

## EMPLOYER STATUS DETERMINATION CAGY Industries, Inc.

This is the determination of the Railroad Retirement Board concerning the status of CAGY Industries, Inc. (CAGY) 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).

Information about CAGY was furnished by Mr. H. Lynn Gibson, CAGY's Vice President and Chief Financial Officer. CAGY was incorporated in the State of Delaware on March 27, 1987, and was organized on June 8, 1987. It is a publicly held corporation registered with the Securities and Exchange Commission (SEC). The corporation was organized for the specific purpose of acquiring, owning, and holding stock of other corporations, and to perform all acts and things covered generally by the denomination of "holding corporation" or "holding company."

CAGY has one class of stock, common stock. The stock is registered with the SEC and is owned and held by 401 shareholders, not one of which is a railroad. No railroad has a direct financial interest in the corporation, nor does any railroad have an indirect stock or financial interest in the corporation through a parent company or "brother-sister corporation."

CAGY owns 92.024% of the capital stock of the Columbus and Greenville Railway Company (BA No. 2563) (C&G), which it first acquired in 1988. The remaining 7.076% of C&G stock is owned by a number of individual shareholders.

In addition to the C&G stock, CAGY owns one hundred percent of the capital stock of three other corporations: (1) Railway Management, Inc. (RMI), a Mississippi corporation organized in 1988, which keeps records of railcar earnings for lessor-owners of freight cars leased for use in interchange service; (2) The Chattooga and Chickamauga Railway Company (CCKY) (BA No. 5527), a Mississippi corporation organized in 1989, which operates as a common carrier of freight over 67 miles of track in Northwest Georgia and in Chattanooga, Tennessee, leased with the option to purchase from the Central of Georgia Railroad Company (BA No. 1505), the Tennessee, Alabama, & Georgia Railway Company (BA No. 2540), and the Alabama Great Southern Railroad (BA No. 1501); and (3) Redmont Railway Company (BA No. 5558) (RRC), a Mississippi corporation organized in 1994, which operates as a freight railroad on 41.5 miles of track between Corinth, Mississippi, and Red Bay, Alabama, under a lease contract from the Mississippi-Alabama Railroad Authority, a non-profit corporation organized pursuant to an Interstate Compact between the States of Mississippi and Alabama.

CAGY also owns 49% of the stock of Southeastern Rail, Inc., a Mississippi corporation organized in 1994, which is engaged in the

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business of construction of railroad tracks, bridges, and facilities for railroads, industries, and public authorities in the Southeastern region of the United States.

The officers of CAGY are Lester Myers, Chairman of the Board; Roger D. Bell, President and Chief Executive Officer; H. Lynn Gibson, Executive Vice President and Chief Financial Officer; Sheila M. Cain, Secretary; and Milton C. Neyman, Jr., Treasurer. The directors of CAGY are Lester Myers, Roger D. Bell, Sam Y. Wilhite, James D. Bryan, Henry Weiss, Birney Imes, Seymour B. Johnson, Paul L. Smith, Bruce J. Brumfield, and Jerrell M. Bearden. CAGY's officers and directors are also officers and directors of C&G and CCKY. CAGY's officers are also officers of RRC. The directors of RRC are Lester Myers, Roger D. Bell, and H. Lynn Gibson.

CAGY provides financial, accounting, and computer services and manages non-operating properties for its subsidiary corporations, for which the subsidiaries pay a fee. CAGY does not, either alone or in conjunction with any one of its subsidiary railroad corporations, perform services in the transportation of property by rail. CAGY's revenues consist primarily of fees and rental income from the lease of equipment. CAGY has four employees, consisting of two accountants, a secretary, and an administrative assistant.

CAGY's primary assets, in addition to the capital stocks identified above, consist of office and computer equipment, locomotives, and railcars. Locomotives owned by CAGY are leased to C&G and CCKY, and railcars owned by CAGY are leased to C&G. However, there is no joint control of any equipment or facilities owned by CAGY, such control being vested in the lessee exclusively.

Section 1 of the RRA defines the term "employer" to include:

(i) any express company, sleeping car company, and carrier by railroad, subject to subchapter I of chapter 105 of Title 49;

(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

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or icing, storage, or handling of property transported by railroad.


Section 1 of the RUIA and section 3231 of the Railroad Retirement Tax Act (RRTA) (26 U.S.C. §3231) contain essentially the same definition.

In a decision regarding a claim for refund of taxes under the RRTA, the United States Court of Appeals for the Federal Circuit held that a parent corporation which owns a rail carrier subsidiary is not under common control with the subsidiary within the meaning of §3231. Union Pacific Corporation v. United States, 5 F.3d 523 (Fed Cir. 1993).

The facts regarding common control in the Union Pacific case are indistinguishable from those presented in the case of CAGY, which, like Union Pacific, is a publicly held company with a large number of shareholders. Accordingly, a majority of the Board finds that CAGY Industries, Inc. is not an employer covered by the RRA and the RUIA because it is not under common control with its rail carrier subsidiaries.

  
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Glen L. Bower

  
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Jerome F. Kever

  
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V. M. Speakman, Jr. (Dissenting)