B.C.D. 03-28

Employer Status Determination
Ecotrans Technologies, LLC

MAR 21 2003

This is the decision of the Railroad Retirement Board regarding the status of Ecotrans Technologies as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Ecotrans was organized April 8, 2001, and began operations in 2002. It is a joint venture formed by CSXT Environmental Corporation, which is a wholly-owned subsidiary of CSX Transportation, Inc. (CSXT), a covered employer under the Acts, and International Road & Rail, a company unrelated to CSXT and not covered under the Acts. CSXT Environmental owns 65 percent of Ecotrans.

Ecotrans engages in the marketing of auxiliary power units for locomotives. It obtains the units from Teleflex, an unrelated Canadian manufacturer, and sells them to railroads. Of approximately 921 units sold, 800 have been sold to CSXT. Ecotrans reportedly has no employees. Its officers perform the work for Ecotrans and are either employees of or consultants to the two owners of Ecotrans or of entities related to them.

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;
>
> (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).

Ecotrans Technologies, LLC

Ecotrans is clearly not a carrier by railroad. However, a majority interest in it is held by CSXT Environmental which, consequently, owns and controls Ecotrans. CSXT Environmental itself is a wholly-owned subsidiary of CSXT, a common carrier by railroad, and accordingly, Ecotrans is "indirectly owned or controlled by, or under common control with, one or more employers * * *"[1]. The provision of auxiliary power units to locomotives clearly constitutes a service in connection with rail transportation. See Railroad Concrete Crosstie Corporation v. Railroad Retirement Board, 709 F.2d 1404, 1408 (11th Cir. 1983). Accordingly, Ecotrans is controlled by an employer and provides services in connection with railroad transportation. Consequently, the Board holds Ecotrans to be a covered employer under the Acts effective as of the date of its formation, April 8, 2001.

In this connection, the Board notes that section 203.2 of the Board's regulations provides in pertinent part that (20 CFR 203.2):

> An individual shall be an employee whenever * * *(d) he is an officer of an employer.

Accordingly, the individuals mentioned above, who are officers of Ecotrans, should be reported as employees of Ecotrans regardless of which company is supplying them to Ecotrans.

Original signed by:

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[1] Union Pacific Corporation v. United States, 5 F.3d 523 (Fed Cir. 1993), which held that a parent corporation which owns a rail carrier subsidiary is not under common control with the subsidiary within the meaning of the Railroad Retirement Tax Act, does not apply in this case as CSXT indirectly controls Ecotrans.