

**B.C.D. 11-80**  
**EMPLOYER STATUS DETERMINATION**  
**Three Notch Railway, LLC**

**August 8, 2011**

This is the determination of the Railroad Retirement Board concerning the status of Three Notch Railway, LLC (TNRW) 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.). The status of TNRW under the Acts has not previously been considered.

Information about TNRW was provided by Mr. Scott G. Williams, President of RailAmerica Transportation Corp. (RTC). According to Mr. Williams, on May 11, 2011, RTC, a subsidiary of RailAmerica, Inc., acquired assets of three railroads, Three Notch Railroad Company, Inc. (TNHR), the Wiregrass Central Railroad Company, Inc. (WGCR), and the Conecuh Valley Railroad Company, Inc. (COEH), the assets of which were purchased from affiliated companies of Gulf & Ohio Railways, Inc. (G & O). Mr. Williams further explained that new limited liability companies were formed to own the assets and to operate the lines. In Surface Transportation Board (STB) Finance Docket No. 35488, one of those newly formed limited liability companies, Three Notch Railway, LLC (TNRW), filed a verified notice of exemption to acquire and operate approximately 34 miles of rail line from TNHR. TNRW was also assigned TNHR's lease with Andalusia & Conecuh Railroad Company (A&C) which had been previously assigned to TNHR by the A&C. Mr. Williams also stated that there is a Lease Agreement between TNRW and CSX Transportation, dated May 10, 2011. TNRW also certified that its projected annual revenues will not exceed those that would qualify it as a Class III rail carrier.

According to Mr. Williams, TNRW began operations on May 11, 2011, and currently has four employees, who have been compensated since operations began on May 11, 2011. TNRW interchanges with CSXT and the Alabama & Florida. TNRW will provide freight service over its lines; no passenger service is proposed. TNRW spends 100% of its business time doing business with CSXT, and 100% of its revenue is from 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;
- (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).

The evidence of record establishes that TNRW is a Class III rail carrier operating in interstate commerce. Accordingly, it is determined that Three Notch Railway, LLC 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 May 11, 2011, the date as of which it began operations and first compensated employees.

Original signed by:

FOR THE BOARD  
Martha P. Rico  
Secretary to the Board