

**EMPLOYER STATUS DETERMINATION
RAILCO, INC.**

This is the decision of the Railroad Retirement Board regarding the status of Railco, Inc. as an employer under the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA).

Railco was formed on June 19, 1992. Railco owns 100% of the stock of Chicago West Pullman Transportation Corp. (CWPTC), which, in turn, owns 100% of the following covered employers: Chicago Rail Link, Georgia Woodlands Railroad Company, Kansas Southwestern Railway Company, Manufacturers' Junction Railway Company, The Newburgh & South Shore Railroad Company, and the Chicago, West Pullman & Southern Railroad Company. According to a letter dated April 11, 1994, from Mr. Thomas E. Whyte, Secretary of Railco, Railco is a holding company with no employees. Mr. Whyte advises that Railco performs no services for any railroad.

Section 1(a)(1) of the RRA (45 U.S.C. §231(a)(1)) defines the term "employer", insofar as is relevant here, as follows:

(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 (other than trucking service, casual service, and the casual operation of equipment and facilities) in connection with the transportation of passengers or property by railroad * * * .

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.

Railco has no employees and performs no services. It simply holds stock. 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 §3231. Union Pacific Corporation v. United States, 5 F. 3d 523 (Fed. Cir. 1993). Furthermore, the Board has held that the mere ownership of stock in a railroad does not constitute

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a service in connection with railroad transportation. See In re Rail Partners L.P., B.C.D. 94-33.

Accordingly, the Board finds that Railco is not an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

An appropriate Form G-215 is attached.

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