B.C.D. 04-43

EMPLOYER STATUS DETERMINATION **SEP 10 2004**

SierraPine LLP, doing business as Amador Foothills Railroad

This is the decision of the Railroad Retirement Board regarding the continued status of the SierraPine LLP, doing business as Amador Foothills Railroad 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).

SierraPine was held to be an employer[1] under the Acts effective December 15, 1998, (B.A. Number 3797). Sierra Pine ceased operations as of June 30, 2004. The assets of the railroad were leased from Sierra Pacific Industries, Inc.,[2] and will be returned to that company. Sierra Pine last compensated employees on June 30, 2004. On July 7, 2004, SierraPine issued a formal embargo of the entire rail line due to track conditions and its attorney[3] reported that it intends to seek authorization from the Surface Transportation Board to abandon the rail line.

Section 202.11 of the Board's regulations provides that:

> The employer status of any company or person shall terminate whenever such company or person loses any of the characteristics essential to the existence of an employer status.

Through the termination of its rail operations and return of its leased rail assets, SierraPine has lost the characteristics essential to the existence of an employer status. Accordingly, the Board holds that SierraPine ceased to be an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective with the close of business on June 30, 2004. Cf. Rev Ruling 82-99, 1982-2 C.B. 154, wherein the Internal Revenue Service ruled that a railroad ceases to be an employer subject to taxes under the Railroad Retirement Tax Act when the railroad's employees stop performing services in connection with the railroad's carrier activities.

Original signed by:

Michael S. Schwartz

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[1] Only as to its operation of the former Amador Central line.

[2] Sierra Pacific Industries was held not to be an employer under the Acts (B.C.D. 04-11).

[3] Attorney Pamela Giovannetti of the law firm of Dun & Martinek LLP, in a letter dated July 30, 2004, addressed to the Chief of the Board's Audit and Compliance Section.