B.C.D. 03-20

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EMPLOYER STATUS DETERMINATION
Watco Companies, Inc.
Watco Transportation Services

This is the determination of the Railroad Retirement Board concerning the status of Watco Companies, Inc., and Watco Transportation Services 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.).

Information dated August 30, 2002, from Watco Companies states that Watco Companies was incorporated (as Generations Holdings, Inc.) on January 12, 1998 (the name was changed to Watco Companies on December 1, 1999). On January 1, 2001, Watco, Inc.[1], Watco Switching[2], and three other companies[3] were merged into Watco Companies. Watco Companies is described as a "privately held corporation of four separate families none of whom own a majority or controlling interest." The business of Watco Companies is chiefly with non-carrier companies including paper companies, smelting and mining companies, petro-chemical companies, agricultural companies, steel processing companies, and utilities. Four percent of Watco Companies' employees perform work related to rail carriers, including rail car repair, locomotive maintenance, major track repair, and warehousing services. Watco Companies owns Watco Transportation Services.

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[1] Watco, Inc. performed rail car repair, locomotive repair and maintenance, locomotive leasing, track repair and maintenance, and rail car management services. Most of its business consisted of rail-related service for non-railroad companies. Ten percent of its business was with railroads, and less than five percent of its business was with its affiliated railroad, Southeast Kansas Railroad. On April 29, 1993, the Board held that Watco, Inc., was not covered under the Acts.

[2] Information dated August 17, 1999, regarding Watco Switching states that it was formerly a subsidiary of Watco Companies providing repair of rail cars for private rail car owners.

[3] Those three companies were Transerve, Inc., Quantum Rail Services, Inc., and Fastrac Railroad Services, Inc. Transerve was sued by the Office of Inspector General of the Railroad Retirement Board on behalf of the Railroad Retirement Board and the Internal Revenue Service for taxes and contributions due based on work its employees performed for the affiliate railroads for the period 1996-2000. Since these companies were merged into Watco Companies, and since any further liability for that period on the part of Transerve is foreclosed by the judgment, the Board does not address the issue of the coverage of these companies in this determination.

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Information dated March 26, 2001, from Watco Transportation Services indicates that operations began January 1, 2001. It owns six railroads, Eastern Idaho Railroad, Inc. (B.A. No. 2768); Palouse River & Coulee City Railroad, Inc. (B.A. No. 2643); South Kansas and Oklahoma Railroad, Inc. (B.A. No. 3880); Stillwater Central Railroad, Inc. (B.A. No. 2878); Kansas and Oklahoma Railroad (B.A. No. 2797); and Timber Rock Railroad, Inc. (B.A. No. 2877), all of which are employers under the Acts. The operations of Watco Transportation Services included the following provided for its subsidiary railroads: track maintenance, locomotive maintenance, railcar repair and vehicle repair, and management and marketing services. Watco Transportation Services is wholly owned by Watco Companies, Inc.

Watco Companies is owned as follows: Charles R. Webb, 47.24 percent; Richard B. and Stacy Webb, 25.20 percent; Gary L. and Susan Lundy, 23.56 percent; and C. Wayne and Glenda Sigley, 4.00 percent.

The directors of the above-companies are as follows: Watco Companies, Richard B. Webb; Watco Transportation Services, Richard B. Webb and Gary L. Lundy; Eastern Idaho Railroad, Richard B. Webb; South Kansas and Oklahoma Railroad, Richard B. Webb and Gary L. Lundy; Palouse River & Coulee City Railroad, Richard B. Webb; Stillwater Central Railroad, Charles R. Webb, Richard B. Webb, Stacy L. Webb, Gary L. Lundy, and Susan K. Lundy; Timber Rock Railroad, Richard B. Webb, Gary L. Lundy, Donald M. Wilson, Deborah Moody, and Leslie Elmore; and Kansas and Oklahoma Railroad, Richard B. Webb and Gary L. Lundy.

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:

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> (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 (except 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, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

Watco Transportation Services is the sole shareholder of its affiliated carriers, who are covered employers under the Acts. In turn, Watco Transportation Services is wholly owned by Watco Companies. Therefore, Watco Transportation Services is under common control with its affiliated carriers. The remaining question is whether Watco Transportation performs services in connection with transportation to its affiliated carriers. In performing track maintenance, locomotive maintenance, railcar repair and vehicle repair, and management and marketing services for its subsidiary railroads, Watco Transportation Services is clearly performing services in connection with railroad transportation. The Board therefore finds that Watco Transportation Services is a covered employer under the Acts administered by the Board effective January 1, 2001, the date as of which it came into existence.

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The next question is whether Watco Companies is a covered employer. The evidence of record indicates that the business of Watco Companies is chiefly with non-carrier companies and that only four percent of Watco Companies' employees perform work related to rail carriers. The Board finds that this level of rail related work is insubstantial and is thus "casual service" and is not service in connection with railroad transportation. See 20 CFR 202.6. Because the Board finds that Watco Companies does not perform service in connection with railroad transportation, we do not address the issue of whether it is under common control with one or more rail carrier employers. Accordingly, the Board finds that Watco Companies is not an employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

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