

Office of Chief Counsel
Internal Revenue Service
Memorandum

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to: Director, Submission Processing
Cincinnati, OH
Attn: Entity Unit

from: Office of Division Counsel/Associate Chief Counsel
(Tax Exempt & Government Entities)

subject: Railroad Retirement Tax Act Status

In accordance with the coordination procedure established between the Service and the Railroad Retirement Board (RRB), the RRB has provided us with its opinion on reconsideration dated _____, that the following business is not a covered employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act effective _____:

In the Board Coverage Decision (B.C.D.) No. _____, dated _____, the RRB determined that _____ was an employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act (the Acts) effective _____. In this decision, the RRB cited its decision regarding Railroad Ventures, Inc. (B.C.D. 00-47), where the RRB held that an entity that has Surface Transportation Board authority to operate a rail line, but leases or contracts with another to operate line in question, is covered under the Acts administered by the RRB unless the RRB determines that the entity is not a carrier under the RRB's applicable three-part test: 1) the entity does not have as a primary business purpose to profit from railroad activities; 2) the entity does not operate or retain the capacity to operate the rail line;

and 3) the operator of the rail line is already covered or would be found to be covered under the Acts administered by the RRB.

The RRB originally found that the purpose of _____ was to enable its affiliate, _____, to profit from marketing coal. Accordingly, the RRB found that _____ does not meet the three Railroad Ventures factors and held it to be a covered rail carrier employer.

In the request for reconsideration, _____ stated that its primary business purpose was to reduce the transportation cost of coal and thereby reduce the electric energy cost paid by the customers of its affiliate _____.

Based on this clarification, the RRB concluded that _____ met all three of the criteria stated in Railroad Ventures. Accordingly, the RRB granted the request for reconsideration and concluded that _____ is not a covered employer.

We have reviewed the opinion of the RRB and, based upon the information submitted to us by the RRB, we also conclude that _____ is not a covered employer under the Railroad Retirement Tax Act effective _____. Please take the appropriate action regarding this business.

Janine Cook