

**B.C.D. 15-19**

**August 11, 2015**

**EMPLOYER STATUS DETERMINATION**

**Elizabethtown Industrial Railroad, L.L.C. (EZR)**

This is the determination of the Railroad Retirement Board (RRB) concerning the status of Elizabethtown Industrial Railroad, L.L.C. (EZR) 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.).

In Surface Transportation Board (STB) Finance Docket No. 35902, decided March 3, 2015, Elizabethtown Industrial Railroad L.L.C. (EZR), a non-carrier, filed a verified notice of exemption to lease and operate a 1.0 mile line of railroad, known as the Conewago Industrial Track, between the connection with the Norfolk Southern Railway Company's main line at milepost 1.0 in Conewago, and milepost 0.0 in West Donegal Township, in Lancaster County, Pennsylvania. The STB decision stated that EZR would provide common carrier freight service over the line and intended to interchange traffic with Norfolk Southern at Conewago. Norfolk Southern Railway Company is a covered employer under the Acts (BA No. 1525).

According to information supplied by Mr. John K. Fiorilla, an attorney for Capehart & Scatchard, P.A., EZR is a limited liability corporation of the Commonwealth of Pennsylvania. The Chief Executive Officer is Robert Lowe. EZR is owned by Robert Lowe (50%) and Eric Bickleman (50%). According to Mr. Fiorilla, the line was acquired by Rail Holdings, Inc. from The Railroad Associates Corporation (TRAC), a non-carrier which was not operating the line. On March 20, 2015, EZR leased the line from Rail Holdings, Inc. Mr. Fiorilla stated that EZR will interchange with the Norfolk Southern Railway Company in Conewago, Pennsylvania and operate entirely within the Conewago Industrial Park. The length of the track is 6400 feet and it runs from Conewago to West Donegal Township in Pennsylvania. Mr. Fiorilla stated that there are currently no employees of EZR and operations are being provided by qualified employees of the Clinton Terminal Railroad, a covered employer under the Acts (BA No. 4571), which Mr. Bickleman and Mr. Lowe also control. Mr. Fiorilla further stated that EZR provides interchange services to and from customers within the Conewago Industrial Park and is 100% of the time doing business with Norfolk Southern Railway Company.

Section 1(a)(1) of the Railroad Retirement Act (RRA) (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;

(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 \* \* \*.

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (RUIA), 45 U.S.C. 351(a) and (b), contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (RRTA), 26 U.S.C. 3231.

The evidence of record establishes that EZR is a rail carrier operating in interstate commerce. Accordingly, it is determined that the Elizabethtown Industrial Railroad LLC (EZR) became an employer within the meaning of section 1(a)(1)(i)-(ii) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)) and the corresponding provision of the Railroad Unemployment Insurance Act effective March 20, 2015, the date as of which it commenced operations.

Original signed by:

FOR THE BOARD  
Martha P. Rico  
Secretary to the Board