

Employer Status Determination

**Huron Services, Inc.
Huron Leasing Corporation**

This is the decision of the Railroad Retirement Board regarding the status of Huron Services, Inc., and Huron Leasing Corporation, as employers under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Huron Services hired its first employees and began operations February 17, 1992, to provide repair of locomotives for Lake State Railway Company (a covered employer, BA No. 3289) and other companies, and to operate tank car transloading facilities at Bay City and Oscoda, Michigan. It had six employees and was owned equally by Mr. Richard L. Van Buskirk, Jr., and Mr. James George, who jointly own Lake State Railway Company. Huron Services terminated operations effective December 31, 1992; all employees of Huron Services then became employees of Lake State Railway Company.

Huron Leasing Corporation was incorporated July 9, 1992, and began equipment leasing activities in September 1992. Huron Leasing is owned by Ms. Nancy J. Van Buskirk and Ms. Judy Ann George. It has two employees and provides equipment leasing and management services to Lake State Railway Company. Lake State Railway is owned by Mr. Richard L. Van Buskirk, Jr., and Mr. James George, the spouses of the owners of Huron Leasing. Mr. John D. Martin and Mr. Richard L. Van Buskirk are employees of both Lake State Railway Company and Huron Leasing. The employees work on the property of the railroad.

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 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(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).


Huron Services was owned by the same individuals who own Lake State Railway Company. It provided locomotive repair for its rail affiliate and operated tank car transloading facilities. It was both under common control with a rail carrier and performing services in connection with railroad transportation. See 20 CFR 202.7 and Livingston Rebuild Center v. Railroad Retirement Board, 970 F. 2d 295 (7th Cir. 1992). Therefore, it is the determination of the Board that Huron Services was a covered employer under the Acts for the period February 17 through December 31, 1992.

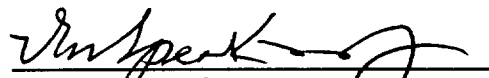
Huron Leasing by providing equipment leasing and management services to Lake State Railway Company is also performing services in connection with railroad transportation. However, the question regarding Huron Leasing is whether it is owned by Lake State Railway Company by reason of being owned by the spouses of the owners of Lake State Railway Company.

If ownership of one spouse can be imputed to the other spouse, Huron Leasing and Lake State Railway will own each other. Of assistance in this determination is section 318 of the Internal Revenue Code which provides in part that "An individual shall be considered as owning the stock owned, directly or indirectly, by or for - (1) his spouse * * *." The Board imputes the ownership of Huron Leasing to the owners of Lake State Railway because the owners of the one are the spouses of the other.

Based on the above, a majority of the Board finds that Messrs. Martin and Van Buskirk, the owners of Lake State Railway, also own Huron Leasing by virtue of their wives' ownership of Huron Leasing.

Accordingly, a majority of the Board finds that Huron Leasing is an employer under the Acts from September 1992.


Glen L. Bower


V. M. Speakman, Jr.


Jerome F. Kever (Dissenting)