

**B.C.D. 15-17**

**July 13, 2015**

**EMPLOYER STATUS DETERMINATION**

**Bucks County Railroad Preservation and Restoration Corporation  
d/b/a New Hope & Ivyland Railroad**

This is a determination of the Railroad Retirement Board concerning the status of Bucks County Railroad Preservation and Restoration Corporation d/b/a New Hope & Ivyland Railroad (New Hope & Ivyland) (BA No. 3378) as an employer under the Railroad Retirement Act (45 U.S.C. §231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.) (collectively known as “the Acts”).

In Board Coverage Decision, B.C.D. 92-62.1, New Hope & Ivyland was determined to be an employer under the Railroad Retirement Act and Railroad Unemployment Insurance Act effective October 12, 1990.

In a letter dated March 4, 2014, Attorney Stephen A. Dennis, on behalf of New Hope & Ivyland, forwarded to the Board a letter dated August 18, 1996 directed to the Internal Revenue Service (IRS). In that letter, New Hope & Ivyland argued that substantially all of the activities of the railroad fell outside of the parameters of the Acts. New Hope & Ivyland operates solely within Pennsylvania on a privately owned right of way used by no one else. It argued that only a small portion of the business involved freight transportation which on occasion linked up with the interstate rail network. The primary purpose of the company was to serve passengers through an old style ride through the Pennsylvania countryside. The letter states that more than 90% of the railroad’s operation was exempt activities and more than 90% of the railroad’s employees should be exempt from the system.

In a letter dated, March 5, 1998, Mason Stewart, Internal Revenue Agent, found that New Hope & Ivyland qualified for segregation. The letter stated that data provided for 1996 indicated that approximately 92.3% of the revenues of the business came from the tourist operation. For 1997, 89% of total man hours and 90% of total salary paid was in conjunction with the tourist operation. The IRS concluded that New Hope & Ivyland was not principally engaged in a carrier business and may be permitted to take advantage of 20 CFR §202.3, the provision which allows for segregation of employees.

Section 202.3 of the Board's regulations states that:

§ 202.3 Company or person principally engaged in non-carrier business.

(a) With respect to any company or person principally engaged in business other than carrier business, but which, in addition to such principal business, engages in some carrier business, the Board will require submission of information pertaining to the history and all operations of such company or person with a view to determining whether some identifiable and separable enterprise conducted by the person or company is to be considered to be the employer. The determination will be made in the light of considerations such as the following:

- (1) The primary purpose of the company or person on and since the date it was established;
- (2) The functional dominance or subservience of its carrier business in relation to its non-carrier business;
- (3) The amount of its carrier business and the ratio of such business to its entire business;
- (4) Whether its carrier business is a separate and distinct enterprise. 20 CFR §202.3

The information submitted to the IRS shows that the primary purpose of New Hope & Ivyland was not interstate commerce, but rather operation of a tourist train. The tourist operation is approximately 90% of the business and therefore, functionally dominant in relation to the carrier business and the ratio of carrier business in relation to the entire business is quite small. In addition to the evidence submitted by New Hope & Ivyland, the IRS found there to be sufficient evidence to qualify for segregation under section 202.3. Although the Acts and its regulations are administered by the Board and the Railroad Retirement Tax Act is administered by the IRS, the laws are *in pari materia* and must be read together for regulatory consistency.

Accordingly, it is determined that B.C.D. 92-62.1 holding New Hope & Ivyland to be an employer under the Acts is modified so that only that portion of the New Hope & Ivyland operation which performs service related to its non-tourist train, freight operation constitutes an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. The beginning date of coverage remains the same as held in B.C.D. 92-62.1, October 12, 1990. Segregation of non-covered employees is effective March 5, 1998, the date of the IRS letter. Service and

compensation may be credited to the extent permitted by section 9 of the Railroad Retirement Act and section 211.16 of the Board's regulations.

Original signed by:

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