

EMPLOYER STATUS DETERMINATION**New York, New Jersey Rail, LLC****New York, Cross Harbor Railroad Terminal Corporation**

This is the determination of the Railroad Retirement Board concerning the status of New York, New Jersey Rail, LLC, and New York, Cross Harbor Railroad Terminal Corporation, as employers under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.). New York, Cross Harbor Railroad Terminal Corporation has been determined to be a rail carrier employer under the Acts with service creditable February 1, 1983, reporting under BA number 4392. The status of New York, New Jersey Rail, LLC under the Acts has not previously been considered.

In Legal Opinion L-83-210, the General Counsel found New York Cross Harbor Railroad Terminal Corporation (Cross Harbor RR) operated a rail car float between New York and New Jersey, and approximately 15 miles of track in Brooklyn, New York, which interchanged with Conrail and with the South Brooklyn Railway. At some point thereafter, Cross Harbor RR was acquired by GJ Railco Acquisition, LLC. GJ Railco is in turn owned by Mid Atlantic New England Rail LLC, a company owned and controlled by Mr. Gordon Reger. See: *Gordon Reger—Continuance in Control Exemption—New Amsterdam & Seneca Railroad Company, LLC.*, STB Finance Docket No. 34825, 71 Fed. Reg. 9422 (Feb. 23, 2006).¹

On November 22, 2005, Mid Atlantic formed New York, New Jersey Rail, LLC (NY NJ Rail) as a New York Limited Liability Company. NY NJ Rail and Cross Harbor RR together filed a notice of exemption with the Surface Transportation Board to transfer the operating rights and rail service obligations from Cross Harbor RR to NY NJ Rail. The parties then requested a stay pending resolution of Cross Harbor RR's obligations to Conrail and to the New York City Economic Development Corporation. See: *New York New Jersey Rail LLC and New York Cross Harbor Railroad Terminal Corporation—Corporate Family Transaction Exemption*, STB Finance Docket No. 34813, 71 Fed. Reg. 42718 (July 27, 2006). That notice states that Cross Harbor RR owns, leases and operates railroad tracks and facilities at

¹ Gordon Reger also controls Regus Industries, LLC, which is sole owner of New Amsterdam & Seneca Railroad Company, LLC. See: *New Amsterdam & Seneca Railroad Company, LLC—Lease and Operation Exemption—Line in Fostoria, Ohio*, STB Finance Docket No. 34811, 71 Fed. Reg. 3349-50, (January 20, 2006). The status of GJ Railco Acquisition, LLC; Mid Atlantic New England Rail LLC, Regus Industries, LLC, and New Amsterdam & Seneca Railroad Company, LLC, will be considered in a subsequent decision.

Brooklyn, New York, and at Greenville and Jersey City in New Jersey, and connects these facilities by car float across New York Harbor. The Greenville rail line includes a rail yard leased from Conrail under an agreement dated December 22, 2005. The parties intended that Cross Harbor RR's rights under the lease would be transferred to NY NJ Rail as well.

Though the transaction was intended to take place on or after March 3, 2006, Mr. James Cornell of NY NJ Rail advised in a letter dated February 15, 2007, that NY NJ Rail acquired control of the rail lines of Cross Harbor RR on September 1, 2006. All employees of Cross Harbor were hired by NY NJ Rail, and began compensated service on that date as well.

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;

Section 1 of the RUIA contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act. See also, regulations of the Board at 20 CFR 202.2, which define covered employer to include any company principally engaged in carrier business. Finally, it should be noted that regulations of the Board at 20 CFR 202.11 provide that the employer status of any company shall terminate whenever such company loses any of the characteristics essential to the existence of an employer status.

The evidence of record establishes that NY NJ Rail is a rail carrier operating in interstate commerce. Accordingly, it is determined that NY NJ Rail became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and its corresponding provision of the Railroad Unemployment Insurance Act effective September 1, 2006, the date as of which its first employee was first compensated. Cf. Rev. Rule. 82-100, 1982-1 Cum.Bul. 155, wherein the IRS held that a company became an employer under the Railroad Retirement Tax Act on the date it hired employees to perform functions directly related to its carrier operations.

The evidence further establishes that Cross Harbor RR ceased operations and transferred its assets and common carrier obligations to NY NJ Rail at close of business August 31, 2006. Accordingly, it is determined that Cross Harbor RR lost the characteristics essential to rail carrier status on August 31, 2006, and ceased

to be a covered rail carrier employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act effective close of business August 31, 2006.

Original signed by:

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