B.C.D. 01-86 DEC 04 2001

EMPLOYER STATUS DETERMINATION
Trans-Mark Associates, Inc.
RMW Ventures, L.L.C.
American Maintenance & Training, Inc.

This is the decision of the Railroad Retirement Board regarding the status of Trans-Mark Associates, Inc., RMW Ventures, L.L.C., and American Maintenance & Training, Inc., as employers under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Trans-Mark was incorporated September 18, 1997, and first paid compensation to employees January 9, 1998. Trans-Mark provides consulting services to state and municipal governments, manufacturing entities, machinery brokers, recycling concerns, agri-business concerns, small railroads and other transportation concerns, and individuals. Services provided include help in development of start-up business plans, assistance with planning for specific transportation, accounting services, and brokerage of engineering services. Trans-Mark provides services to C & NC Railroad Corporation, Maumee & Western Railroad Corporation, and Wabash Central Railroad Corporation, all employers under the Acts (B.A. Nos. 2374, 2375, and 2376, respectively). The average percentage of Trans-Mark's gross revenues generated by business with these companies is 15.8, 19.8, and 8.2, respectively. Trans-Mark is owned by Spencer Wendelin.

American Maintenance was incorporated September 9, 1997, and first paid compensation to employees April 24, 1998. American Maintenance provides services to federal, state, and local government entities, industrial and agri-business firms, and railroads. Services provided include maintenance and repair of large machinery; training of individuals and groups in the operation of various types of large equipment and in equipment safety training; construction work and consulting assistance, including the specialized movement of large items such as machinery and fixed structures, such as bridges; and the disassembly of large machinery. American Maintenance provides

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services to C & NC Railroad Corporation, Maumee & Western Railroad Corporation, and Wabash Central Railroad Corporation. The average percentage of gross revenues generated by business with these companies is 10.8, 24.6, and 10.2, respectively. American Maintenance is owned by Wurmwood Trust, Charles Hambley, Jr., and William Hambley, co-trustees.

RMW was formed April 28, 1997. It is reported to have no employees. RMW leases real estate and other assets to short line railroads and other companies. RMW leases real estate to C & NC Railroad Corporation, Maumee & Western Railroad Corporation, and Wabash Central Railroad Corporation. The percent of business time spent doing business with rail carriers is under 10 percent. Approximately 75 percent of RMW's revenue is received from property leases, a portion of which is attributable to railroad lessees. RMW is owned by 12 different parties, including individuals, joint holders, and others.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

> (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;
>
> (ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad * * *.

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Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

Trans-Mark, American Maintenance, and RMW all provide services to carriers covered under the Acts. However, there is no evidence in the record which contradicts the information submitted that these companies are not affiliated with any carriers. Accordingly, the Board finds that Trans-Mark, American Maintenance, and RMW are not employers under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Original signed by:

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever