

**EMPLOYER STATUS DETERMINATION****R. J. Corman Railroad Company/Texas Lines, LLC (RJCD)**

This is a determination of the Railroad Retirement Board concerning the status of R. J. Corman Railroad Company/Texas Lines, LLC (RJCD) 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).

In Surface Transportation Board (STB) Finance Docket No. 35839, decided July 3, 2014, RJCD filed a verified notice of exemption to acquire and operate lines of railroad known as the “Texas Southeastern Railroad,” in Angelina County, Texas, from Texas South-Eastern Railroad Company (TSE) (B.A. No. 2827). Pursuant to the agreement with TSE, RJCD acquired the subject line and will operate, maintain and perform all common carrier service over the rail line.

Mr. Jeremy J. Sylvester, Attorney for RJCD, provided information about RJCD. According to Mr. Sylvester, Mr. Michael Wester is the President of R. J. Corman Railroad Company (RJCC) (B.A. No. 2367), a Kentucky limited liability company, which was formed for the purpose of eventually acting as a second-tier holding company for all the railroad companies owned or controlled by R.J. Corman Railroad Group, LLC (Group). According to Mr. Sylvester, Mr. Wester oversees all of R.J. Corman’s railroad companies, including RJCD. Mr. Sylvester stated that RJCD acquired a railroad located in Diboll, Texas from TSE and is now operating as a Class III common rail carrier. According to Mr. Sylvester, RJCD closed its acquisition of TSE on August 29, 2014 and commenced operations on September 1, 2014. Mr. Sylvester stated that RJCD acquired the assets of the TSE, including its rail equipment and approximately twelve miles of route track. According to Mr. Sylvester, R.J. Corman Railroad Company/Memphis Line (RJCM) (B.A. No. 2598) hired all four employees of TSE for the purpose of working on RJCD’s rail line and employees began services on September 1, 2014. Mr. Sylvester stated that RJCM is providing employees’ services to RJCD pursuant to an affiliate employee sharing arrangement. Mr. Sylvester stated that RJCD expects to generate approximately \$460,000 in annual freight revenue from approximately 951 railcars shipped on its line. Mr. Sylvester stated that RJCD interchanges with Union Pacific Railroad Company (B.A. No. 1713) and freight traffic will be generated from UP’s freight customers whose shipments will interchange with RJCD’s rail line. According to Mr. Sylvester, RJCD does not have its own employees and is a flow-through entity for federal income tax purposes.

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 contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act.

The evidence of record establishes that RJCD is a rail carrier operating in interstate commerce. Accordingly, it is determined that RJCD became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and the corresponding provision of the Railroad Unemployment Insurance Act effective September 1, 2014, the first day of the month in which it began operations and its employees were first compensated. [CF. Rev. Rul. 82-100, 1982-1 C.B. 155, wherein the IRS held that a company became an employer under the Railroad Retirement Tax Act on the date it hired employees to perform functions directly related to its carrier operations.]

Original signed by:

FOR THE BOARD  
Martha P. Rico  
Secretary to the Board