

**B.C.D. 16-18**

**July 27, 2016**

**EMPLOYER STATUS DETERMINATION**

**Rocky Mountain Railcar & Repair, Inc. (RMRR)**

This is a determination of the Railroad Retirement Board concerning the status of Rocky Mountain Railcar & Repair, Inc. (RMRR) 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.*). The status of RMRR under the Acts was previously considered on October 13, 2010 under the acronym “RMRC,” and based on information available at the time, RMRC was ruled not to be a covered employer. *See* Board Coverage Decision (B.C.D.) No. 11-1.

In B.C.D. 11-1, the Board found that the Federal Railroad Administration did not require RMRC to pay user fees and found that the Surface Transportation Board (“STB”) did not make a ruling regarding the status of RMRC. Further, the Internal Revenue Service (“IRS”) had not ruled on the applicability of the Railroad Retirement Tax Act to RMRC. The Board found no evidence that RMRC was operating as a rail carrier in interstate commerce subject to the jurisdiction of the STB and therefore found that RMRC was not an employer as defined under 45 U.S.C. § 231(a)(1).

On March 12, 2013, RMRR responded to a request from the Railroad Retirement Board for updated information. The following decision is based on the new information provided by RMRR. Included in the updated information was an STB decision issued April 12, 2011. In the STB decision (Finance Docket No. 35478), RMRR filed a Verified Notice of Exemption to acquire from Utah Industrial Depot, and to operate, 11.5 miles of rail line, located inside an existing industrial facility in Tooele County, Utah. The rail line includes a spur that connects to the Union Pacific Railroad Company main line. There are no mileposts on the line. RMRR certifies that its projected annual revenues upon becoming a Class III carrier will not exceed \$5 million. The STB decision stated that according to RMRR, the transaction was expected to be consummated on or after September 28, 2011.

In a letter dated April 14, 2014 Mr. Mike Jarema, of RMRR’s HR/Compliance Department, provided information regarding the change in the operations of RMRR. RMRR continues to operate its railcar repair business. Mr. Jarema explained that previously, cars were brought into RMRR’s facility by Union Pacific and were switched in and out “via the Army.” Since becoming a short line, RMRR switches cars in and out of the depot (now known as Peterson Industrial Depot), using the 11.5 miles of track acquired from Utah Industrial Depot. Mr. Jarema advised that RMRR was to enter into a full contract with Union Pacific on the switching of cars into and out of RMRR’s depot.

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).

At the time of the October 18, 2010 decision, RMRR's status was pending with the STB and the IRS. Since then, RMRR has been granted an exemption by the STB that authorized RMRR to acquire and operate 11.5 miles of rail line, thereby becoming a class III carrier. The evidence of record establishes that RMRR is a rail carrier operating in interstate commerce.

Accordingly, the Board finds that Rocky Mountain Railcar & Repair, Inc. became an employer within the meaning of section 1(a)(1) of the Railroad Retirement Act and Section 1 of the Railroad Unemployment Insurance Act effective May 1, 2011, the effective date of the exemption. Cf. Rev. Rul. 82-100, 1982-01 C.B. 155, wherein the IRS ruled that a company becomes an employer subject to RRTA taxes on the date the company first hires employees to perform functions directly related to its carrier operations.

Original signed by:

FOR THE BOARD  
Martha P. Rico  
Secretary to the Board