

Employer Status Determination

Rail Tours, Inc.

This is the decision of the Railroad Retirement Board regarding the status of Rail Tours, Inc. (RTI), as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

RTI is a subchapter S corporation which is privately held by three shareholders, Mr. John C. Larkin, Mr. Wade W. Larkin and Ms. Avis K. Larkin. These three individuals act as officers of the corporation and also own the Escanaba & Lake Superior Railroad Company (E&LS), a carrier employer under the Acts. RTI has stated that John C. Larkin is the company's only employee.

RTI was incorporated October 16, 1984. RTI, through John Larkin, manages, supervises, and operates the E&LS. Among the duties performed by the RTI for the E&LS under a management agreement are the following:

-) negotiate and execute any and all contracts and leases relating to property owned by the E&LS;
-) collect all freight rates, rental and other income due the E&LS and deposit them into the railroad's account;
-) contract and supervise the performance of any repairs and alterations to the premises and property, purchase supplies and equipment maintain and manage the premises and property of the E&LS;
-) negotiate any and all labor agreements, handle arbitrations and grievances, and deal with any unions which may be a party to a contract with the E&LS.

E&LS pays RTI a fee under the contract and in turn John Larkin is compensated by RTI.

Section 1(a)(1) of the Railroad Retirement Act (RRA) (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

(i) any express company, sleeping-car company, and carrier by railroad, subject to subchapter I of chapter 105 of Title 49;

(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 * * *.

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Section 1(a) and 1(b) of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (RRTA) (26 U.S.C. § 3231).

RTI is clearly not a carrier and, therefore, is not covered under section 1(a)(1)(i) of the Railroad Retirement Act. However, the officers of RTI are the same individuals who own E&LS; thus, RTI and E&LS are under common control. Accordingly, the question becomes whether RTI performs a service in connection with railroad transportation.

It is the Board's opinion that the management services performed by RTI for its affiliate, E&LS, constitute service in connection with railroad transportation. Adams v. Railroad Retirement Board, 214 F. 2d 534 (9th Cir., 1954). Indeed, the sole purpose of RTI's existence is to provide such services and as an economic entity RTI and E&LS are the same operation.

Therefore, RTI is both under common control with a rail carrier and performing services in connection with railroad transportation. Accordingly, it is the determination of the Board that RTI is and has been a covered employer under the Acts from the date of its incorporation, October 16, 1984.

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