

Employer Status Determination

Decision on Reconsideration

Four Rivers Finance Company, Inc. (FRFC)

This is a decision upon reconsideration of the Railroad Retirement Board based on the request of Four Rivers Finance Company, Inc. (FRFC). The Board issued an initial determination in Board Coverage Decision 12-1, rendered December 15, 2011, finding that FRFC became an employer covered under the Railroad Retirement and Railroad Unemployment Insurance Acts, effective October 30, 2003. For the reasons set forth below, the Board determines upon reconsideration that FRFC is an employer covered by the Railroad Retirement and Railroad Unemployment Insurance Acts (RRA and RUIA), but modifies the effective date of coverage under the RUIA to December 15, 2011, the date of the initial Board decision.

Information provided for the initial decision described the services provided by FRFC to be “centralized loan administration and cash management services to its affiliates P&L, EVRW and A&O”¹, further described as administrative services, including handling bank accounts, preparation and documentation of Board of Director meetings, accounting services, and centralized loan administrative services. Over 95% of these services were provided to FRFC’s rail carrier affiliates P&L, EVWR, and A&O. Accordingly, the Board found that FRFC was a covered employer because it was under common control with employers covered by the Act and performs services in connection with the transportation of passengers or property by railroad.

In its request for reconsideration, FRFC does not challenge that it is an employer covered by the Acts but rather the retroactive aspects of the decision. Through its counsel, FRFC argues that the Board decision subjects FRFC to unique administrative hardship if it is required to revisit records for its numerous, short-term employees, all of which were employed by FRFC strictly on a part-time basis while concurrently providing similar financial services for other, non-covered employers.

¹FRFC, a Delaware corporation, is a wholly owned subsidiary of Four Rivers Transportation, Inc. (FRT), a non-covered entity. In addition to FRFC, FRT also owns the Paducah & Louisville Railway, Inc. (P&L), Evansville Western Railway, Inc. (EVWR), and Appalachian and Ohio Railroad, Inc. (A&O), all rail carrier employers covered by the Acts.

In support of its request for reconsideration, FRFC submits the following relevant information:

- FRFC provides financial services commonly required within corporate families that include multiple capital-intensive enterprises. Because the FRT corporate family includes three short line railroad operations, each of which may at separate times faces significant capital expenditures, FRT requires specialized intra-corporate financial guidance that FRFC's employees provide. FRFC manages, distributes, and allocates funds among the FRT corporate family. It functions similarly to a bank or credit institution and it performs many of the same services that a non-carrier holding company that controls several railroad subsidiaries performs to oversee the allocation and/or re-allocation of intra-corporate family funds among its various railroad subsidiaries.
- FRFC was created in order to provide the above services. They hire up to two part-time corporate finance specialists that assist with transactions among the FRT corporate family. These part-time specialists provide more expertise than FRT would normally have had on its own.
- The part-time, short-term nature of this work creates a revolving door of employees, some of which work for FRFC for a matter of months.
- If FRFC had not been created, the services it provides would have been shouldered by FRT or by an unaffiliated third party. FRT is not a covered employer and presumably, neither would an unaffiliated third party.
- Since its beginning in 2003, FRFC made contributions for its employees to FICA in good faith on the understanding that it was not a covered employer under the RRA. Similarly, FRFC has subscribed to the applicable state unemployment system, again on the good faith understanding that this was the applicable unemployment benefit system.
- Given the short-term nature of the work done by each FRFC employee, and the amount of the total annual income each FRFC employee earned through FRFC compared to his or her work for other companies, the difference between what was withheld and/or paid based upon FICA and state unemployment versus what would have been done under the RRA and RUIA is small.

The representatives for FRFC have cited to *Short Lines, Incorporated-Reconsideration*, B.C.D. No. 93-57, as precedent for finding an employer covered on a prospective basis. In fact, that decision does not find that coverage under the RRA may be applied on a prospective basis. At this time, there is no provision in the RRA that allows for coverage on a prospective basis. The information submitted shows that FRFC began operations on October 2003 and therefore, coverage under the RRA began at that time. The Board maintains that coverage under the RRA began in October 2003 and does not modify that part of its decision in B.C.D. No. 12-1.

However, *Short Lines* does note that the Board has the ability to find an employer covered under the RUIA prospectively from the date of the Board's initial ruling if certain circumstances are present. *RailTex Trac Company, Inc.*, B.C.D. No. 95-86, discusses the authority and history of this provision of the RUIA in detail. It notes that section 8(k) of the RUIA gives the Board the authority to decide not to give retroactive effect to a coverage ruling with respect to the RUIA. Rulings on non-retroactive coverage under the RUIA have been granted by the Board in cases where:

1. The evidence suggests that the employer paid taxes under the Federal/State unemployment compensation system believing in good faith that he was covered by that system;
2. No benefits have been paid to the employer's employees under the RUIA; and;
3. Where retroactive coverage would impose undue burden on the Board, the employer, and the state system for no apparent gain.

In this case, the facts are consistent with the facts present in other cases where the Board has rendered non-retroactive rulings regarding RUIA coverage. Information submitted shows that FRFC believed that it was not a covered employer in good faith and FRFC covered these employees under FICA and state unemployment systems since FRFC began operations. It appears that no benefits have been paid to employees under the RUIA. In addition, the information submitted shows that making coverage under the RUIA retroactive to October 2003 would create a unique burden for FRFC due to the part-time, short-term nature of its employees. Finally, it appears that FRFC was not created in order to subvert the Acts and classify covered employees as non-covered employees. Rather, it was created to address a specialized need through a new company that was found to be a covered employer. The information submitted shows that making coverage under the RUIA retroactive to October 2003 would create a unique burden for FRFC due to

the part-time, short-term nature of its employees. Based on the foregoing, the Board finds that it would be appropriate to hold FRFC to be a covered employer under the RUIA prospectively from the date of the Board's initial ruling in this case.

The Board's decision dated December 15, 2011 is modified to change the effective date of coverage under the RUIA to December 15, 2011, the date of the Board's initial decision.

Original signed by:

Walter A. Barrows

Steven J. Anthony