B.C.D. 00-22

Employer Status Determination
Customized Transportation, Inc.

JUN 2 3 2000

This is the decision of the Railroad Retirement Board regarding the status of Customized Transportation, Inc. (CTI) 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 CTI was incorporated on July 1, 1980, as the wholly owned subsidiary of CSX Corporation (CSX) the parent company of CSX Transportation (CSXT), a covered rail carrier employer under the Acts. CTI has approximately 2,870 full-time employees and leases 530 employees. Its anticipated gross revenue for 1998 was $420 million, of which approximately $20 million was derived from two railroad customers, the Union Pacific Railroad and CTI's affiliate, CSXT (CSXT refueling: $12.5 million; CSXT parts transport: $5 million; Union Pacific refueling: $2.5 million). CTI divides its customer base into two groups: automotive and general industry. In 1998 the automotive group accounted for approximately 65 percent of gross revenues. CTI provides "customized logistic services," "including subassembly and manufacturing, inventory management, component kitting [designing packages to contain parts], parts sequencing, transportation and distribution planning, dedicated contract carriage, packaging design, synchronized material flow, business process engineering, warehousing, and supplier and carrier management." Its automotive group customers include General Motors, Ford, Chrysler, BMW, Honda, Mazda, and Isuzu. Its general industry customers include John Deere, G.E. Appliances, Goodyear, Sears, Montgomery Ward, Frigidaire, Textron, Simmons, G. M. Diesel, Compaq, Union Pacific Railroad, and CSX Transportation.

Under a contract with Union Pacific, CTI has been transporting diesel fuel to and refueling Union Pacific locomotives for the last three years. CTI services eight of thirty-two Union Pacific field locations. Twenty-three CTI employees provide services to Union Pacific. Effective January 1, 1998, CTI also has a refueling contract with CSXT[1]. Ryder Integrated Logistics, Inc., serves as the refueling operator for CSXT (and not for Union Pacific) under a subcontract with CTI. Ryder provides the drivers, tractors, and certification necessary to

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[1] In a footnote in his letter of August 14, 1998, to Edmund T. Fleming, Chief of the Board's Audit and Compliance section, CSX Tax Counsel, Scott J. Rynearson, stated that O/O Truck Sales, Inc. ("O/O Truck") (former BA No. 9352) formerly performed a refueling function for CSXT. Mr. Rynearson indicated that at the time that O/O Truck was dissolved, it assigned its CSXT contract to CTI.

perform the obligations under the contract. Ryder is a subsidiary of Ryder System, Inc., a logistics company. CTI also transports mechanical and engineering parts and supplies for CSXT, which it does itself and not through a subcontractor. This function involves the transport of trailers containing brake shoes, wheel parts, and other supplies for rail cars and locomotives. Approximately 45 employees are assigned to the contract with CSXT.

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.
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> (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 (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).

CTI does not operate a railroad, and so does not fall within the carrier definition of "employer" under section 1(a)(1)(i) of the RRA. CTI is, however, as a wholly owned subsidiary of CSX Corporation, under common control with CSXT, a covered rail carrier employer under the Acts. Thus, we must examine whether CTI performs service in connection with railroad transportation in order to determine if CTI falls within the affiliate definition of "employer" under section 1(a)(1)(ii) of the RRA and the corresponding section of the RUIA.

Section 202.7 of the Board's regulations provides that service is in connection with railroad transportation:

> * * * if such service or operation is reasonably directly related, functionally or economically, to the performance of obligations which a company or person or companies or persons

> have undertaken as a common carrier by railroad, or to the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad. [20 CFR 202.7].

Section 202.6 of those regulations provides that:

> The service rendered or the operation of equipment or facilities by a controlled company or person in connection with the transportation of passengers or property by railroad is "casual" whenever such service or operation is so irregular or infrequent as to afford no substantial basis for an inference that such service or operation will be repeated, or whenever such service or operation is insubstantial.

Roughly four percent of CTI's revenues are derived from rail-related service. Accordingly, the Board finds that the rail-related service performed by CTI is insubstantial and therefore casual as those terms are used in section 202.6, above. Therefore, the Board finds that CTI is not performing a service in connection with railroad transportation so as to bring CTI within the definition of an employer under section 1(a)(1)(ii) of the Railroad Retirement Act and the corresponding provision of the Railroad Unemployment Insurance Act. Based on the foregoing, it is determined that CTI is not an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

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