B.C.D. 03-10 JAN 29 2003

EMPLOYER STATUS DETERMINATION
TransitAmerica, LLC

This is the determination of the Railroad Retirement Board concerning the status of TransitAmerica, LLC, 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.).

In Surface Transportation Board Finance Docket No. 34253, TransitAmerica filed a notice of exemption to acquire and operate approximately 2.6 miles of rail line formerly owned by Herzog Contracting Company. It interchanges with the Burlington Northern Santa Fe Railway Company. TransitAmerica currently has one customer, Herzog Contracting Company, and one employee. It began operations on December 20, 2002, and first compensated its employee on December 9, 2002.

TransitAmerica is jointly owned by Herzog Transit Services, Inc., and Stagecoach Rail North America, LLC. Herzog Transit Services is a wholly-owned subsidiary of Herzog Contracting Company[1].

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).

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[1] Herzog Contracting Corporation and Herzog Transit Services were held not to be employers under the Acts (Legal Opinion L-90-79 and B.C.D. No. 94-109, respectively).

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Although TransitAmerica currently has only one customer, its attorney advised the Board's Audit and Compliance Section that it was established to provide common carrier rail service over the rail line in question. The Board finds that the evidence of record establishes that TransitAmerica is a carrier operating in interstate commerce.

Accordingly, it is determined that TransitAmerica 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 December 9, 2002, the date as of which it first compensated its employee.

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