

JAN 21 1994

**EMPLOYER STATUS DETERMINATION -- RECONSIDERATION
Rail Management and Consulting Corporation**

This is the determination of the Railroad Retirement Board concerning the request of Rail Management and Consulting Corporation (RMCC) for prospective coverage under the Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.) (RUIA).

BACKGROUND

In Legal Opinion L-91-102, issued on July 29, 1991, RMCC was held to have been an employer under the Railroad Retirement Act (45 U.S.C. §231 et seq.) (RRA) and the RUIA from the date of its incorporation and commencement of operations on January 26, 1982. In a letter dated November 8, 1991, RMCC's attorney stated that RMCC intended to appeal the initial employer status determination.

In a letter dated July 15, 1992, RMCC requested reconsideration and also requested a temporary postponement of reconsideration until a decision was issued by the United States Court of Appeals for the Seventh Circuit in the case of Livingston Rebuild Center, Inc. v. Railroad Retirement Board. In a letter dated August 17, 1992, the Secretary to the Board notified RMCC that the Board would grant RMCC's request to defer reconsideration.

Subsequent to the decision in Livingston Rebuild Center, Inc. v. Railroad Retirement Board, 970 F.2d 295 (7th Cir. 1992), RMCC filed reports of creditable compensation for the period 1982 through 1991 and indicated that it would file reports for 1992 on or before the due dates. RMCC requested, however, that the employer status determination be applied prospectively for purposes of the RUIA.

DISCUSSION


The attorney for RMCC has advised the Board that during the period 1982 through 1991, RMCC paid all applicable Federal and State unemployment taxes. He also stated that it is his understanding that any unemployment claims made by RMCC employees during that period would have been filed with the appropriate State agency and that the RRB did not pay any unemployment benefits to any RMCC employees for that period. Board records verify this latter statement.

Based upon the information provided by RMCC, the Board finds that it would be appropriate to hold RMCC to be a covered employer under the RUIA prospectively from July 1, 1991, the first day of the calendar quarter in which RMCC was notified that it is a covered employer under the RUIA. No benefits were paid based on employment with RMCC for the period prior to that date, and RMCC paid taxes into the appropriate State unemployment system for that period. Finally, there is no evidence that RMCC did not believe in good

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faith that it was subject to the Federal/State unemployment compensation system rather than the RUIA.

Based on the foregoing, the decision of the Board's Deputy General Counsel in Legal Opinion L-91-102 is modified to change the effective date of coverage under the RUIA to July 1, 1991.


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