

**EMPLOYER STATUS DETERMINATION  
CSX Transportation Terminals, Inc.**

This is the determination of the Railroad Retirement Board concerning the status of CSX Transportation Terminals, Inc. (CSXTT) 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).

According to information submitted in a letter dated November 16, 2007, from Mr. Spencer B. Lowe, Manager-Income Tax, for CSX Corporation (CSX), CSXTT was incorporated on May 2, 2007, and is owned by CSX Transportation, Inc., an employer under the Acts (B.A. No. 1524). CSXTT began operations on July 1, 2007, and has eleven employees, first compensated on July 13, 2007. Mr. Lowe explained that all of these employees work in the operation of trans-loading coal between barges and railcars. CSXTT is described as a coal terminal, and its only service is the transfer of coal between barge and rail. CSXTT performs this service for CSX Transportation, Inc., its parent company, and TransKentucky Transportation Railroad, Inc. which is also a subsidiary of CSX Transportation, Inc. and an employer under the Acts, B.A. No. 3587. Mr. Lowe explained that 100% of CSXTT's time is spent doing business with these entities, and 100% of its revenue is from them as well.

While no individual has a controlling interest in CSXTT and any other rail carrier, two Vice-Presidents and an Assistant Secretary are also officers of CSX Transportation, Inc. CSXTT does not have a written service agreement, but does perform work for CSX Transportation, Inc. and TransKentucky Transportation Railroad, Inc.

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).

CSXTT is clearly not a carrier by rail. By reason of its ownership by CSX, CSXTT is under common control with rail carrier employers. Furthermore, as stated above, CSXTT shares some officers with CSX. We therefore find that the available evidence indicates that CSXTT is owned by a covered rail carrier employer and controlled by officers or directors who control a railroad.

With respect to the question of whether CSXTT is performing a service in connection with the transportation of passengers or property by railroad, we have previously found the business of loading and unloading freight and cargo from freight cars to be service in connection with the transportation of passengers or property by railroad. See, *Calumet Transload and Railroad, LLC* (B.C.D. 05-19) and *Logistics Management Systems, Inc.* (B.C.D. 03-62). Also see *Railroad Retirement Board v. Duquesne Warehouse Co.*, 149 F.2d 507 (D.C.Cir. 1945), *aff'd* 326 U.S. 446, 90 L.Ed. 192, 66 S.Ct. 238 (1946), in which the Court of Appeals held that a warehouse corporation owned by a railroad and engaged in loading and unloading railroad cars and other handling of property transported by railroad, and in other activities which enabled the railroad to perform its rail transportation more successfully, was performing "services in connection with" the transportation of property by railroad and was therefore an employer under the Railroad Unemployment Insurance Act. The Court of Appeals quoted from the opinion of the Railroad Retirement Board, which had held that Duquesne was an employer under the Act:

In light of the general purpose of the \* \* \* [Railroad Unemployment Insurance Act] and accepted doctrines of statutory construction, the Board has construed the carrier affiliate coverage provision as denoting services which are an integral part of, or are closely related to, the rail transportation system of a carrier and as including within its coverage (1) carrier affiliates engaged in activities which are themselves railroad transportation or which are rendered in connection with goods in the process of transportation, such as loading and unloading railroad cars, receipt, delivery, transfer in transit, and other handling of property transported by railroad; and also (2) carrier affiliates engaged in activities which enable a railroad to perform its rail transportation, such as maintenance and repair of way and equipment, and activities which enable a railroad to operate its rail system more successfully and to improve its services to the public such as auxiliary bus transportation, dining facilities, and incidental warehousing services.

We agree with the Board's construction of the Act. It follows the ordinary meaning of the words used in the statute. It achieves a common sense result well within what we conceive to be the policy of Congress, i.e., to cover the business of railroading as it is actually carried on. (Footnote omitted.) 149 F.2d at 509.

The instant case falls within the rationale set out in Duquesne Warehouse Co., above. As 100% of CSXTT's revenue is derived from performing transloading services for its affiliated railroads, we find it is performing service in connection with the transportation of passengers or property by railroad. Therefore, based on the information set forth above, it is the determination of the Railroad Retirement Board that CSX Transportation Terminals, Inc. is an employer under the RRA and RUIA as of July 1, 2007, the date it began operations.

Original signed by:

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