

B.C.D. 13-15

May 29, 2013

EMPLOYER STATUS DETERMINATION

Affton Terminal Services Railroad, LLC

This is a determination of the Railroad Retirement Board concerning the status of Affton Terminal Services Railroad, LLC (“Affton”) 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). The status of Affton under the Acts has not previously been considered.

Affton is a privately held company owned by Mr. Floyd E. Wright. Mr. Tim Brendley, Controller, supplied information regarding the formation and start of operations for Affton. In correspondence dated November 2, 2012, Mr. Brendley stated that Affton began operations on April 1, 2012 with four compensated employees.

In Surface Transportation Board Finance Docket No. 35390, service date March 30, 2012, Affton filed a verified notice of exemption to operate two miles of railroad right-of-way and trackage and transloading facilities in St. Louis, Missouri, pursuant to an agreement with Affton Trucking Company. The exemption stated that the trackage would be used for unloading grains, plastic pellets, and related products, with the Terminal Railroad Association of St. Louis and BNSF Railway Company and loading the items onto trucks for final delivery. The exemption also stated that Affton plans to add additional trackage in the future.

Affton’s trackage will constitute the entire line of railroad and is not a spur, switching or side tracks. Affton certified that its projected annual revenues would not exceed levels that would qualify it as a Class III rail carrier. Affton does not now intend to provide any rail passenger service.

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.

Section 1 of the RUIA (45 U.S.C. § 351) contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The evidence of record establishes that Affton is a rail carrier operating in interstate commerce. Accordingly, it is determined that Affton Terminal Services Railroad, LLC became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and its corresponding provision of the Railroad Unemployment Insurance Act effective April 1, 2012, the date on which Affton began operations.

Original signed by:

FOR THE BOARD
Martha P. Rico
Secretary to the Board