B.C.D. 05-7

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EMPLOYER STATUS DETERMINATION
Fulton County Railway, LLC

This is the determination of the Railroad Retirement Board concerning the status of Fulton County Railway, 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 Fulton County was provided by Mike Ogborn, Manager, Fulton County. According to Mr. Ogborn, Fulton County began doing business October 23, 2004, and first hired employees August 30, 2004. In Surface Transportation Board Finance Docket No. 34542, Fulton County filed a notice of exemption to lease and operate approximately 55 miles of rail line owned by CSX Transportation, Inc. It interchanges with CSXT.

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.

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).

The evidence of record establishes that Fulton County is a carrier operating in interstate commerce. Accordingly, it is determined that Fulton County is 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 as of August 30, 2004, the date as of which it first hired an employee. Cf. Rev. Ruling 82-100, 1982-1 C.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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