B.C.D. 07-17

EMPLOYER STATUS DETERMINATION MAY 10 2007
Streamline, Inc.

This is the determination of the Railroad Retirement Board concerning the status of Streamline, Inc. (Streamline) 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).

Information regarding Streamline was provided by Mr. Jim Coulton, Senior Director Federal Taxes for Union Pacific Railroad Company (B.A. No. 1713). Mr. Coulton stated that Streamline, a subsidiary company of Union Pacific, was incorporated on August 28, 2006 and is estimated to begin operations on March 1, 2007.[1] Mr. Coulton advised that Streamline would transfer two executives in including its President, T.R. Brown, from the payroll of Union Pacific to its own payroll effective January 1, 2007. In addition, Streamline planned to hire other employees after January 1, 2007.

According to Mr. Coulton, Streamline will provide services in three markets. In the first market, Streamline's operation will be similar to a broker of transportation services. Specifically, Mr. Coulton stated that Streamline will provide door-to-door and ramp-to-ramp intermodal transportation. Mr. Coulton stated that Streamline's services will increase Union Pacific's share of door-to-door intermodal revenue and at the same time, Streamline's services will reduce Union Pacific's ramp-to-door operating cost.

In the second market, Mr. Coulton stated that Streamline will also work in the marine container door-to-door transportation market as a service provider or vendor to Union Pacific. He stated that Streamline's services will allow Union Pacific the ability to offer its ocean carrier customers a more vertically integrated and complete service product.

In the third market, Streamline will provide a more efficient and lower cost internal drayage and truck transportation services to Union Pacific's internal customers, primarily the Intermodal Operations department and the Supply department. Mr. Coulton stated that currently three separate departments of Union Pacific provides truck transportation purchasing functions; however, Streamline's services will consolidate this purchasing function to realize lower costs and improve service.

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[1] Streamline, in addition to being a subsidiary of Union Pacific Railroad, Inc., is also affiliated with over 50 consolidated companies and subsidiaries of Union Pacific Railroad Company.

Section 1(a)(1) of the RRA defines the term "employer" to include:

(i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of Title 49;

(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, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad.

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Sections 1(a) and (b) of the RUIA contain essentially the same definitions, as does section 3231 of the Railroad Retirement Tax Act (RRTA) (26 U.S.C. § 3231).

Since Streamline is a wholly-owed subsidiary of Union Pacific Railroad, it meets the first part of the "affiliate" definition of a covered employer set out in sub-paragraph (ii) above.

The "affiliate" definition of a covered employer contains a second requirement that we now must address: in order to be covered as an affiliate employer, an entity must provide service in connection with railroad transportation. The Board has previously addressed the question of whether an intermodal operation affiliated with a covered rail carrier employer was also covered as an employer. In that decision, B.C.D. No. 96-82, a majority of the Board held that CSX Intermodal (CSXI) was not a covered employer because it was an independent business segment in the CSX family that was not primarily set up to benefit CSX Transportation. The analysis applied by the Majority in the CSXI decision identified the type of factors that should be considered. Those factors included: (1) the physical relation of the affiliate's operations to the rail operation; (2) the history and origin of the affiliate; (3) for whose benefit the affiliate's services are performed; and (4) the amount of the affiliate's business with the public. Applying these factors to this case, the Board concludes, for the reasons set out below, that Streamline does provide service in connection with rail transportation within the meaning of the affiliate definition of a covered employer.

Looking at the first factor, physical relation of the affiliate's operations to the rail operations, the corporate address for Streamline is 1400 Douglas Street in Omaha, Nebraska, which is the identical street address provided for Union Pacific Railroad on the company's web site (www.uprr.com). Information about Streamline was provided by Jim Coulton, Senior Director – Federal Taxes, Union Pacific Railroad. The Chairman of Streamline is J.J. Koraleski, a Union Pacific Railroad employee, and its CEO is J.E. Kaiser, also a Union Pacific Railroad employee. Streamline's President is T.R. Brown, who was a Union Pacific Railroad employee until he became a Streamline employee on January 1, 2007. Mr. Coulton reported that Union Pacific Railroad (UPRR) expected "a large portion of the business [of Streamline] to be through UPRR to their existing customer base."

Turning to the second and third factors identified in the CSXI decision, the history and origin of the affiliate and for whose benefit the affiliate's services are performed, it is noteworthy that Streamline was incorporated on August 28, 2006 as a subsidiary of Union Pacific Railroad. The detailed description of Streamline's operations demonstrates that it was established for the purpose of improving the operations and increasing the revenue of Union Pacific Railroad. More specifically, Mr. Coulton stated that Streamline's service would increase the Union Pacific Railroad's "share of door-to-door intermodal revenue at the same time that it reduces ramp-to-door operating costs by creating efficiencies 'above the rail car and beyond the intermodal terminal', not possible in the current environment and by reducing the discount that intermodal takes today versus truck transportation." In addition, Mr. Coulton stated that Streamline would enter the marine container door-to-door transportation market as a service provider or vendor to Union Pacific Railroad, thereby allowing Union Pacific Railroad "to offer its ocean carrier customers a more vertically integrated and complete service product." A third market for Streamline, Mr. Coulton explained, would be providing more efficient and lower cost internal drayage and truck transportation services to internal customers of Union Pacific Railroad, primarily the Intermodal Operations department and the Supply department. Mr. Coulton reported that prior to Streamline's operations, truck transportation purchasing functions were performed by three separate departments at the Union Pacific Railroad. Streamline was to consolidate this purchasing function to realize lower costs and improved service.

The fourth factor, the amount of the affiliate's business with the public, was not ascertainable at the time Streamline began, but, as noted above, Mr. Coulton stated that Union Pacific Railroad expected a large portion of Streamline's business to be through Union Pacific Railroad to Union Pacific Railroad's existing customer base.

Unlike the facts in the CSXI case[1], the facts in this case overwhelmingly demonstrate that Streamline was established for the benefit of Union Pacific Railroad. Specifically, Streamline was never an operation independent of Union Pacific Railroad; it is physically located at the same location as Union Pacific Railroad; its Chairman and CEO are employees of Union Pacific Railroad and its President worked as a Union Pacific Railroad employee until he became a Streamline employee in January 2007; and it was created for the express purpose of improving Union Pacific Railroad's operations and revenue. The evidence in this case leads the Board to conclude that Streamline provides service in connection with railroad transportation within the meaning of section 1(a)(1)(ii) of the Railroad Retirement Act and the corresponding provision of the Railroad Unemployment Insurance Act.

It is therefore determined that Streamline, Inc. became an employer under the RRA and the RUIA effective January 1, 2007, the date on which it first had employees. Cf. Rev. Ruling. 82-100, 1982-1 C.B. 155 (wherein the Internal Revenue Service held 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.

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[2] Facts in B.C.D. No. 96-82 showed, for example, that CSXI and CSX Transportation (CSXT) did not share any officers and had headquarters in separate states; that CSXI did not originate as an offshoot of CSXT but instead had predecessors that had been covered by social security; and that CSXI maintained an "arms-length" relationship with CSXT.