

**Employer Status Determination
Minnesota Zephyr Limited**

This is the determination of the Railroad Retirement Board as to the status of Minnesota Zephyr Limited as an employer covered by the Railroad Retirement and Railroad Unemployment Insurance Acts. The status of Minnesota Zephyr has not previously been considered.

The evidence of record indicates that Zephyr was incorporated on June 20, 1986, as a Minnesota corporation, and began operations on September 10, 1986. Since that time, Zephyr has conducted a "dinner train" passenger excursion service over 5.8 miles of track of the Minnesota Transportation Museum, and an additional one-half mile of track of the Burlington Northern Railroad Company, both located entirely within the state of Minnesota. In a notice of exemption under section 10505 of Title 49 of the U.S. Code, Zephyr requested an exemption from the regulations of the Interstate Commerce Commission for a proposed operation of an interstate passenger excursion train to Minneapolis over approximately 44 miles of Chicago and Northwestern Transportation Company (Northwestern) track in Minnesota and Wisconsin. See Minnesota Zephyr Limited--Operation Exemption, Finance Docket No. 31924, 56 Fed. Reg. 47104 (September 17, 1991). However, while negotiations are continuing, the Northwestern has not yet agreed to grant the necessary trackage rights and no interstate passenger service has ever been conducted. In a subsequent hearing on a petition by adjoining property owners to revoke the September 1991 exemption, the ICC noted that the exemption was prospective, and that:

Zephyr's interstate operation would be subject to Commission jurisdiction, and exempt, if Zephyr ever did, in fact, commence it. However, the mere filing and publication of Zephyr's notice, standing alone, does not remove an ongoing wholly intrastate operation from continuing State and local jurisdiction. Minnesota Zephyr Limited--Operation Exemption, Finance Docket No. 31924, decided March 31, 1992.

Section 1(a)(1)(i) of the Railroad Retirement Act and sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act define the term "employer" to include a carrier by railroad subject to the jurisdiction of the Interstate Commerce Commission. The ICC has determined that Zephyr's wholly intrastate dinner train operations

are not subject to the Commission's jurisdiction. Accordingly, Minnesota Zephyr limited is not at present an employer covered by the Acts administered by the Board.

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