B.C.D. 01-49

EMPLOYER STATUS DETERMINATION JUN 04 2001
ParkSierra Corporation

This is the determination of the Railroad Retirement Board concerning the status of ParkSierra Corporation as an employer 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.).

Information regarding ParkSierra was provided by Rose-Michele Weinryb, counsel for ParkSierra, and by Mr. David L. Parkinson, former sole owner of ParkSierra. According to Ms. Weinryb, ParkSierra, a subchapter S corporation, was incorporated and began doing business December 21, 1989. Until September 28, 2000, it was wholly-owned by Mr. David L. Parkinson and was the general partner of Arizona & California Railroad Company Limited Partnership and California Northern Railroad Company, L.P., carrier-employers under the Acts (B.A. Nos. 3777 and 5734, respectively). ParkSierra had a one percent interest in each railroad, and its sole function prior to September 28, 2000, was acting as general partner for the two railroads. As such, it performed certain functions for the two railroads, such as certain investment, banking, and other financial activities; preparing and filing tax returns; leasing property; and obtaining insurance. ParkSierra states that it had no employees; all of its corporate officers were employees of the railroads, which paid railroad retirement taxes for those individuals. Mr. Parkinson had an approximately 16 percent interest in each railroad.

In Surface Transportation Board Finance Docket No. 33932 ParkSierra filed a notice of exemption to acquire all of the assets of Arizona & California Railroad Company and California Northern Railroad Company in exchange for stock in ParkSierra. On September 28, 2000, ParkSierra assumed the common carrier obligations of the two railroads, each of which continued to provide railroad service as an operating division of ParkSierra.

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;

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> (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 (other than trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad * * *.

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions.

The evidence of record indicates that prior to September 28, 2000, ParkSierra was not a carrier operating in interstate commerce. Nor was it under common control with Arizona & California Railroad Company and California Northern Railroad Company. Although ParkSierra was a general partner of the two railroads prior to September 28, 2000, it owned only a one percent interest in each railroad and ParkSierra's sole owner, Mr. Parkinson, had approximately a 16 percent interest in each railroad. However, as of September 28, 2000, ParkSierra became a carrier operating in interstate commerce. Accordingly, it is determined that ParkSierra is an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of September 28, 2000, the date as of which it acquired the rail operations of Arizona & California Railroad Company and California Northern Railroad Company.

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever