*, No. 89-539 (91-2 USTC ¶ 70,012, July 12, 1991) *appeal docketed* No. 91-6046 (6th Cir. filed Sept. 6, 1991), involves approximately $193,000, it is clearly an issue worth investigating.