BCD 00-14

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Employee Status Determination
Managers of the Central Kansas Railway, L.L.C.

This is the decision of the Railroad Retirement Board regarding whether the services performed by managers of the Central Kansas Railway, L.L.C. (CKR), constitute employee service under the Railroad Retirement and Railroad Unemployment Insurance Acts.

CKR, a covered employer under the Acts (B.A.2765), is a limited liability corporation, doing business in and incorporated under the law of the State of Kansas. A contract between CKR and its parent, OmniTrax, Inc., provides that certain individuals associated with OmniTrax are managers of CKR.

Section 1(b) of the Railroad Retirement Act and section 1(d)(1) of the Railroad Unemployment Insurance Act both define a covered employee as an individual in the service of an employer for compensation. Section 1(d) of the Railroad Retirement Act further defines an individual as "in the service of an employer" when:

> (i)(A) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or (B) he is rendering professional or technical services and is integrated into the staff of the employer, or (C) he is rendering, on the property used in the employer's operations, personal services the rendition of which is integrated into the employer's operations; and
>
> (ii) he renders such service for compensation * * *.

Section 1(e) of the Railroad Unemployment Insurance Act contains a definition of service substantially identical to the above, as do sections 3231(b) and 3231(d) of the Railroad Retirement Tax Act (26 U.S.C. §§ 3231(b) and (d)).

Limited liability corporations are formed under the laws of the individual states. Sections 17-7607 et seq. of the Kansas Statutes govern limited liability corporations organized under the laws of that state. Section 17-7616 suggests that the functions of managers of a limited liability corporation are similar to those of directors of a corporation. See also sections 17-7617-19. Limited liability corporations are taxed as partnerships, but have the limited liability aspect of corporations. Managers of a limited liability corporation, such as CKR, are analogous to partners in a partnership, and generally would not be employees of the enterprise.

Managers of the Central Kansas Railway, L.L.C.

Information provided by OmniTrax indicates that the managers of CKR were Mr. Patrick J. Broe, Mr. Dwight N. Johnson, Mr. William B. Bryant, Mr. Michael J. Ogborn, and Mr. Thomas E. Whyte. Mr. Whyte and Mr. Bryant are no longer managers of CKR, having resigned June 6, 1997, and February 6, 1998, respectively. The managers have appointed officers for CKR, including a president of CKR, and none of the managers are themselves officers of CKR. The officers have general and active control of CKR's affairs and business and general supervision of its agents and employees. The president supervises and controls the day to day operations of the business.

The managers approve the budget and financing arrangements for CKR and approve major contracts outside the ordinary course of CKR's business, perform other similar oversight functions, and are authorized to perform such functions as signing documents for CKR. They are not compensated for performance of their duties as managers, and they spend approximately an hour a month in performance of their duties as managers of CKR and of at least seven other OmniTrax subsidiary railroads.

Essentially, OmniTrax has created managers analogous to boards of directors for its limited liability corporation rail subsidiaries. Directors of corporations, and the managers of CKR in this case, are not employees of the companies of which they are directors or managers in that they are not subject to the continuing authority of the employer to supervise and direct the manner of rendition of their service, are not rendering professional or technical services and are not integrated into the staff of the employer, and are not rendering, on the property used in the employer's operations, personal services the rendition of which is integrated into the employer's operations.

Accordingly, it is decision of the Board that the services provided by the managers of CKR do not constitute service covered under the Railroad Retirement or Railroad Unemployment Insurance Acts.

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