

## **EMPLOYER STATUS DETERMINATION**

### **The Broe Companies, Incorporated**

This is a determination as to the employer status of The Broe Companies, Inc. (Broe) under the Railroad Retirement Act (RRA) (45 U.S.C. §231 et seq.) and the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. §351 et seq.). Broe has not previously been held to be an employer under the Acts.

The evidence is that Broe was incorporated October 12, 1982, as a privately held Colorado corporation. Broe is primarily involved in real estate investment and property management with offices in Denver, Kansas City and Lincoln. Broe directly controls two rail carrier employers: Central Kansas Railway and Great Western Railway. In turn, Great Western Railway, and another Broe subsidiary, Railco, Inc., are owners of the following rail carrier employers: Chicago West Pullman & Southern Railroad Co.; Manufacturers' Junction Railroad Co.; Kansas Southwestern Railway Co.; Newburgh and South Shore Railroad Co.; Georgia Woodlands Railroad Co.; Chicago Rail Link; and the Great Western Railway Co. of Iowa. Broe also has several subsidiaries which conduct business unrelated to the rail industry.

Section 1 of the RRA defines "employer" to include:

(i) any express company, sleeping car company, and carrier by railroad, subject to part I of the Interstate Commerce Act;

(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, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad. [45 U.S.C. §231(a)(1)(i) and (ii)].

Section 1 of the RUIA (45 U.S.C. § 351) and section 3231 of the Railroad Retirement Tax Act (RRTA) (26 U.S.C. § 3231) contain essentially the same definition.

A recent decision of the United States Court of Appeals for the Federal Circuit regarding a claim for refund of taxes under the RRTA held that a parent corporation which owns a rail carrier subsidiary is not under common control with the subsidiary within

the meaning of section 3231 of the Internal Revenue Code. Union Pacific Corporation v. United States, 5 F. 3d 523 (Fed. Cir., 1993).

The facts in the Union Pacific case are indistinguishable from those presented by Broe. Accordingly, a majority of the Board finds that The Broe Companies, Incorporated, is not and has never been an employer covered by the RRA and the RUIA because it is not under common control with its rail carrier subsidiaries.

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Glen L. Bower

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V. M. Speakman, Jr. (dissenting)

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Jerome F. Kever

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C. 44-94

**TO** : The Board

**FROM** : General Counsel

**SUBJECT** : The Broe Companies, Incorporated  
Employer Status

Attached is a draft determination finding that The Broe Companies, Incorporated (Broe) is not a covered employer.

As parent of its rail carrier subsidiaries, Broe is in the same position as the Union Pacific Corporation with respect to the Union Pacific Railroad. The attached ruling follows Union Pacific Corporation v. United States in finding that Broe is not under common control with its rail carrier subsidiaries, and hence is not a covered employer.

Catherine C. Cook

Attachment