B.C.D. 02-22

EMPLOYER STATUS DETERMINATION
Carolina Rail Service, Inc.
Carolina Rail Service, LLC.

MAR 0 8 2002

This is a determination of the Railroad Retirement Board concerning the continued status of Carolina Rail Service, Inc. (CRS, Inc) (B.A. No. 4570) and the status of Carolina Rail Service, LLC (CRS, LLC) 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).

Information regarding CRS, Inc. was provided by Ms. Sherry C. Smith of Canal Holdings, LLC. According to Ms. Smith, CRS, Inc. merged with CRS Holdings, LLC. She stated that effective October 1, 2001, CRS Holdings, LLC changed its name to Carolina Rail Service, LLC. Ms. Smith stated that an internal merger was necessary due to changes to Canal Industries, Inc., the parent company of CRS, Inc. She further stated that for tax reduction purposes, Canal Industries, Inc. liquidated its assets by merging CRS, Inc. with a limited liability company. According to the State of North Carolina's Department of the Secretary of State, an Articles of Merger was filed with the state on September 27, 2001. The Articles of Merger stated that the merger of CRS, Inc. with CRS Holdings, LLC became effective October 1, 2001. The Articles of Merger further stated that effective the same time, CRS Holdings, LLC changed its name to Carolina Rail Service, LLC. Exhibit A of the Articles of Merger stated that each share of CRS, Inc's capital stock issued and outstanding prior to the merger were cancelled. However, Ms. Smith stated that Carolina Rail, LLC continues to provide rail services as did its predecessor, Carolina Rail, Inc.

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

> 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.

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.

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Section 1 of the RUIA contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act.

The evidence of record establishes that Carolina Rail Service, Inc. no longer possesses the characteristics of an operating railroad. Therefore, effective October 1, 2001, the date on which Carolina Rail Service, Inc. merged with CRS Holdings, LLC [which simultaneously changed its name to Carolina Rail Service, LLC], Carolina Rail Service, Inc. ceased to be an employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act. Further, the evidence of record also establishes that Carolina Rail Service, LLC is a rail carrier operating in interstate commerce. Accordingly, it is determined that Carolina Rail Service, LLC became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and the corresponding provision of the Railroad Unemployment Insurance Act effective October 1, 2001, the effective date it became the surviving rail entity.

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