

Employer Status Determination Rail Investments, Inc.

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

RII 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 also act as officers of the corporation and also own the Escanaba & Lake Superior Railroad Company (E&LS), a carrier employer under the Acts.

RII was incorporated September 29, 1977, to lease freight locomotives and railcars and provide management and computer services to the E&LS. There is, however, no evidence that RII engaged in any operations prior to December 15, 1993, when it entered into a contract with E&LS. Among the duties performed by the RII for the E&LS 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 premise 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;
-) hire, discharge and supervise all employees and independent contractors required for the operation and maintenance of the E&LS.

In effect, RII was established to perform management services for E&LS. E&LS would then pay RII a management fee which would then pass through to the shareholders of RII.

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

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(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 * * *.

Sections 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).

RII is clearly not a carrier and, therefore, is not covered under section 1(a)(1)(i) of the Railroad Retirement Act. However, the officers and directors of RII are the same individuals who own E&LS. Consequently, E&LS and RII are under common control. The question then becomes whether RII performs a service in connection with rail transportation.

The Board finds that the management services being performed by RII are also a service in connection with rail transportation. Adams v. Railroad Retirement Board, 214 F.2d 534 (9th Cir., 1954). Therefore, the Board finds that RII 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 RII is and has been a covered employer under the Acts from the date of its starting to perform services for the E&LS, December 15, 1983, the date on which it first performed services for the E&LS.

Glen L. Bower

V. M. Speakman, Jr.

Jerome F. Kever

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