

**EMPLOYER STATUS DETERMINATION
Southwestern Railcar Services, LLC (SRCLLC)**

This is a determination of the Railroad Retirement Board concerning the status of Southwestern Railcar Services, LLC (SRCLLC) 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 SRCLLC was provided by Mr. C. Alan Sessions, Financial Vice President for SRCLLC. Mr. Sessions stated that SRCLLC is a single member limited liability company owned and controlled by Southwestern Railroad, Inc. (SWR) (B.A. No. 2775). Mr. Sessions stated that Mr. David L. Durbano is the President of SRCLLC. SRCLLC began operations and first compensated its twelve employees on May 1, 2013. He stated that SRCLLC will provide freight railroad services to Southwestern Railroad, Inc., Cimarron Valley Railroad, LC (B.A. 2777), and BSNF Railway Company (B.A. 1621). Specifically, SRCLLC's services include railcar inspection, repairs, maintenance, cleaning, and derailment related services. Mr. Sessions advised that for the period through August 2013, 18.48 % of the revenue billed by SRCLLC was billed to its affiliates, Southwestern Railroad, Inc. and Cimarron Valley Railroad, LC.

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 * * * *. [45 U.S.C. § 231 (a)(1)(i) and (ii)]

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 Southwestern Railcar Services, LLC is a wholly-owned subsidiary of Southwestern Railroad, Inc., it meets the first part of the “affiliate” definition of a covered employer set forth in sub-paragraph (ii) above. Additionally, since Southwestern Railcar Services, LLC provides services to its affiliates, Southwestern Railroad, Inc. and Cimarron Valley Railroad, LC as well as to BNSF Railway Company, covered employers under the Acts, it is clear that Southwestern Railcar Services, LLC provides services in connection with railroad transportation.

Accordingly, it is determined that Southwestern Railcar Services, LLC became an employer under the RRA and the RUIA effective May 1, 2013, the date it began operations and first compensated its employees.

Original signed by:

Michael A. Schwartz

Walter A. Barrows

Jerome F. Kever