

EMPLOYER STATUS DETERMINATION
Moscow Camden & San Augustine Railroad
Moscow Camden and San Augustine Railroad LLC

This is the determination of the Railroad Retirement Board concerning the status of Moscow Camden and San Augustine Railroad LLC (MC and SA RR LLC), as an employer under the Railroad Retirement Act (45 U.S.C. 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.). The status of the MC and SA RR LLC has not previously been considered. This is also the determination of the Board concerning the continued status of the Moscow Camden & San Augustine Railroad (Moscow Camden & San Augustine) as a covered employer under the Acts. Moscow Camden & San Augustine (employer number BA 3829) has been determined to be a covered rail carrier employer, with service creditable from May 28, 1898.

In Surface Transportation Board (STB) Finance Docket No. 34990, MC and SA RR LLC, filed a notice of exemption to acquire and operate the assets of Moscow Camden & San Augustine, which include a 6.9 mile line of track in Texas connecting a plywood and lumber plant in Camden to an interchange with the Union Pacific Railroad at Moscow. See: 72 Fed. Reg. 7711, (February 16, 2007). The notice recites that MC and SA RR LLC was formed as a Delaware limited liability company wholly owned by Georgia-Pacific Wood Products South LLC (Georgia-Pacific South). Georgia-Pacific South is the wholly owned subsidiary of Georgia Pacific LLC, formerly Georgia Pacific Corporation. Georgia Pacific LLC in turn is owned by Koch Industries, Inc.¹ Georgia Pacific Corporation has previously been determined not to be a covered employer under the Acts. See Legal Opinion L-91-91, *Georgia Pacific Corporation*.

¹ Koch Industries also owns through subsidiaries the Gloster Southern Railroad Company LLC (BA 2583), operating in Mississippi and Louisiana, and Old Augusta Railroad Company LLC (BA 5590), operating in Mississippi. Both have been determined to be rail carrier employers under the Acts. See Legal Opinion L-86-136, and B.C.D. 04-41, respectively. In addition, Koch Industries owns Blue Rapids Railway Company, located in Kansas. Blue Rapids has been determined not to be a rail carrier employer. See B.C.D. 07-04.

On December 21, 2006, Georgia-Pacific South entered into an agreement with International Paper Company, an unrelated firm, to purchase International Paper's Camden lumber plant and the rail line of the Moscow Camden & San Augustine. Prior to closing the

transaction, Georgia-Pacific South assigned its right to the rail line and assets of the Moscow Camden & San Augustine to Georgia-Pacific South's new subsidiary, MC and SA RR LLC. In a letter dated April 26, 2007, Mr. David H. Coburn, attorney for the MC and SA RR LLC, advised the railroad first compensated employees and began operations on March 31, 2007.

Section 1(a)(1) of the Railroad Retirement Act (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;

Section 1 of the RUIA contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act. See also, regulations of the Board at 20 CFR 202.2, which define covered employer to include any company principally engaged in carrier business. Finally, it should be noted that regulations of the Board at 20 CFR 202.11 provide that the employer status of any company shall terminate whenever such company loses any of the characteristics essential to the existence of an employer status.

The evidence of record establishes that MC and SA RR LLC is a rail carrier operating in interstate commerce. Accordingly, it is determined that MC and SA RR LLC became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and its corresponding provision of the Railroad Unemployment Insurance Act effective March 31, 2007, the date as of which its first employee was first compensated. Cf. Rev. Rule. 82-100, 1982-1 Cum.Bul. 155, wherein the IRS held that a company became an employer under the Railroad Retirement Tax Act on the date it hired employees to perform functions directly related to its carrier operations.

The evidence further establishes that Moscow Camden & San Augustine ceased operations and transferred its assets and common carrier obligations to MC and SA RR LLC at close of business March 30, 2007. Accordingly, it is determined that Moscow Camden & San Augustine lost the characteristics essential to rail carrier status on March 30, 2007, and ceased to be a covered rail carrier employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act effective with the close of business March 30, 2007.

Original signed by:

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