

B.C.D. 13-46

December 16, 2013

EMPLOYER STATUS DETERMINATION

Rusk, Palestine & Pacific Railroad, LLC (RPPR)

This is a determination of the Railroad Retirement Board concerning the status of Rusk, Palestine & Pacific Railroad, LLC (RPPR) 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 RPPR under the Acts has not previously been considered.

RPPR is a privately held corporation owned by Permian Basin Railways (PBR - BA # 9368). Mr. Daniel Marko, General Counsel of Permian Basin Railways, supplied information regarding the formation and start of operations for RPPR. He indicated that RPPR began control of the rail line on August 6, 2012. The first employees were compensated by PBR from September 1, 2012.

In Surface Transportation Board (STB) Finance Docket No. 35668, decided September 12, 2012, PBR filed a verified notice to continue in control of RPPR upon RPPR's becoming a Class III rail carrier. In conjunction with that filing, RPPR in STB Finance Docket No. 35669, decided September 12, 2012, filed a verified notice of exemption to operate approximately 27 miles of rail line currently owned by the Texas Parks and Wildlife Authority. The line is leased to the Texas State Railroad Authority which has entered into an operating agreement with RPPR. RPPR (under the name American Heritage Railways of Texas, LLC) had been operating a tourist passenger excursion service over the line. RPPR plans to restore common carrier freight service over the line and continue offering the tourist service. Further, RPPR seeks incidental trackage rights for the purpose of interchange over approximately 1.3 miles of track owned and operated by Union Pacific (UP) that connects with UP's rail yard in Palestine, Texas.

The rail line has no mileposts but consists of approximately 27 miles of rail line between Rusk, Texas and Palestine, Texas. RPPR will interchange with UP and provide common carrier freight service while maintaining the tourist passenger service. Expected freight volume is 500 cars per year by 2014. RPPR employees first began compensated service for RPPR on September 1, 2012. Freight volume and revenues are not projected to result in RPPR's becoming a Class I or Class II rail carrier.

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 RPPR is a rail carrier operating in interstate commerce. Accordingly, it is determined that Rusk, Palestine & Pacific 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 September 1, 2012, the date on which RPPR employees first began receiving compensation related to carrier operations (see IRS Rev. Ruling 82-100, 1982-1 C.B. 155, “Employer Beginning of Tax Liability.”)

Original signed by:

FOR THE BOARD
Martha P. Rico
Secretary to the Board