

B.C.D. 12-39

October 9, 2012

**EMPLOYER STATUS DETERMINATION
Kingman Terminal Railroad, LLC (KTRR)**

This is a determination of the Railroad Retirement Board concerning the status of Kingman Terminal Railroad, LLC (KTRR) 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). The status of KTRR under the Acts has not previously been considered.

KTRR is 100% owned by Tennessee Southern Railroad Company, Inc. (TSRR - BA#5509) a subsidiary of Patriot Rail Corp. TSRR has been ruled to be covered under the RRA and RUIA. Mr. Robert Shellig, Vice President – Law for Patriot Rail Corp., provided information on KTRR’s operations and corporate structure in a response dated July 19, 2012 to an Audit and Compliance questionnaire and provided copies of the Surface Transportation Board (STB) decisions regarding KTRR’s operations. Mr. Shellig confirmed that KTRR commenced operations on or about August 6, 2012. KTRR’s corporate office is in Kingman, Arizona.

The Surface Transportation Board (STB) in Finance Docket Nos. 35618 and 35619 ruled May 8, 2012 in favor of KTRR’s verified notice of exemption to operate approximately 3.0 miles of rail line within the Kingman Airport & Industrial Park, in Mohave County, Arizona. There are no mileposts on the line. BNSF previously operated the line as excepted track and BNSF is voluntarily terminating its switching operation on the line. KTRR will provide freight rail service for customers with traffic between locations within Kingman Airport & Industrial Park and the BNSF interchange point. Expected traffic for the first year of operation will be about 1200 cars. KTRR did not acquire the line from another carrier, as the line is owned by the Kingman Airport & Industrial Park.

KTRR began compensating its first employee on July 1, 2012 and began operations on or about August 6, 2012. The projected revenues of KTRR will not exceed those that would qualify it as a Class III rail carrier. KTRR plans to have 3 employees. Mr. Shellig also reported that KTRR will only do business with BNSF and that revenues will be shared under the terms of an agreement with BNSF.

Section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)), 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 (45 U.S.C. § 351) contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The evidence of record establishes that KTRR is a rail carrier operating in interstate commerce. Accordingly, it is determined that Kingman Terminal Railroad, LLC 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 July 1, 2012, the date KTRR first began compensating employees. Cf. Rev. Ruling 82-100, 1982-1 C.B. 155, wherein the IRS ruled that a company becomes an employer subject to RRTA taxes on the date the company first hires employees to perform functions directly related to its carrier operations.

Original signed by:

FOR THE BOARD
Martha P. Rico
Secretary to the Board