

EMPLOYER STATUS DETERMINATION**American Orient Express Railway Company, LLC (AOERC) (B.A. No. 6704)****AOE Equipment, LLC (AOEE) (B.A. No. 6705)****AOE Rail Services, LLC (AOERS) (B.A. No. 9638)**

This is the determination of the Railroad Retirement Board concerning the continued status of American Orient Express Railway Company, LLC (AOERC) (B.A. 6704), AOE Equipment, LLC (AOEE) (B.A. No. 6705), and AOE Rail Services, LLC (AOERS) (B.A. No. 9638) as employers under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351, et seq.) (RUIA).

In Board Coverage Decision 06-15, issued April 18, 2006, in a decision on reconsideration AOERC was found to be a rail carrier employer effective April 1, 1999. That same decision held AOEE and AOERS to be covered employers¹ by reason of their being under common control (through ownership by a common parent company) with AOERC, and because they each provided services in connection with railroad transportation. On April 20, 2007, the United States Court of Appeals for the District of Columbia Circuit affirmed the decision of the Board with respect to AOERC. American Orient Express Railway Company, LLC v. Surface Transportation Board and United States of America, ____ F. 3d ____, Nos. 06-1077, 06-1080 (April 20, 2007).

In a letter dated June 27, 2006, Mr. Robert Bergen, attorney for AOERC, advised the Board that on May 18, 2006, AOERC, AOEE and AOERS sold their operating assets. Mr. Bergen further advised that as a result of this transaction, effective May 19, 2006, AOERC, AOEE and AOERS no longer operated a rail business, nor did they employ any employees.

In a letter dated September 29, 2006, Mr. Bergen advised that AOERC, AOEE and AOERS ceased operations on May 19, 2006, as the result of the sale of their assets on May 18, 2006, to GrandLuxe Holdings LLC². Employees of AOERC and AOERS were compensated for time worked up to and including May 18, 2006.

Section 202.11 (20 CFR 202.11) of the Board's regulations provides that:

The employer status of any company or person shall terminate whenever such company or person loses any of the characteristics essential to the existence of an employer status.

¹ Effective November 14, 1997 and August 1, 1999, respectively,

² In Board Coverage Decision 07-24, issued August 6, 2007, GrandLuxe Railway, LLC was found to be an employer under the Acts effective May 18, 2006, the date AOERC transferred its assets and operating agreement rights to GrandLuxe.

The information summarized above indicates that, due to the sale of their assets and transfer of their operating agreement rights to GrandLuxe, AOERC, AOEE and AOERS no longer possess the characteristics of an operating rail company. The Board therefore finds that effective with the close of business on May 18, 2006, the date of the sale and transfer to GrandLuxe, AOERC, AOEE and AOERS ceased being covered employers under the Railroad Retirement Act and Railroad Unemployment Insurance Act.

Original signed by:

FOR THE BOARD
Beatrice Ezerski
Secretary to the Board