

**EMPLOYER STATUS DETERMINATION
Mars Steel Corporation**

This is the determination of the Railroad Retirement Board concerning the status of Mars Steel Corporation (Mars Steel) 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 the evidence of record, in January 2008 the Board's Office of Inspector General (OIG) completed an investigation of Denver Rock Island Railroad (DRIR), a covered employer under the RRA and RUIA (B.A. No. 3786). The conclusion of the OIG was that Thomas Mars, the owner of DRIR, under-reported creditable compensation to the Railroad Retirement Board (RRB) and under-reported railroad retirement tax to the Internal Revenue Service (IRS) for the period 1994 through 2005. During the course of the investigation, OIG/OI Special Agents became aware that Mr. Mars had a second company, Mars Steel Corporation, and some of the employees in question were paid by Mars Steel, rather than DRIR.

In order to make a determination as to the employer status of Mars Steel, as well as the employee service of the individuals involved, Mr. Mars was asked to provide additional information, including the names of the employees who were on the payroll of Mars Steel for the period 1994 through 2005, the dates of their employment, and the names of the employees who were on the payroll of DRIR, and the dates of their employment. Mr. Mars was also asked if any of the individuals on the payroll of either Mars Steel or DRIR were employed as independent contractors.

According to information provided by Mr. Mars, Mars Steel was incorporated on September 15, 1986 as a structural steel fabrication plant. Due to economic conditions, the plant closed down in 1994. The only operations which continued from that point on were sandblasting activities on tanker cars, which then developed into full scale car repair and track construction/salvage services. Mr. Mars is the sole shareholder of Mars Steel, and Forrest A. Mars is the Chief Executive Officer. Mr. Mars provided the names of the 12 past employees (through 2005) of Mars Steel; the 18 current employees of Mars Steel; and the 35 DRIR employees for the period 1994 through 2005. Mr. Mars also stated that none of these employees were ever considered independent contractors. Mr. Mars explained that regarding the Mars Steel employees, "at one point in time or another they all have" worked in positions related to business connected with rail carriers. The track crew of Mars Steel "performs construction/repair of rail spurs" of the DRIR "as well as track salvage for others". Using 2007 as an example, Mr. Mars explained that Mars Steel employees spent 56.35% of their time providing services to DRIR, and 43.65% of their time providing services to the

Union Pacific (an employer under the Acts). Of Mars Steel's total revenue for 2007, 42% was attributed to DRIR, and 39% from Union Pacific. Services provided were described by Mr. Mars as "construction/repair of railroad spurs, switched, derails, welding, sandblasting, painting, misc. rolling repairs to rail car tankers, auto racks".

While Mr. Mars stated that no railroad has a financial interest in Mars Steel, as noted above, he is the owner of DRIR as well as the sole shareholder of Mars Steel. In addition, Forrest A. Mars is the Secretary/Treasurer of DRIR as well as the Chief Executive Officer of Mars Steel. Mars Steel's assets include service trucks, cranes, other equipment (e.g. welders, torches, saws) as well as a 12,000 square foot shop building. It owns no track, is not a lessee or lessor of railroad track or equipment, and no equipment or facilities are jointly owned with a rail carrier. The Federal Railroad Administration has not required Mars Steel to pay user fees; there has been no ruling by the Surface Transportation Board (STB) regarding the status of Mars Steel; and the IRS has not ruled on the applicability of the Railroad Retirement Tax Act to Mars Steel.

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).

Mars Steel is clearly not a carrier by rail. By reason of its ownership by Mr. Mars, who also owns DRIR, Mars Steel is under common control with a rail carrier employer. Furthermore, as stated above, Mars Steel shares officers with DRIR. We therefore find that the available evidence indicates that Mars Steel is under common ownership with a rail carrier and controlled by officers or directors who control a railroad.

With respect to the question of whether Mars Steel is performing a service in connection with the transportation of passengers or property by railroad, as 100% of Mars Steel's time is spent providing various services to rail carriers

(including its affiliate, DRIR), and 81% of Mars Steel's revenue is derived from performing car repairs, track construction and salvage services (42% from its affiliate, DRIR), 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 Mars Steel Corporation is an employer under the RRA and RUIA as of March 1, 1994, the date DRIR, the affiliate carrier of Mars Steel, was found to be a covered employer under the Acts. Service and compensation for employees of Mars Steel will be credited in accordance with section 9 of the Railroad Retirement Act (45 U.S.C. §231h)).

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