B.C.D. 00-61 DEC 2 1 2000

EMPLOYER STATUS DETERMINATION
ILLINOIS INDIANA DEVELOPMENT COMPANY, L.L.C

This is the determination of the Railroad Retirement Board regarding the status of Illinois Indiana Development Co., L.L.C. (IIDC), as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.) (RUIA).

Information regarding IIDC was provided Rose-Michelle Weinryb, Counsel for IIDC. Information was also found in Surface Transportation Board (STB) Finance Docket No.'s 33819 and 33845.

IIDC purchased a rail line of 25.888 miles in Indiana from the Norfolk Southern Railway Company. IIDC reportedly has no employees but has contracted with the Chicago South Shore and South Bend Railroad (CSS), an employer under the RRA and RUIA (B.A. No. 5325), to operate the rail line. The rail operation interchanges with CSXT, NS, CNIC and most other railroads serving Chicago. The beginning date of operation was February 4, 2000.

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;

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

In our decision on reconsideration of the employer status of Railroad Ventures, Inc. (B.C.D. 00-47), the Board held that an entity that has STB authority to operate a rail line, but leases or contracts with another to operate the line in question, is covered under the Acts administered by the Board unless the Board determines that the entity is not a carrier. The Board enunciated a three-part test in B.C.D. No. 00-47 to be applied in making this determination. An entity that leases a line to another company or contracts with another company to operate the line is a carrier under the Railroad Retirement Act unless the Board finds that all three of the following factors exist: 1) the entity does not have as a primary business purpose to profit from railroad activities; 2) the entity does not operate or retain the capacity to operate the rail line; and 3) the operator of the rail line is already covered or would be found to be covered under the Acts administered by the Board.

ILLINOIS INDIANA DEVELOPMENT COMPANY, L.L.C

According to the above-cited Surface Transportation Board decisions, the acquisition and operation of the rail line by IIDC, through its contract carrier, CSS, is for the purpose of conducting freight operations previously conducted by NS. Moreover, as stated in STB Finance Docket No. 33845, "IIDC further states that it will retain a residual common carrier obligation." IIDC also advised the STB that its projected revenues would not exceed those that would qualify it as a Class III carrier. Accordingly, the Board finds that IIDC has as a primary business purpose to profit from railroad activities. The Board therefore finds that IIDC became a rail carrier employer under section 1(a)(1)(i) of the RRA and the corresponding sections of the RUIA beginning February 4, 2000, the date it began operations.

Cherryl T. Thomas

Cherryl T. Thomas

V. M. Speakman, Jr.

V. M. Speakman, Jr.

Jerome F. Kever

Jerome F. Kever