

JUL 14 2006

**EMPLOYER STATUS DETERMINATION
Ogeechee Railway Company**

This is the determination of the Railroad Retirement Board concerning the continuing status of Ogeechee Railway Company (ORC) (B.A. No. 5525) 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). Ogeechee has been an employer under the RRA and RUIA with service creditable from May 5, 1989.

Information regarding Ogeechee was provided by David Boddiford, President, ORC, and was also taken from a verified notice of exemption before the Surface Transportation Board filed by Georgia Midland Railroad, Inc. (GMR) (B.A. No. 5593) and captioned Georgia Midland Railroad, Inc. – Acquisition and Operation Exemption- Rail Lines of Ogeechee Railway Company in Georgia. See STB Finance Docket No. 34466, filed February 9, 2004. GMR is a wholly owned subsidiary of Atlantic Western Transportation, Inc. (AWT), a non-carrier.

On February 20, 2004, Ogeechee subleased its right to conduct railroad operations on certain lines in Georgia to GMR and Heart of Georgia Railroad, Inc. (HOG) (B.A. No. 5575). Ogeechee also leased all of its assets to GMR. Ogeechee ceased its operations on February 21, 2004 and its employees were last compensated on March 12, 2004. The sublease to GMR and HOG was for two years with an option to require assignment of the subleases and the conveyance of Ogeechee's assets for \$900,000.00. The terms of the sublease provided for a monthly payment to Ogeechee in the amount of \$6,500.00 .

Based on the foregoing, the Board held in a decision dated June 14, 2005, that Ogeechee continued to be an employer covered under the Acts (B.C.D. 05-27). However, in November 2005 the option referred to above was exercised and the assets of Ogeechee were sold to GMR.

Section 202.11 of the Board's regulations provides that:

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.

Through the sale of its rail and other assets and its cessation of operations, Ogeechee has lost the characteristics essential to the existence of an employer status. Accordingly, the Board holds that Ogeechee ceased to be an employer

under the Railroad Retirement and Railroad Unemployment Insurance Acts effective with the close of business on November 30, 2005. Cf. Rev Ruling 82-99, 1982-2 C.B. 154, wherein the Internal Revenue Service ruled that a railroad ceases to be an employer subject to taxes under the Railroad Retirement Tax Act when the railroad's employees stop performing services in connection with the railroad's carrier activities.

Original signed by:

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