B.C.D. 03-37

APR 2 2 2003

EMPLOYER STATUS DETERMINATION
Decision on Reconsideration
Massachusetts Bay Commuter Railroad Company, LLC

This is the determination of the Railroad Retirement Board on reconsideration of its decision dated March 3, 2003 (B.C.D. No. 03-23), regarding the employer status of Massachusetts Bay Commuter Railroad Company, LLC (MBCR) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

As stated in the Board's decision, MBCR has been selected by the Massachusetts Bay Transportation Authority to operate the Authority's commuter rail system in the Boston area. MBCR will replace Amtrak as the contractor, and is scheduled to begin operations of the Boston regional commuter rail system as of July 1, 2003. An agreement was entered into effective January 10, 2003, between the Authority and MBCR. The commuter rail system includes a line that is used to provide regular commuter service between Boston, Massachusetts, and Providence, Rhode Island.

Accordingly, the Board determined that MBCR will be an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of July 1, 2003, the date as of which it is scheduled to begin operations.

In its request for reconsideration, MBCR states that an Operating Agreement was entered into February 19, 2003, and that since January 10, 2003, MBCR has been engaged in mobilization and transition activities pursuant to the above-mentioned agreements. MBCR hired its first employee January 10, 2003, and plans to hire additional employees prior to July 1, 2003. MBCR requests that the effective date of coverage be made January 10, 2003, rather than July 1, 2003.

Decision on Reconsideration
Massachusetts Bay Commuter Railroad Company, LLC

The Board concurs that MBCR should be covered from the date it first hires employees for the purpose of setting up its rail operation. Cf. Rev Ruling 82-100, 1982-1 C.B. 155, wherein the Internal Revenue Service ruled that a railroad becomes an employer subject to taxes under the Railroad Retirement Tax Act when the company first hires employees to perform functions directly related to its carrier operations. Accordingly, the Board modifies its decision dated March 3, 2003, to hold that MBCR became an employer under the Acts as of January 10, 2003.

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever