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Employer Status Determination
Bulk Intermodal Distribution Services, Incorporated

This is the decision of the Railroad Retirement Board regarding the status of Bulk Intermodal Distribution Services, Inc. (BIDS) as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. The status of this company has not previously been considered.

The evidence is that BIDS was incorporated on March 17, 1995, as the wholly owned subsidiary of CSX Corporation, the parent company of CSX Transportation (CSXT), a covered rail carrier employer under the Acts. Prior to that date, the services performed by BIDS were performed by Total Distribution Services, Incorporated (TDSI). The status of TDSI under the Acts is being separately considered. On February 27, 1995, the stock of Fairfax Forwarding, Inc., was indirectly contributed by CSX Corporation to Total Distribution Services. Total Distribution Services then contributed the assets of the bulk transload function to Fairfax Forwarding. On March 17, 1995, Fairfax Forwarding was merged into another CSX Corporation subsidiary. The name of the surviving company was changed to BIDS.

BIDS performs a bulk transload function. It transfers customers' bulk product from one transportation mode to another and performs various services in connection with those goods, including blending, heating, sifting, and packaging. Specifically, BIDS transfers bulk product from plant to rail, from barge, ship, or truck to rail, from rail to truck to barge or ship, and from truck to rail; heats products such as corn syrup, vegetable oils, and fuel oils for use upon delivery; blends and mixes products such as asphalt, hydrogen peroxide solutions, and food grade products; provides warehousing of products; sifts products for immediate use; transfers products from rail cars into containers; performs quality control by product sampling; and provides inventory control and reporting.

BIDS has 107 terminals located in 19 states east of the Mississippi. BIDS owns one terminal and leases 106 terminals from CSXT. BIDS also leases all terminal equipment from CSXT. The terminals are operated by independent contractors which employ 270 persons. Information provided indicates that the

services identified in the preceding paragraph are actually performed by these independent contractors. BIDS has 12 employees which manage the contracts with the independent contractors for operation of the terminal facilities. BIDS' 12 employees also design the "rail to truck" processes, maintain field and terminal equipment (although it is owned by CSXT), and provide technical support to the bulk marketing group[1] on an as-needed basis. The "rail to truck" processes are a series of BIDS-developed customized handling procedures that vary depending on the nature of the bulk materials handled (wet, dry, food grade, hazardous, etc). One of BID'S four directors is both the Assistant Corporate Secretary for BIDS and a Vice President/Secretary for CSXT.

In a letter of December 9, 1999, Tax Counsel for CSX submitted information which indicated that revenue from loading and unloading accounts for between 50 and 60 percent of BIDS's gross revenue, that revenue attributable to value-added services accounts for 30 to 35 percent of BIDS's gross revenue, and that "much of the revenue attributable to the value-added services is now billed and collected either through CSXT invoices or as a component of CSXT's line haul tariff."

Section 1(a)(1) of the Railroad Retirement Act (RRA) (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 * * *.

[1] Information provided indicates that BIDS does not maintain a separate sales and marketing group, but uses CSXT's marketing department to market its services under the name "CSX Transflo."

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Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (RUIA), 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).

BIDS is clearly not a carrier by rail. However, BIDS is a wholly-owned subsidiary of CSX Corporation, which also controls CSX Transportation, a rail carrier employer under the RRA and the RUIA. Accordingly, the Board finds that since March 17, 1995, BIDS has been under common control with a rail carrier employer. Therefore, if BIDS provides a service in connection with the transportation of property by rail, it is an employer under the Acts.

The most recent information provided by CSX Tax Counsel indicates that the majority of BIDS' revenue, between 50 and 60 percent, comes from the loading and unloading services which BIDS provides. The United States Supreme Court, early in the Board's history, agreed with the Board that loading and unloading are services in connection with railroad transportation, Railroad Retirement Board v. Duquesne Warehouse Co., 326 U.S. 446, 90 L. Ed. 192 (1946). The Duquesne case was one of the earliest dealing with the affiliate definition of an "employer." The Supreme Court affirmed a ruling by the U.S. Court of Appeals for the District of Columbia, 149 F.2d 507 (D.C. Cir. 1945), which wrote that:

> . . . 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 Board finds that in this case once again, the loading and unloading services provided by BIDS constitute service in connection with railroad transportation.

In addition, the Board finds significant the fact that much of the BIDS revenue attributable to value-added services is now billed and collected either through CSXT invoices or as a component of CSXT's line haul tariff. CSXT is the rail carrier affiliate of BIDS. The Supreme Court wrote in the Duquesne case that the question to be addressed in deciding whether a service is service in connection with railroad transportation:

> . . . is whether a carrier's affiliate is performing a service that could be performed by the carrier and charged for under the line-haul tariffs. If it is such a service, it is a transportation service within the meaning of the present Acts. 326 U.S. at 454, 90 L.Ed. 197-198.

The Board finds that the fact that BIDS' customers are billed for BIDS' value-added services through CSXT invoices or as a component of CSXT's line haul tariff is an indication that those services are a transportation service within the affiliate definition of an "employer' under the RRA and the RUIA.

For the reasons explained above, the Board finds that both the loading and unloading services and the value-added services which BIDS performs constitute service in connection with railroad transportation within the affiliate definition of a covered employer.

Accordingly, the Board finds that BIDS became an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective March 17, 1995.

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For experience-rating purposes, BIDS should be treated as a new employer.

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