B.C.D. 01-40

APR 30 2001

Employer Status Determination
Hollis & Eastern Railroad Company, B.A. No. 2846
Hollis & Eastern Railroad Company, L.L.C. Preassigned B.A. No. 2884

This is the determination of the Railroad Retirement Board concerning the continuing status of Hollis & Eastern Railroad Company (Old H&E) B.A. No. 2846, 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) and the status of Hollis & Eastern Railroad Company, L.L.C. (New H&E) preassigned B.A. No. 2884, as a new employer under the RRA and RUIA. Old H&E was ruled to be an employer under the Acts effective May 15, 1959. New H&E has not heretofore been determined to be an employer under the Acts.

On November 8, 2000, Old H&E merged with and into New H&E. Old H&E was an Oklahoma Corporation and New H&E is a Delaware Corporation. On November 9, 2000, New H&E changed its status as a legal entity from a corporation to a limited liability company under the laws of Delaware. A Certificate of Exemption for this transaction was granted in Surface Transportation Board Finance Docket No. 33954, decided November 13, 2000. There has been no change in actual railroad operations. Attorney Edward A. Razim, III, on behalf of New H&E, stated in his letter of January 24, 2001, that the railroad's primary business was and continues to be the transport of wallboard and other products from Republic Gypsum's Facility in Duke, Oklahoma to the Wichita Tillman Jackson County rail line. He also stated that New H&E performs the same operations as old H&E.

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 [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).

In view of the foregoing, it is determined that Hollis and Eastern Railroad Company (an Oklahoma Corporation) ceased to be an employer under the RRA and RUIA as of the close of business on November 8, 2000 when, it merged with and into Hollis and Eastern Railroad Company, L.L.C. (a

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Delaware corporation). It is also determined that Hollis and Eastern Railway Company, LLC., (a Delaware limited liability company) became an employer under the RRA and RUIA on November 9, 2000, the date it began actual operations as a new legal entity.

Original signed by:

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever