B.C.D. 00-50

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EMPLOYER STATUS DETERMINATION
New York Central Lines, L.L.C.

This is the determination of the Railroad Retirement Board concerning the status of New York Central Lines, L.L.C. (NYC), 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).

Initial information regarding NYC was provided by Scott J. Rynearson, then Tax Counsel for CSX Corporation (CSXC). CSXC is the parent company of CSX Transportation, Inc. (CSXT), a rail carrier employer under the RRA and RUIA (B.A. No. 1524). CSXC and CSXT are referred to collectively as CSX. NYC is a subsidiary of Consolidated Rail Corporation, Inc. (CRC), which is also an employer under the Acts (B.A. No. 1321). On June 1, 1999, CSXT and Norfolk Southern (NS) (B.A. No. 9408) took over railroad operations formerly conducted by Conrail. In connection with the partition of the operations of Conrail by and between CSXT and NS, CSX and NS[1] acquired 100% of the common stock of Conrail Inc. (CRR) as part of their take-over of the railroad operations of Consolidated Rail Corporation (CRC). See STB Finance Docket No. 33388, Decision No. 89, decided July 20, 1998, p. 23. CRC remains a direct wholly owned subsidiary of CRR. CRR became a direct wholly owned subsidiary of Green Acquisition Corp. (Tender Sub); Tender Sub is now a direct wholly owned subsidiary of CRR Holdings; and CRR Holdings is jointly owned by CSX Corporation and Norfolk Southern Corporation.

According to information provided by Mr. Rynearson, NYC began operations June 1, 1999, and has an operating agreement with, and leases equipment to, CSXT. Mr. Alvin R. Carpenter is the Chief Executive officer of NYC. The operating agreement between NYC and CSXT provides for CSXT to pay a fee for the use of assets allocated to the contract. The assets so allocated are not specified in the contract itself. The equipment lease examined in connection with this determination is similar.

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[1] See Surface Transportation Board (STB) Finance Docket No. 33388, Decision No. 89, July 20, 1998. Footnote 3 of this lengthy STB decision explains that:

> "CSXC and CSXT and their wholly owned subsidiaries, and also the wholly owned CRC subsidiary to be known as New York Central Lines LLC (NYC), are referred to collectively as CSX. NSC and NSR and their wholly owned subsidiaries, and also the wholly owned CRC subsidiary to be known as Pennsylvania Lines LLC (PRR), are referred to collectively as NS. CRR and CRC, and also their wholly owned subsidiaries other than NYC and PRR, are referred to collectively as Conrail or CR. CSX, NS, and Conrail are referred to collectively as applicants (or, sometimes, the primary applicants)."

New York Central Lines, L.L.C.

Pursuant to a request for additional information regarding the operating agreement and a description of the equipment leased under the Equipment Agreement, Mr. David J. Stoyanoff, Tax Counsel for CSX Corporation, provided supplemental information. Mr. Stoyanoff stated that pursuant to the operating agreement, CSXT would have the right and obligation to use the rail property for the term of the agreement (25 years) "in such manner and for such purposes as CSXT considers necessary and appropriate in connection with the operation of its business. CSXT will have the exclusive right to operate the property, will sell transportation services, dispatch and run trains, bill customers and otherwise extend its transportation operation onto the property owned by NYC," according to Mr. Stoyanoff. Additionally, Mr. Stoyanoff stated that CSXT will have the obligation to maintain the property of NYC, including the right of way, grading, track structure, bridges, tunnels, signals and other property in accordance with NYC's customary practice." Regarding the equipment leased under the Equipment Agreement between NYC and CSXT, Mr. Stoyanoff delineated the equipment as revenue freight cars, locomotives, vehicles, road machinery, non-revenue freight cars, and other equipment. NYC's total track mileage is approximately 5,852. Its total route mileage is 2,955. The additional 2,897 miles of track is comprised of double and triple tracks, sidetracks, spurs and yard tracks.

Mr. Rynearson stated that NYC also renders perishable protective service to CSXT, Norfolk Southern Railway, and other non-rail shippers. Perishable protective service is a service performed by NYC for shipments in temperature controlled rail cars, trailers, or containers. These cars, trailers or containers are each equipped with a mechanical refrigeration unit that provides temperature control to the loading compartment. NYC inspects the shipments for proper operation of the refrigeration unit, and refuels and repairs the units. Inspections are usually made daily and information such as the thermostat setting, thermometer reading and fuel level is formally recorded and preserved for evidentiary purposes.

According to Mr. Rynearson, NYC anticipates that more than 98 percent of NYC's revenue will be attributable to the operating agreement and equipment lease agreements with CSXT. The balance of NYC's revenue will be attributable to the perishable protective service.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), defines a covered employer as:

New York Central Lines, L.L.C.

> (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;
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> (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 * * *.

STB Finance Docket No. 33388 indicates that NYC is under common ownership and control with CSXT and NS. Additionally, the information provided indicates that NYC derives the major portion of its revenue from its operating agreement with CSXT, a rail carrier under the Acts. By leasing equipment and providing perishable protective service to CSXT, NYC is performing a service in connection with the transportation of passengers or property by railroad. Accordingly, it is determined that NYC became an employer within the meaning of section 1(a)(1)(ii) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(ii)) and the corresponding provision of the Railroad Unemployment Insurance Act effective June 1, 1999, the date on which it commenced operations.

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