

EMPLOYER STATUS DETERMINATION
Logistics Support, Inc.

This is a determination of the Railroad Retirement Board concerning the status of Logistics Support, Inc. (LSI) 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).

According to Mr. Larry Locke, President and one of the two owners of LSI, LSI, a private company, was incorporated in 2001. It began operations in 2002, although those operations were not railroad related. Two employees were hired in August 2006, and according to Mr. Locke, "all current employees work is in RR operations". Specifically, LSI employees operate locomotives on the Texas and Oklahoma Railroad (TXOR) (B.A. No. 3888) in a switching operation. Mr. Locke explained that all business is done with a railroad carrier and all revenue comes from railroad operations. LSI does not own any track, but owns two locomotives and support equipment for operations on the TXOR. LSI operates the TXOR on a per car move basis.

Mr. Locke explained that before 2006 LSI owned a crane service¹; in 2006 it ceased operation of the crane service and took over operations on the TXOR. Mr. Locke also stated that LSI has "no interest in or from a Railroad"; "no individual owns a controlling interest in both LSI and any other RR"; and " no officers in LSI are officers in a RR".

Pursuant to a request for additional information, Mr. Locke submitted a copy of the agreement in which LSI assumed the operating rights of the TXOR in August 2006.² Review of that agreement indicates that TXOR originally had an agreement with Gulf Coast Rail Service (Gulf Coast) for Gulf Coast to perform freight operations and maintenance of the TXOR line. Review of the Gulf Coast file shows that Gulf Coast was found to be an employer under the Acts effective October 11, 1995 (B.A. No. 4864) (B.C.D. 96-32). Gulf Coast, doing business as Orange Port Terminal Railway, is a switching railroad. LSI has not obtained authority from the Surface Transportation Board.

¹ Mr. Locke explained that LSI had one employee in the crane service from March 2002 through June 2002 and November 2002 through February 2004.

² Mr. Locke also provided the clients of TSI when it provided crane operations – Temple Inland Paper Board, Trinity Industries, Rescar, and T.K. Young Enterprises.

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, United States Code;

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions.

The evidence of record establishes that because it has assumed the rail operation of the Texas and Oklahoma Railroad, LSI is now a carrier operating in interstate commerce. The fact that it has not obtained authorization from the Surface Transportation Board (STB) is not determinative of coverage under the Acts administered by the Board. As indicated above, the Railroad Retirement Act covers any carrier by railroad subject to the jurisdiction of the STB. The STB has jurisdiction over transportation by rail carrier. See 45 U.S.C. § 10501. Title 49 U.S.C. § 10102(5) defines a "rail carrier" as a person providing "railroad transportation for compensation." Accordingly, as a person providing "railroad transportation for compensation," LSI would be a rail carrier under the jurisdiction of the STB and therefore would be a carrier under the Railroad Retirement Act. It may be considered that the Railroad Retirement Act covers "substantially all those organizations which are intimately related to the transportation of passengers or property by railroad in the United States. S. Rep. No. 818, 75th Cong. 1st Sess. 4 (1937)." Standard Office Bldg. Corp. v. U.S., 819 F. 2d 1371, 1376 (7th Cir. 1987).

Accordingly, the Board finds that Logistics Support, Inc., is a rail carrier employer providing carrier services under the Railroad Retirement and Railroad Unemployment Insurance Acts effective August 11, 2006, the date it took over operations of the Texas and Oklahoma Railroad and first compensated its employees.

Original signed by:

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