

EMPLOYER STATUS DETERMINATION

BCD 2022-17

American Rocky Mountaineer, LLC d/b/a Rocky Mountaineer (ARM)

BA No. 1916

April 11, 2022

This is a decision of the Railroad Retirement Board concerning the status of American Rocky Mountaineer, LLC d/b/a Rocky Mountaineer (ARM) as an employer under the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA) (collectively, “the Acts”). RRA, 45 U.S.C. § 231 *et seq.*; RUIA, 45 U.S.C. § 351 *et seq.*

On March 19, 2021, Mr. Lawrence Tsang, Manager, Total Rewards for ARM, provided information about ARM. Peter Armstrong is the founder, owner, and interim Chief Executive Officer of ARM. ARM is also owned by Invictus Maneo Ltd., Oceaneer Investments Ltd., No. 245 Dynamic Endeavors Inc., and The PBRA Alter Ego Trust. ARM began operations August 15, 2021. Mr. Tsang reported that ARM has terminal points in Denver, Colorado and Moab, Utah, with total trackage for the route being approximately 368.7 miles long (Denver, Colorado to 7 Mile Siding near Moab, Utah). ARM had two employees who were first compensated on February 1, 2021, and before the end of July 2021 had 20 employees.

ARM operates a new passenger rail excursion between Denver, Colorado and Moab, Utah. The one-way trip lasts two (2) days and is offered to customers starting in Denver, Colorado or Moab, Utah. Westbound passengers will board at Denver’s Union Station, ride through the Rocky Mountain National Park, and disembark for an overnight stay in Glenwood Springs, Colorado. The following day, passengers will continue westward, crossing into Utah and arriving in Moab, Utah, near the Arches and Canyonlands National Parks. Eastbound passengers will ride the same route in reverse, with an overnight stop in Glenwood Springs, Colorado. The service will be offered seasonally, between April and October. ARM will not offer freight rail service and will, therefore, not interchange with any rail carriers.

In Surface Transportation Board (STB) Finance Docket No. 36468, decided May 27, 2021, ARM filed a petition for exemption for ARM to provide luxury passenger rail service between Denver, Colorado and Moab, Utah, on Union Pacific Railroad Company (UP) (B.A. No. 1713) lines, pending entry into a final agreement with UP to provide track access and dispatch ARM trains. *American Rocky Mountaineer, LLC - Petition for Exemption from 49 U.S.C. Subtitle IV*, 2021 STB Fin. Dkt. 36468. In its decision, the STB determined that ARM is a rail carrier subject to its jurisdiction under 49 U.S.C. § 10501 as the services that ARM will offer include the interstate transportation of passengers by rail between Denver, Colorado and Moab, Utah, and additionally, ARM will hold itself out to the public as engaged in the business of transporting persons or property from place to place for compensation. *Id.* at 3-4.

Under section 1(a)(1)(i) of the RRA, insofar as relevant here, a covered employer is defined as “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.” RRA § 1(a)(1)(i), 45 U.S.C. § 231(a)(1)(i). Section 1 of the RUIA and section 3231(a) of the Railroad Retirement Tax Act (RRTA) contain substantially similar definitions. RUIA § 1, 45 U.S.C. § 351; RRRTA, 26 U.S.C. § 3231.

Here, the record establishes that American Rocky Mountaineer, LLC is a rail carrier operating in interstate commerce because it provides passenger rail transportation across state lines. Accordingly, it is determined that American Rocky Mountaineer, LLC became an employer within the meaning of the Acts effective February 1, 2021, the date it first compensated its employees. *See also* Rev. Ruling 82-100, 1982-1 C.B. 155 (Internal Revenue Service ruled that under RRRTA employer status begins on date company first hires employees to perform functions directly related to its carrier obligations).

FOR THE BOARD
Stephanie Hillyard
Secretary to the Board