

**June 2, 2000**  
**L-2000-17**

**TO** : Carol A. Arnold  
Assessment & Training  
Through: Ronald Russo  
Director of Policy and Systems

**FROM** : Steven A. Bartholow  
General Counsel

**SUBJECT** : Railinc Corporation and American Association of Railroads  
Contribution Rates

This is in response to your e-mail request of April 25, 2000 for guidance as to whether a joint employer record for experience rating purposes may be established for Railinc Corporation (Railinc - II) (BA-7534) and the Association of American Railroads (BA-7304) (AAR). In a separate request, you inquired as to whether the experience of the former Railinc Corporation (BA-9341) (Railinc-I) should have been joined with the new Railinc-II when it was created in 1999. For the reasons explained below, it is my opinion that a joint employer record may be established for Railinc-II and the AAR with an effective date of January 1, 2001, assuming we consider their inquiry as a request for such. Additionally, it is my opinion that it would not be correct to join the Railinc-I experience with the current Railinc-II experience. Railinc II is a separate, independent company which is performing business in the inspection of safety and audit of railcar movement. Railinc-I was involved in data processing and communications.

According to the facts as presented in your e-mail, the Association of American Railroads (AAR) telephoned the Board on April 19, 2000, inquiring about their contribution rate, explaining that they had never received, or could not locate, their notice. You stated that upon being provided two contribution rates (one for BA-7304, jointly with BA-9341<sup>1</sup> and BA-7721, and the other for BA-7534), the AAR alleged that this was in error. AAR indicated that Railinc-II, formed in 1999, was a subsidiary of the AAR, just as Railinc-I was, and should have a joint contribution rate. You indicated that although this was not the case, since Railinc-I was not set up as a joint record with the AAR, the AAR may have assumed a joint contribution rate existed since the rates for the two separate entities were identical. You also stated that the AAR does not wish to reopen the contribution rates for 1999, but would like a recalculated contribution rate for 2000.

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<sup>1</sup>It is unclear whether a rate is still established for BA-9341, which no longer exists.

Section 8(a)(18) of the Railroad Unemployment Insurance Act (RUIA) provides that the Board may allow 2 or more employers to establish and maintain a joint employer record if the employers request such record. Section 345.202 of the Board's regulations provides in pertinent part that:

Two or more employers that are under common ownership or control may request the Board to consolidate their individual employer records into a joint individual employer record. Such joint individual employer record shall be treated as though it were a single employer record. A request for such consolidation shall be made to the Director of Unemployment and Sickness Insurance, and such consolidation shall be effective commencing with the calendar year following the year of request. 20 C.F.R. §345.202(a).

Additionally, section 345.205 provides as follows:

The cumulative benefit balance, net cumulative contribution balance, 1-year compensation base, and 3-year compensation base of an employer that reincorporates or otherwise alters its corporate identity in a transaction not involving a merger, consolidation, or unification will attach to the reincorporated or altered identity. 20 C.F.R. §345.205.

First, based upon the information you provided, it appears that Railinc-I was never set up as a joint record with the AAR. You indicated that the AAR may have assumed that they had a joint record with Railinc-I because the contribution rates in those years happened to be identical. Further evidence shows that the annual contribution rate notices for the AAR and for Railinc-I were mailed to separate contacts at different addresses. Barring a specific request and approval by the Director of Unemployment and Sickness Insurance for consolidation of employer records, the individual employer records of the AAR and Railinc-I were correct under the Board's regulations (20 CFR §345.202(a)).

Since you indicated that the AAR does not wish to reopen the contribution rates for 1999, but would like a recalculated rate for 2000, the Board may consider this as a request for a joint employer record for consolidation with Railinc-II. Since this request was received too late to change the 2000 contribution rates for both entities, this request would be effective commencing with the calendar year following the year of request, specifically January 1, 2001.

Second, you inquired as to whether when the new Railinc-II was created in 1999, it would have been correct for the Board to join the old Railinc-I experience with the new Railinc-II. As stated in the Board's regulations cited above (20 CFR 345.205), experience may be joined when an employer alters its corporate identity in a transaction that does not involve a merger, consolidation or unification. It would not be correct to join the Railinc-I experience with the current Railinc-II experience since the latter is a separate, independent company which is performing business in the inspection of safety and audit of railcar movement and is completely separate from the data processing and communications operation of the former Railinc-I. Railinc II is not a reincorporation of Railinc-I, but is a new corporation that happens to have the same name as the former corporation.

In summary, Railinc-II may be set up as a joint record for experience rating purposes with the AAR with an effective date of January 1, 2001. Additionally, it would not be correct to join the Railinc-I experience with the current Railinc-II experience, since the latter is a new separate, independent company.

I hope this information is helpful.