B.C.D. 01-78

OCT 1 0 2001

EMPLOYER STATUS DETERMINATION
Port of Benton

This is the determination of the Railroad Retirement Board regarding the status of Port of Benton 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).

The Port of Benton is an autonomous public port district owned by the property taxpayers residing in portions of Benton County, in the State of Washington. The Port of Benton is responsible for encouraging economic development within the district, including management of seven sites which include two airports, three industrial centers, a riverfront business park, and a wine and food park.

Public port districts are authorized to enhance the economic welfare of the district by developing mooring facilities, airports, and other facilities for handling cargo and passengers; providing capital improvements for industrial and manufacturing facilities; improving port lands for sale or lease for industrial and commercial purposes; developing comprehensive development plans; promoting tourism; and levying taxes and selling bonds to develop properties and manufacturing facilities. The district is governed by elected port commissioners.

The Port of Benton filed a notice of exemption to acquire the rail line assets of the United States Department of Energy to operate a rail line approximately 17 miles long known as the Hanford Site Rail System, Southern Connection. Surface Transportation Board (STB) Decision, Finance Docket No. 33653, decided September 29, 1998. The Port of Benton leased the railroad track, equipment, property, and facilities it received from the Department of Energy to Livingston Rebuild Center, Inc., an employer under the Acts for the period June 1, 1988, to May 17, 1993 (B.A. Number 9619). Livingston Rebuild Center assigned the contract and lease to

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Tri-City Railroad Company, L.L.C., which filed a notice of exemption to lease the Hanford Site Rail System. STB Decision, Finance Docket No. 33888, decided June 16, 2000. Tri-City, B.A. No. 4649, was held by the Board to be a covered employer under the Acts by reason of this transaction.

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 * * *.

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).

The Board notes that in its decision regarding Railroad Ventures, Inc. (B.C.D. 00-47), the Board held that an entity that has STB authority to operate a rail line, but leases or contracts with another to operate the line in question, is covered under the Acts administered by the Board unless the Board determines that the entity is not a carrier. The Board enunciated a three-part test in B.C.D. No. 00-47 to be applied in making this determination. An entity that leases a line to another company or contracts with another company to operate the line, is a carrier under the Railroad Retirement Act unless the Board finds that all three of the following factors exist: 1) the entity does not have as a primary business purpose to profit from railroad activities; 2) the entity does not operate or retain the capacity to operate the rail line; and 3) the operator of the rail line is already covered or would be found to be covered under the Acts administered by the Board.

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The Port of Benton does not have a primary business purpose to profit from railroad activities. It is a unit of local government the purpose of which is to facilitate economic development. The Port of Benton does not operate the rail line and does not retain the equipment or personnel to operate the rail line. The operator of the rail line, Tri-City, is a covered employer under the Acts administered by the Board. Accordingly, all three of the above-listed factors exist in this case, and the Board concludes that the Port of Benton is not an employer under the Acts administered by the Board.

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