

**Employer Status Determination
Rail Operating Support Group, Inc.**

This is the decision of the Railroad Retirement Board regarding the status of Rail Operating Support Group, Inc.(ROSG) as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. The status of this company has not previously been considered.

ROSG is a wholly owned subsidiary corporation of RailAmerica, Inc. RailAmerica is a holding company which owns ten rail carriers.¹ ROSG began operations January 1, 1998. In a letter dated May 19, 1998, Mr. Gary Laakso, General Counsel of RailAmerica, stated that as the supervisors in the RailAmerica group work for more than one individual railroad in the group, the sole purpose of ROSG is to consolidate payroll for these individuals into one source.

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 carrier by railroad subject to the jurisdiction of the Surface Transportation Board under part A of subtitle IV of title 49, United States Code;

(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 * * *.

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).

ROSG is clearly not a carrier by rail. However, because ROSG is a subsidiary company of RailAmerica, and because RailAmerica also owns or controls ten railroads, ROSG is under common control with a railroad employer. Further, the Board finds that by providing individual managers to the affiliated railroads, ROSG is providing a management service to these companies which constitutes a service

¹RailAmerica has been determined not to be a covered employer under the Acts. See B.C.D. 93-54.

in connection with rail transportation within the meaning of the Acts. See Adams v. Railroad Retirement Board, 214 F. 2d 534, (9th Cir., 1954.).

Accordingly, it is determined that ROSG is an employer within the meaning of section 1(a)(1)(ii) of the Railroad Retirement Act (45 U.S.C. § 231a(1)(ii)) and the corresponding provision of the Railroad Unemployment Insurance Act as of January 1, 1998, the date as of which it commenced operations.

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