B.C.D. 03-3

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EMPLOYER STATUS DETERMINATION
Railroad Safety Consultants Inc.

This is the determination of the Railroad Retirement Board concerning the status of Railroad Safety Consultants Inc. (RSC) 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).

Mr. Randy C. Caldwell, President, RSC, has advised that RSC is a privately held corporation which is incorporated under the laws of Delaware and is owned by three individual stockholders, including himself, who are also on the Board of Directors. He describes RSC as a consulting firm that gives seminars and presentations on working safely for railroads. RSC reports that it currently has no employees or compensation but, as its business grows, Mr. Caldwell indicates that he expects to have a support staff. Insofar as the RSC stockholders and directors are concerned, Mr. Caldwell describes them as individual consultants who work together and contract out their services on an as needed basis.

There is no railroad which has a financial interest in RSC, either through direct or indirect stock ownership. There is no individual who owns a controlling interest in RSC and in a rail carrier. There are no RSC officers/directors who are also officers/directors of a rail carrier. RSC has no assets, no written agreements to provide service for any rail carrier, and no lessee or lessor relationships regarding railroad track or equipment. There has been no Surface Transportation Board ruling regarding the status of RSC. The only relationship between RSC and the rail industry is that RSC plans to provide its services exclusively to railroads.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)) 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 [49 USC §§1010 et seq.];

(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, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad;

(iii) any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any employer as defined in paragraph (i) or (ii) of this subdivision;

(iv) any railroad association, traffic association, tariff bureau, demurrage bureau, weighing and inspection bureau, collection agency, and any other association, bureau, agency, or organization which is controlled and maintained wholly or principally by two or more employers as defined in paragraph (i), (ii), or (iii) of this subdivision and which is engaged in the performance of services in connection with or incidental to railroad transportation; and

(v) any railway labor organization, national in scope, which has been or may be organized in accordance with the provisions of the Railway Labor Act, as amended, and its State and National legislative committees, general committees, insurance departments, and local lodges and

Railroad Safety Consultants Inc.

> divisions, established pursuant to the constitution or bylaws of such organization.

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 information summarized above shows that Railroad Safety Consultants Inc. is not operating a railroad. Nor is it owned by or under common control with any rail carrier employer. The evidence demonstrates that Railroad Safety Consultants Inc. does not fall within any of the other definitions of employer under the Acts administered by the Board. The Board therefore finds that Railroad Safety Consultants Inc. is not an employer covered under the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

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