B.C.D. 04-63

DEC 0 3 2004

EMPLOYER STATUS DETERMINATION
East Brookfield & Spencer Railroad, LLC (EBSR)

This is a determination of the Railroad Retirement Board concerning the status of the East Brookfield & Spencer Railroad, LLC (EBSR) 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.).

In Surface Transportation Board (STB) Finance Docket No. 34505, decided June 1, 2004, EBSR filed a verified notice of exemption to lease from CSX Transportation, Inc. (CSXT) (BA No. 1524) and operate approximately 4 miles of rail line. The line is a portion of CSXT's passing track located between mileposts 60 and 64 in East Brookfield and Spencer, Worcester County, Massachusetts, together with approximately 270 feet of lead track running from the passing track at milepost 63.08 to the property line of the proposed New England Automotive Gateway Facility in East Brookfield, Massachusetts.

Information regarding EBSR was furnished by Mr. Robert Amrine, Vice President of EBSR. In a letter dated August 13, 2004, Mr. Amrine stated that the Chief Executive Officer is Mr. George W. Bell, II. Mr. Amrine additionally stated that EBSR is owned by Mr. Bell and Mr. Steven Pugliese. ESBR, is a Delaware limited liability company, which began rail operations on October 1, 2004, according to Mr. Amrine. According to information provided by Mr. Amrine, EBSR anticipated hiring 8 employees, with the first employee hired on or about August 26, 2004. Mr. Amrine stated that EBSR will provide switching services and perform mechanical repairs for an annual expected volume of 23,100 multi-level railcars. According to Mr. Amrine, EBSR interchanges with CSXT and 100 percent of EBSR's total business is with CSXT. Additionally, a Track Lease Agreement between CSXT and EBSR shows that, by Interchange Agreement, CSXT and EBSR have provided for the orderly interchange between them of railcars.

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. (45 U.S.C. § 351, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The evidence of record establishes that EBSR is a rail carrier operating in interstate commerce. Accordingly, it is determined that the East Brookfield & Spencer Railroad, LLC (EBSR) became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. §231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act effective August 26, 2004, the date as of which it hired its first employees. Cf. Rev. Ruling 82-100, 1982-1C.B. 155, wherein the Internal Revenue Service ruled that a company becomes an employer under the Railroad Retirement Tax Act on the date it hires employees to perform functions directly related to its commencement of railroad carrier operations.

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