B.C.D. 03-66

SEP 09 2003

EMPLOYER STATUS DETERMINATION
Connex Railroad, LLC

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

Information regarding this company was provided by James E. Howard, counsel for the company and for Massachusetts Bay Commuter Railroad Company, LLC (MBCR). Massachusetts Bay Commuter Railroad Company was selected by the Massachusetts Bay Transportation Authority to operate the Authority's commuter rail system in the Boston area. Operations were scheduled to begin July 1, 2003. The Board held Massachusetts Bay Commuter Railroad Company to be an employer under the Acts as of January 10, 2003 (B.C.D. Nos. 03-23 and 03-37).

Connex Railroad is a subsidiary of Connex North America, Inc.[1] Connex North America also has a 60 percent interest in Massachusetts Bay Commuter Railroad Company. Connex Railroad has three employees. Connex Railroad currently provides rail transportation services to one client, including rail operations planning, train and engine crew scheduling, value engineering with respect to commuter rail operations, financial and accounting services and management advice. More specifically, Connex Railroad will provide the following services to MBCR: rail operations services (such as analyzing and monitoring crew utilization, equipment utilization and transportation performance and reporting, and development and implementation of improvements with respect to crew and equipment utilization), customer related services (such as management of ticket offices and information booths and communication with passengers on [Massachusetts Bay Commuter Railroad Company] trains), financial services (such as maintenance of books and accounts, preparation of budgets, forecasts and reports, monitoring actual results v. budgeted, preparation of financial information and reports required by [Massachusetts Bay Transportation Authority-Massachusetts Bay Commuter Railroad Company] Operating Agreement, and establishment and monitoring of internal control procedures) and management services (such as providing general management and oversight of commuter rail operations and the relationship of Massachusetts Bay Commuter Railroad Company with the Massachusetts Bay Transportation Authority]). Mr. Howard characterized the services provided by Connex Railroad to MBCR as "essential functions that must be performed in order to enable MBCR to provide rail transportation service and to perform its obligations pursuant to the operating agreement between MBCR and Massachusetts Bay Transportation Authority."

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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[1] Although Mr. Howard requests that the Board issue a decision holding Connex North America not to be an employer under the Acts, it should be noted that the Board has already done so: in B.C.D. No. 03-23 holding Massachusetts Bay Commuter Railroad Company to be a covered employer, the Board also ruled that Connex North America was not an employer under the Acts.

Connex Railroad, LLC

(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;

(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, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad;

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).

Connex Railroad is a subsidiary of Connex North America, Inc., which is the same company that owns a 60 percent interest in MBCR. The Board finds that Connex Railroad is under common control with Massachusetts Bay Commuter Railroad Company. In addition, Connex Railroad provides all of its services to MBCR. The Board therefore finds that Connex Railroad provides service in connection with railroad transportation within the statutory definition of a covered employer. Accordingly, it is determined that Connex Railroad is an employer within the meaning of section 1(a)(1)(ii) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(ii)) and the corresponding provision of the Railroad Unemployment Insurance Act as of July 1, 2003, the date as of which rail operations began.

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