



## LEXSEE NOTICE 2000-28

Notice 2000-28

Notice 2000-28; 2000-1 C.B. 1116; 2000 IRB LEXIS 180; 2000-21 I.R.B. 1116

May 22, 2000

[\*1]

**SUBJECT MATTER:** Coal Exports**TEXT:**

This notice provides guidance relating to the coal excise tax imposed by § 4121 of the Internal Revenue Code. The notice provides rules under the Code for making a nontaxable sale of coal for export or for obtaining a credit or refund when tax has been paid with respect to a nontaxable sale of coal for export.

## SECTION I. NONTAXABLE SALE

(A) *General rule.* Section 4121 imposes a tax on the producer's sale of coal from mines in the United States. Under the Export Clause of the United States Constitution, art. I, §9, cl. 5, this tax does not apply to the producer's sale of coal if (1) the coal was in the stream of export when sold by the producer and (2) the coal is actually exported. *See A.G. Spalding & Bros. v. Edwards*, 262 U.S. 66, 67 L. Ed. 865, 43 S. Ct. 485, 1923-1 C.B. 263, T.D. 3476 (1923), H-1 C.B. 263, *United States v. IBM*, 517 U.S. 843, 135 L. Ed. 2d 124, 116 S. Ct. 1793 (1996), 1996-2 C.B. 163, and *Ranger Fuel Corp. v. United States*, 33 F. Supp. 2d 466 (E.D. Va. 1998).

(B) *In the stream of export when sold by the producer.* Coal is in the stream of export when sold by the producer if the sale is a step in the exportation of the coal to its ultimate destination in a foreign [\*2] country. For example, coal is placed into the stream of export when (1) the coal is loaded on an export vessel and title is transferred from the producer to a foreign purchaser, or (2) the producer sells the coal to an export broker in the United States under terms of a contract showing that the coal is to be shipped to a foreign country.

(C) *Proof of exportation.* Exportation may be evidenced by (1) a copy of the export bill of lading issued by the delivering carrier, (2) a certificate signed by the agent or representative of the export carrier showing actual exportation of the coal, (3) a certificate of landing signed by a customs officer of the foreign country to which the coal is exported, or (4) in a case in which the foreign country has no customs administration, a statement of the foreign consignee showing receipt of the coal.

(D) *Sale.* Sale means an agreement whereby the seller transfers the coal (that is, the title or the substantial incidents of ownership) to the buyer for consideration, which may consist of money, services, or other things.

## SECTION II. CREDIT OR REFUND

(A) *General rule.* Tax paid on coal is treated as an overpayment under § 6402 if the coal is (1) in the stream [\*3] of export when sold by the producer and (2) actually exported. A claim for a credit or refund may be made only by (1) the producer that paid the tax to the government, or (2) the exporter of the coal, if the person that paid the tax waives the right to the claim. The requirements in paragraphs (B) and (C) of this section are similar to the requirements in § 6416 (a) and (c).

(B) *Information to be submitted; claims by the producer.* Each claim by the producer that paid the tax to the government must contain the following information with respect to the coal covered by the claim:

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- (1) The quarter and year for which the tax was reported on Form 720, Quarterly Federal Excise Tax Return, the IRS No. listed on the form (IRS No. 36, 37, 38, or 39) on which the tax was reported, the amount of tax paid on the coal, and the date the tax was paid;
- (2) A statement that the claimant has evidence that the coal was in the stream of export when sold by the producer and actually was exported; and
- (3) A statement that the claimant:
  - 1.
  - 2.
  1. Has neither included the tax in the price of the coal with respect to which it was imposed nor collected the amount of the tax from its buyer;
  - 3.
  - 4.
  1. Has repaid the amount of the tax [\*4] to the ultimate purchaser of the coal; or
  - 5.
  - 6.
  1. Has obtained the written consent of the ultimate purchaser of the coal to the allowance of the claim.

(C) *Information to be submitted; claims by the exporter.* Each claim by an exporter of coal that is not the producer of the coal must contain the following information with respect to the coal covered by the claim:

- (1) A statement by the person that paid the tax to the government that that person has waived the right to claim a refund of the tax;
- (2) A statement by the person that paid the tax to the government that provides the quarter and year for which the tax was reported on Form 720, Quarterly Federal Excise Tax Return, the IRS No. listed on the form (IRS No. 36, 37, 38, or 39) on which the tax was reported, the amount of tax paid on the coal, and the date the tax was paid;
- (3) A statement that the claimant has evidence that the coal was in the stream of export when sold by the producer;
- (4) The proof of exportation; and
- (5) A statement that the claimant:
  - 7.
  - 8.
  2. Has neither included the tax in the price of the coal with respect to which it was imposed nor collected the amount of the tax from its buyer;
  - 9.
  - 10.
  2. Has repaid the amount of the tax to the ultimate [\*5] purchaser of the coal; or
  - 11.
  - 12.
  2. Has obtained the written consent of the ultimate purchaser of the coal to the allowance of the claim.

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(D) *Form of claim.* Each claim for refund must be filed on Form 8849, Claim for Refund of Excise Taxes, in accordance with the instructions for that form. Each claim for a credit against excise tax liability must be filed on Part I, Line 1, of Schedule C of Form 720 in accordance with the instructions for that form.

(E) *Time for filing.* Claims must be filed within the period prescribed by § 6511. Thus, claims generally must be filed within 3 years of the time the Form 720 reporting the tax was filed or 2 years from the time the tax was paid, whichever is later.

(F) *Interest.* Section 6611 (relating to interest on overpayments) applies to claims made under § 6402.

### SECTION III. PAPERWORK REDUCTION ACT

The collections of information contained in this notice have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1690.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays [\*6] a valid OMB control number.

The collections of information in this notice are in sections II.(B) and II.(C). This information is required to support exempt sales and claims for credits or refunds. The collections of information are required to obtain a tax benefit. The likely respondents are businesses.

The estimated total annual reporting burden is 400 hours.

The estimated annual burden per respondent 1 hour.

The estimated number of respondents is 400.

The estimated frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### SECTION IV. DRAFTING INFORMATION

The principal author of this notice is Frank Boland of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr. Boland at (202) 622-3130 (not a toll-free call).

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