

AUG 27 2004

Employer Status DeterminationChestnut Ridge Railway Company
Chestnut Ridge Railway Corporation

This is the determination of the Railroad Retirement Board concerning the continuing status of Chestnut Ridge Railway Company (Chestnut) (B.A. No. 2205) as an employer 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). Chestnut was determined to be an employer under the RRA and RUIA with coverage from January 11, 1902. This is also the determination of the Board concerning the status of Chestnut Ridge Railroad Corporation (CHR). CHR has not heretofore been ruled to be a covered employer.

Mr. Donald G. Avery, attorney for CHR, advised a staff member of the Board's Office of General Counsel that substantially all the assets of Chestnut's corporate affiliates, as well as the assets of Chestnut itself, were purchased by H.H. Liquidating Corporation, alias Horsehead Corporation, on December 23, 2003, pursuant to a bankruptcy auction in the matter of Chestnut Ridge Railway Company, et al, United States Bankruptcy Court, Southern District of New York, Case No. 02-14024, filed on August 19, 2002. All that remains of Chestnut is a corporate shell with no assets. On March 15, 2004, CHR began railroad operations as a common carrier providing line haul and switching service to zinc recycling and production facilities owned by Horsehead Corporation beginning at milepost 0.0, where it intersects with the Norfolk Southern at Palmerton, Pennsylvania, and running northerly to milepost 6.6. CHR also services three other shippers along this line. A Surface Transportation Board (STB) exemption for this operation was granted to CHR in STB Finance Docket No. 34480, decided March 23, 2004. Prior to CHR's beginning of operations, Horsehead Corporation, owner of CHR, received STB authority retroactive to its bankruptcy auction purchase on December 23, 2003, to acquire and operate the rail line formerly operated by Chestnut. See STB Finance Docket No. 34481, decided March 12, 2004. Horsehead Corporation transferred its ownership of Chestnut's railroad assets to CHR on March 15, 2004. Horsehead Corporation neither leased nor contracted for railroad operations on the Chestnut line subsequent to its purchase of same and prior to its transfer of ownership to CHR.

Section 202.11 of the Board's regulations provides that:

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

In view of the foregoing, it is the determination of the Railroad Retirement Board that Chestnut Ridge Railway Company ceased to be an employer covered under the RRA and RUIA on December 23, 2003, the date on which all of its assets were sold.

Sections 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 [45 U.S.C. §231(a)(1)(i)].

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. § § 351(a) and (b)) contain substantially the same definition as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

Based on the information summarized above, it is determined that the Chestnut Ridge Railroad Corporation became an employer covered under the Railroad Retirement Act and the Railroad Unemployment Insurance Act on March 15, 2004, the date it began operations.

Original signed by:

Michael S. Schwartz

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