B.C.D. 03-59

JUN 25 2003

EMPLOYER STATUS DETERMINATION
Connotton Valley Railway, Inc.

This is a determination of the Railroad Retirement Board concerning the status of Connotton Valley Railway, Inc. (CVR) 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).

In Surface Transportation Board (STB) Finance Docket No. 34264 decided October 30, 2002, CVR filed a notice of exemption to lease and operate a rail line from the Wheeling & Lake Erie Railway Company (BA 3373). The rail line leased runs from milepost 5.1 in Cleveland, Ohio to milepost 15.5 at Falls Junction in Glenwillow, Ohio. According to a letter dated May 6, 2003 from Mr. Clifford Perry, Chief Executive Officer of CVR, the CVR began operations on October 14, 2002, and first compensated employees on that date. CVR reports that it is a freight and tourist scenic railway. It interchanges with the Wheeling and Lake Erie Railway Company. In addition to leasing the rail line in question, CVR also leased equipment with which to operate the railroad.

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;

Section 1 of the RUIA contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act.

The evidence of record establishes that Connotton Valley Railway, Inc. is a rail carrier operating in interstate commerce. Accordingly, it is determined that Connotton Valley Railway became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and the corresponding provision of the Railroad Unemployment Insurance Act effective October 14, 2002, the date its

Connotton Valley Railway, Inc.

employees were first compensated. [CF. Rev. Rul. 82-100, 1982-1 C.B. 155, wherein the IRS held that a company became an employer under the Railroad Retirement Tax Act on the date it hired employees to perform functions directly related to its carrier operations.]

V. M. Speakman, Jr.

Jerome F. Kever