

**EMPLOYER STATUS DETERMINATION
Baton Rouge Southern Railroad, LLC**

This is the determination of the Railroad Retirement Board concerning the status of Baton Rouge Southern Railroad, LLC (BRSR) 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). Information was provided by Rita Mitchell, Payroll Manager of BRSR.

BRSR was formed on July 18, 2008, and is owned by Watco Transportation Holdings, Inc.¹ In Surface Transportation Board (STB) Finance Docket No. 35159, BRSR filed a verified notice of exemption to acquire the lease and operating rights to 8.2 miles of rail line from the Kansas City Southern Railway Company (KCS), a covered employer under the Acts. According to that Finance Docket, BRSR is leasing the rail lines from KCS "for continued rail operations" and the projected annual revenue of BRSR will exceed \$5 million. Rail operations on the lines controlled by KCS began on or about November 2, 2008. According to Ms. Mitchell, BRSR planned to have ten employees at the time of start up, increasing to twelve employees shortly after that. These employees will perform work on the leased tracks of BRSR as well as the interchange tracks with KCS. BRSR owns two locomotives, maintenance equipment, and an office building. As stated above, BRSR leases rail tracks from KCS.

Ms. Mitchell explained that 10% of BRSR's business time is spent doing business with rail carriers; of that time, 90% is business with KCS. According to Ms. Mitchell, 5% of BRSR's revenue received is from rail carriers. Ms. Mitchell described BRSR's services as serving "local shipping customers on the leased rail tracks as well as industry switching and railcar storage. BRSR will interchange traffic with KCS". BRSR will have a Lease Agreement with KCS, which is on file with the STB. According to Finance Docket 35159, the Lease Agreement between BRSR and KCS will contain a provision which prohibits BRSR from interchanging traffic with a third party.

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:

¹ According to STB Finance Docket No. 35169, Watco indirectly controls seventeen Class III railroads operating in fifteen states. Watco owns 100% of the issued and outstanding stock of BRSR, an entity formed "for the purpose of leasing and operating certain rail lines owned by the Kansas City Southern Railway Company".

(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 (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The evidence of record establishes that BRSR is a carrier operating in interstate commerce. Accordingly, it is determined that BRSR is an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. §231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of November 2, 2008, the date it began operations.

Original signed by:

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