

EMPLOYER STATUS DETERMINATION
Box Car Services, L.L.C.

NOV 24 2008

This is the decision of the Railroad Retirement Board regarding the status of Box Car Services, L.L.C. (Box Car) as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. The status of this company has not previously been considered.

The evidence of record is that Box Car was formed in Massachusetts on July 30, 2003 as a privately held, Limited Liability Company, owned by Daniel M. Bigda. Box Car predominantly buys, sells, and leases railcars and also provides basic financing services for railcars. Box Car does not jointly own any facilities with a covered rail carrier. Box Car has two employees. Mr. Bigda reported that the only work that Box Car employees perform on railroad-owned property is railcar inspections.

In his answers to a Railroad Retirement Board questionnaire dated January 17, 2008, Mr. Daniel Bigda of Box Car stated that the company earns 50% of its revenue from rail carriers and does 10% of its business with rail carriers. The rail carriers that were specifically cited were CNR, CPR, UP, and CSX.

No STB decisions have been rendered concerning Box Car nor does Box Car pay any Federal Railroad Administration user fees. The IRS has not ruled on the applicability of the Railroad Retirement Tax Act to Box Car. No railroad has a financial interest in Box Car either through direct interest or a parent company. Neither Mr. Bigda nor any other of Box Car's officers owns a controlling interest in any other rail carrier.

Section 1(a)(1) of the Railroad Retirement Act (RRA) (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, United States Code;
- (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 ***.

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (RUIA), 45 U.S.C. §351(a) and (b) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (RRTA), 26 U.S.C. § 3231.

Box Car is clearly not a carrier by rail. Further, there is no evidence that Box Car is under common ownership with any rail carrier or controlled by officers or directors who control a railroad. Box Car therefore is not a covered rail carrier affiliate employer. As Box Car meets no other definition of a covered employer under the Acts, the Board finds that Box Car is not a covered employer.


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