

SEP 28 2006

**EMPLOYER STATUS DETERMINATION  
Cape Cod Central Railroad, Inc.**

This is the determination of the Railroad Retirement Board concerning the status of Cape Cod Central Railroad, Inc. (CCCR) 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). CCCR has not heretofore been ruled to be an employer under the Acts.

Mr. John F. Kennedy, Chief Executive Officer of CCCR, advised that he and three other principals purchased CCCR on February 10, 2006. Mr. Kennedy advised that the company has a license to operate on State-owned tracks equaling 24 miles, operating scenic tour round trips, with Hyannis, Massachusetts as the only terminal point where passengers both board and detrain. All trips are sold as "round trip" tickets. Mr. Kennedy advised further that the line was formed as the result of a Request for Proposals from the Commonwealth of Massachusetts Executive Office of Transportation. CCCR does not interchange with any other railroad.

A review of the company's web site ([www.CapeTrain.com](http://www.CapeTrain.com)) confirms that its operations are advertised solely as an excursion service, with scheduled scenic excursions, dinner and luncheon trains, a family supper train, a Sunday brunch train, and a rail/sail combination, which includes a one-hour Hyannis Harbor Cruise by Hy-Line Cruises.

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 [45 U.S.C. § 231(a)(1)(i)].

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially the same definition as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The Surface Transportation Board (STB) has jurisdiction over transportation by rail carrier that is:

- (A) only by railroad; or
- (B) by railroad and water, when the transportation is under common control, management, or arrangement for a continuous carriage or shipment.

(2) Jurisdiction under paragraph (1) applies only to transportation in the United States between a place in –

(A) a State and a place in the same or another State as part of the interstate rail network; [49 U.S.C. §10501(a)(1) and (2)]

The evidence with respect to CCCR shows that it operates only within the State of Massachusetts and that it does not interchange with any other railroad. The train trips that CCCR provides are excursion trips that are not a part of an interstate rail network. The evidence thus demonstrates that CCCR is not subject to the jurisdiction of the Surface Transportation Board and therefore does not fall within the definition of a carrier employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

In view of the foregoing, it is the determination of the Railroad Retirement Board that Cape Cod Central Railroad, Inc. is not an employer under the RRA or RUIA.

Original signed by:

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