

EMPLOYER STATUS DETERMINATION

Bombardier Transportation Services USA Corporation (BTS)

This is the determination of the Railroad Retirement Board concerning the status of Bombardier Transportation Services USA Corporation (BTS) as an employer under the Railroad Retirement Act (RRA) (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. § 351 et seq.).

Information regarding BTS was provided by Debra Lees, Human Resources and Labor Relations Manager for BTS. The president of BTS is Thomas Martin. BTS is a wholly owned subsidiary of Bombardier Transit Corporation, whose parent company is Bombardier Inc, neither of which is a covered employer under the Acts.

According to Ms. Lees, BTS has been selected by the Maryland Transportation Administration to operate two of the lines in the Maryland Area Rail Commuter (MARC) rail system, the Camden Line and the Brunswick Line. BTS will replace CSX Transportation (CSXT) as the contractor. CSXT also owns the rail lines. Amtrak operates the third commuter line. These lines both have a terminal point in Union Station, Washington, D.C. The Camden line runs approximately 37 miles between Union Station and the Camden Station in Baltimore, Maryland. The Brunswick line runs 73 miles between Union Station and Brunswick, Maryland, 74 miles between Union Station and Frederick, Maryland, and 105 miles between Union Station and Martinsburg, West Virginia.

BTS is scheduled to begin operations of the MARC lines as of June 1, 2013. The contract was awarded and the effective date of the Notice to Proceed was November 19, 2012. BTS began compensating management staff on April 1, 2013. It anticipates offering employment to approximately 123 employees effective June 1, 2013 when operations begin. As part of the MARC contract, BTS has agreed to employ individuals involved in the MARC operations covered by the contract and, as such an employer, to be subject to the RRA. BTS will be conducting commuter passenger operations and maintenance services which will include operating MARC-owned trains along these lines, on-board fare collection, rolling stock maintenance, station and other facility maintenance, maintenance-of-way along 3.2 miles of MTA-owned track, and material management.

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 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 rail transportation in the United States between a place in a State and a place in the same or another State as part of the interstate rail network. See 49 U.S.C. §10501(a)(2)(A). Although local government authorities, such as MARC, may be exempt from STB jurisdiction, the governmental authority is still subject to applicable laws of the United States related to “employment, retirement, annuity, and unemployment systems or other provisions related to dealings between employees and employers” including the Railroad Retirement and Railroad Unemployment Insurance Acts (the Acts). 49 U.S.C. §10501(c)(3)(A)(iii). The Board has found that to meet the definition provided by 49 U.S.C. §10501(c)(3)(A) of local authority subject to the Acts, the commuter rail service conducted by the local authority must have been previously conducted by a rail carrier employer, then assumed by the local authority. To meet § 1050 (c)(3)(B), the service must meet the standards for ICC Jurisdiction prior to January 1996. See Board Coverage Decision 09-2, *Tri-County Commuter Rail Organization, South Florida Regional Transportation Authority, Trinity Railway Express—Train Dispatching, Herzog Transit Services, Incorporated*, January 20, 2009.

The operation of the commuter rail service over the Brunswick and the Camden Lines was previously referenced in Maryland Department of Transportation, State Railroad Administration, L-91-87. In determining that the state railroad administration was not a covered employer that decision noted that commuter trains on the Brunswick and the Camden lines were operated by CSX. Moreover, all of the lines cross from Washington, DC into Maryland and one of the commuter lines, which BTS will operate, runs from Washington, DC through Maryland, to West Virginia. The evidence provided shows that profit from railroad activities will be the primary purpose of BTS. It will operate a rail line and the operator for which BTS is taking over (CSX) is already a covered employer under the Acts.

In light of the evidence as summarized above, the commuter rail service that will be conducted by BTS was previously conducted by a covered rail carrier and therefore, BTS meets the definition provided by 49 USC §10501(c)(3)(A) of a local authority subject to the Acts. Alternatively, the Board finds that BTS will become a carrier operating in interstate commerce within the meaning of 10501(c)(3)(B) when it begins operation of two of the lines of the MARC commuter rail system.

Accordingly, it is determined that BTS will be an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of April 1, 2013, the date it began to compensate employees. See Rev Ruling 82-100, 1982-1 C.B. 155.

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