

EMPLOYER STATUS DETERMINATION
Transportation Management Services, Inc.

NOV 19 1997

This is the determination of the Railroad Retirement Board regarding the status of Transportation Management Services, Inc. (TMSI) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.)(RRA) and Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.)(RUIA).

According to letters dated April 25, 1996, and August 7, 1995, from William J. Drunsic, chief executive officer and controlling shareholder of TMSI, TMSI is a privately held corporation providing management and business development services to railroad and non-railroad customers. It began operations on January 2, 1995, under EIN No. 03-0346088, and currently has three employees.

The RRA defines a which define a covered "employer" in relevant part as:

* * * any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers * * * and which operates any equipment or facility or performs any service * * * in connection with the transportation of passengers or property by railroad * * *. [45 U.S.C. § 231a(1)(ii)].

A similar definition is provided at 45 U.S.C. § 351(a).

The Board's regulations provide that "control" exists when:

* * * there exists in one or more such carriers the right or power by any means, method or circumstance, irrespective of stock ownership to direct, either directly or indirectly, the policies and business of such a company or person and in any case in which a carrier is in fact exercising direction of the policies and business of such a company or person. [20 C.F.R. § 202.4]

"Common control" exists when:

* * * the control (as the term is used in § 202.4) of such company or person is in the same person, persons, or company as that by which such carrier is controlled [20 C.F.R. § 202.5].

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Mr. Drunic is the chief executive officer and controlling shareholder of TMSI. He is also an officer and controlling shareholder of the Nashville and Eastern Railroad Corporation (NERR, BA No. 2592). According to Interstate Commerce Commission Decision, Finance Docket No. 32644, dated March 8, 1995, Mr. Drunic acquired all of the shares of NERR's stock in exchange for his shares in the SouthCentral Rail Group, Inc. Although Mr. Drunic is not involved in the day-to-day business of NERR, as the sole or controlling shareholder of NERR he has the right to direct the policies and business of NERR. Mr. Drunic periodically travels on site to NERR. Accordingly, the Board finds that common control exists between NERR and TMSI under 20 C.F.R. 202.5.

With respect to service performed in connection with railroad transportation, Mr. Drunic states that TMSI performs new business development, industrial development, industrial property search and evaluation, accounting and payroll services, real estate and lease management services, purchase and leasing of equipment, and engineering and construction management services to railroad and non-railroad clients. TMSI owns and leases six air dump cars and one tie inserter. It has two locomotives in storage.


TMSI employees spend approximately 75% of their time on business connected with railroad transportation, and TMSI derives approximately 80% of its revenues from services performed for its railroad customers. Mr. Drunic states that the percentage of revenue derived from TMSI's non-railroad customers is gradually increasing, but at present, a large percentage of TMSI's revenues are derived from railroad customers. According to a letter dated June 2, 1997, from Mr. Drunic, in 1995, 55% of TMSI's revenue was derived from services provided to NERR, and in 1996, 40% of TMSI's revenues was derived from services provided to NERR, and an additional 25% derived from other railroad activities, resulting in 65% of TMSI's revenues coming from railroad services. Mr. Drunic estimated that 35% of TMSI's revenues for 1997 would be derived from services provided to NERR, with another 30% derived from "other railroad projects and activities". Accordingly, the Board finds that TMSI is performing service in connection with railroad transportation.

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Information in the record establishes that TMSI began operations on January 2, 1995. Accordingly, the Board finds that effective with the start of business, January 2, 1995, Transportation Management Services, Inc., became a covered employer under the RRA and the RUIA.



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