B.C.D. 02-87

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EMPLOYER STATUS DETERMINATION
Yakima Valley Rail & Steam Museum
d/b/a Toppenish, Simcoe & Western Railroad
Toppenish, Simcoe & Western Railroad, Inc.

This is the determination of the Railroad Retirement Board concerning the continuing status of the Yakima Valley Rail & Steam Museum d/b/a Toppenish, Simcoe & Western Railroad (TSW) (B.A. No. 2645) and the new status of Toppenish, Simcoe & Western Railroad, Inc. (TSWI) 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). TSW was ruled to be an employer under the RRA and RUIA effective October 18, 1993. TSWI has not heretofore been ruled to be an employer under the Acts.

On April 1, 2002, TSWI was created as an independent, for-profit corporate entity. On April 1, 2002, all TSW employees became TSWI employees and TSW ceased to exist. TSWI performs the same freight operations which TSW performed. Board records show that the Yakima Valley Rail and Steam Museum was the parent corporation and its subsidiary was the Toppenish, Simcoe & Western Railroad. The museum operations were ruled to be not covered under the RRA and RUIA. However, the freight operations of its subsidiary were segregated from the non-carrier operations of the museum and ruled to be a covered employer under the RRA and RUIA. (B.C.D. 97-52). The reason for this change from a segregated subsidiary unit of a non-carrier parent company to an independent corporation was because the museum's non-profit status as an educational and preservation corporation was in jeopardy due to its unrelated business income from the freight operation.

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:

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> (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 Toppenish, Simcoe & Western Railroad, Inc., became an employer covered under the Railroad Retirement Act and the Railroad Unemployment Insurance Act on April 1, 2002, the date it began operations. Toppenish, Simcoe & Western Railroad (B.A. No. 2645) ceased to be an employer covered under the Acts administered by the Board on April 1, 2002, the date on which it ceased its operations and became nonexistent.

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