

101928



BURLINGTON NORTHERN RAILROAD

FILED FOR RECORD  
SEP 26 9 52 AM '86  
BURLINGTON  
NORTHERN RR

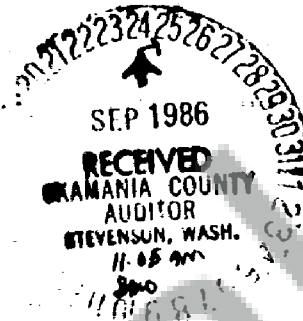
MICHAEL HOLLAND  
Assistant General Counsel

GARY M. OLSON

2200 First Interstate Center  
999 Third Avenue  
Seattle, Washington 98104  
Telephone (206) 467-3204

September 15, 1986

Prosecuting Attorney  
Skamania County Washington  
Courthouse  
Stevenson, Washington 98648



Re: Burlington Northern Railroad Co. v. Department of  
Revenue of the State of Washington, et al.,  
King County Cause No. 86-2-11792-0

Gentlemen:

This office represents Burlington Northern Railroad Company in the above-referenced action. In addition, Eugene A. Ritti and Richard G. Smith of Hawley Troxell Ennis & Hawley, Boise, Idaho have been retained by BN. The complaint alleges overvaluation by the Washington Department of Revenue of BN's operating property for the tax year 1984.

As you know, BN filed a similar complaint for tax year 1984 in Federal Court in Tacoma, Washington, alleging various violations of the 4-R Act. The Federal Court has already issued a preliminary injunction in that case. However, the jurisdiction of the Federal Courts to hear such actions is still being disputed by the States. Therefore, although BN believes the tax year 1984 dispute should be litigated in Federal Court, it did, as a protective measure, feel compelled to file the above-referenced action in State Court, pending resolution by the Federal Appellate Courts of the jurisdiction issue.

Although the Rules of Civil Procedure provide that an answer or other responsive pleading should be filed by you, please be advised that until the jurisdiction issue of whether this type of lawsuit can be brought in Federal Court has been finally resolved, BN will take no further action to prosecute this lawsuit at this particular time. Therefore, if you so desire, you need

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not file an answer or other responsive pleading until  
you hear further from me.

If you have any questions, please feel free to call  
Gene Ritti, Rick Smith or me at your convenience. Mr  
Ritti and Mr. Smith may be reached at (208) 344-6000.

Very truly yours,

*Michael Holland*  
Michael Holland

MH/ds  
enclosures

cc w/enclosures: All parties of record

101928

FILED FOR RECORD  
SEP 26 9 52 AM '85  
J. J. New, Dep.  
GARY H. SLOAN

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

BURLINGTON NORTHERN RAILROAD  
COMPANY,

Plaintiff,

v.

DEPARTMENT OF REVENUE OF THE  
STATE OF WASHINGTON, et al.,

Defendants.

NO. 86-2-11792-0

SUMMONS

TO: SKAMANIA COUNTY,  
STATE OF WASHINGTON:

A lawsuit has been started against you in the above-entitled court by BURLINGTON NORTHERN RAILROAD COMPANY, plaintiff. Plaintiff's claim is stated in the written Complaint, a copy of which is served upon you with this Summons.

In order to defend against the lawsuit, you must respond to the complaint by stating your defense in writing, and serve a copy upon the undersigned attorney for the plaintiff within 20 days after the service of this Summons, or within 60 days if this Summons was served outside the State of Washington, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what he asks for because you have not responded. If you serve a notice of appearance on the undersigned attorney, you are entitled to notice before a default judgment may be entered.

You may demand that the plaintiff file the lawsuit with the court. If you do so, the demand must be in writing and must be served upon the plaintiff. Within 14 days after the service of

MICHAEL HOLLAND  
2200 First Interstate Center  
Seattle, Washington 98104  
Telephone: (206) 467-3204

SUMMONS - 1

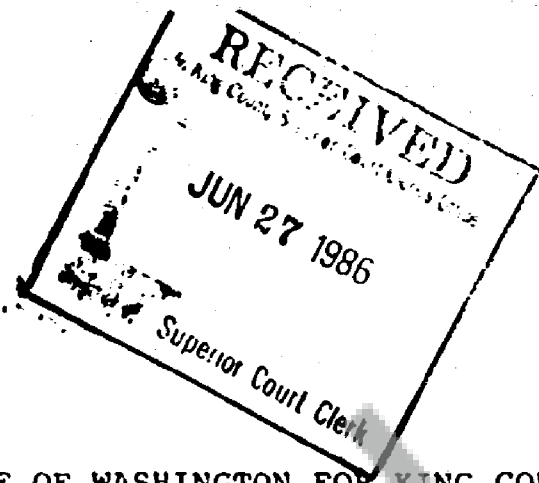
1 the demand, the plaintiff must file this lawsuit with the court,  
2 or the service on you of this Summons and Complaint will be void.

3 If you wish to seek the advice of an attorney in this  
4 matter, you should do so promptly so that your written response,  
5 if any, may be served on time.

6 This Summons is stated pursuant to Rule 4 of the Superior  
7 Court Civil Rules of the State of Washington.

8 DATED: 23 September 86

9 Michael Holland  
10 Michael Holland  
11 of Attorneys for Plaintiff  
12 Burlington Northern Railroad  
13 Company  
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5 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

6 BURLINGTON NORTHERN RAILROAD )  
7 COMPANY, )

8 Plaintiff, )

9 v. )

10 DEPARTMENT OF REVENUE OF THE )  
11 STATE OF WASHINGTON, THE )  
12 BOARD OF TAX APPEALS OF THE )  
13 STATE OF WASHINGTON, AND THE )  
14 COUNTIES OF ADAMS, BENTON, )  
15 CHELAN, CLARK, COLUMBIA, )  
16 COWLITZ, DOUGLAS, FERRY, )  
17 FRANKLIN, GRANT, GRAYS HARBOR, )  
18 KING, KITSAP, KITTITAS, )  
19 KLUCKITAT, LEWIS, LINCOLN, )  
20 MASON, OKANOGAN, PACIFIC, )  
21 PEND OREILLE, PIERCE, SKAGIT, )  
22 SKAMANIA, SNOHOMISH, SPOKANE, )  
23 STEVENS, THURSTON, WALLA WALLA )  
24 WHATCOM, WHITMAN, YAKIMA, )

25 Defendants. )  
26 )

NO. 86-2-11792-0

COMPLAINT

19 Plaintiff, Burlington Northern Railroad Company ("BN"), for  
20 a cause of action against the defendants, alleges as follows:

21 I.

22 BN is a Delaware corporation with its principal place of  
23 business in the State of Texas, and is an interstate common  
24 carrier by railroad. BN is duly qualified to do business in the

25 MICHAEL HOLLAND  
26 2200 First Interstate Center  
Seattle, Washington 98104  
Telephone: (206) 467-3200

Complaint - 1

1 State of Washington, operates in thirty-two counties, and has  
2 paid all required fees.

3 II.

4 Defendant Department of Revenue of the State of Washington  
5 ("DOR") is a subdivision of the State of Washington. Pursuant to  
6 Chapter 84.12.200 et seq., RCW, the DOR annually values the oper-  
7 ating property of BN and supervises the assessment and collection  
8 of ad valorem taxes in Washington.

9 III.

10 Defendant Board of Tax Appeals of the State of Washington  
11 ("BTA") is a subdivision of the State of Washington. Pursuant to  
12 Chapter 82.03.130 RCW, taxpayers such as BN may appeal to the BTA  
13 from operating property valuations and assessments made by the  
14 DOR.

15 IV.

16 Defendants, Adams, Benton, Chelan, Clark, Columbia, Cowlitz,  
17 Douglas, Ferry, Franklin, Grant, Grays Harbor, King, Kitsap,  
18 Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific,  
19 Pend Oreille, Pierce, Skagit, Skamania, Snohomish, Spokane,  
20 Stevens, Thurston, Walla Walla, Whatcom, Whitman, and Yakima are  
21 counties to which BN pays taxes based upon the operating property  
22 valuation and assessment made and approved by defendants DOR and  
23 BTA.

24 V.

25 Jurisdiction for this action is predicated upon Chapter  
26 82.03.180, RCW. Pursuant to Chapter 84.68.050, RCW, venue is  
proper in King County.

Complaint - 2



VI.

Pursuant to Chapter 84.12.200, RCW, et seq., BN is valued for assessment purposes by the DOR. BN's system-wide operating property is to be valued for ad valorem tax purposes at one hundred percent (100%) of correct actual cash flow. A portion of this system value is allocated to the State of Washington. BN's Washington value is then apportioned among the counties in which BN's operating property is located. The DOR determines the equalized value of the property apportioned to each county and certifies the equalized value to the county assessors for placement on the tax rolls. Taxes are payable by BN to the counties in equal payments on April 30 and October 31 of the year following the date of assessment.

VII.

The DOR alleged the 1984 true and correct actual cash value of BN's Washington operating property to be \$342,400,000. That valuation was timely appealed by BN to the BTA. During the hearing before the BTA, the DOR reduced what it claimed to be BN's true and correct actual cash value to \$341,169,783, which the BTA affirmed.

VIII.

The valuation set by the DOR and BTA on BN's Washington operating property is substantially in excess of the true and correct actual cash value of BN's Washington operating property. The true and correct actual cash value of BN's Washington operating property for 1984 is not in excess of \$185,349,000.

IX.

The methods of the DOR and BTA in valuing BN's operating property were based upon numerous errors, inconsistencies and distortions in the development and arbitrary manipulation of three indicators of value referred to as the "income approach," the "stock and debt approach" and the "cost approach," were based upon an improper weighting of these approaches, and were based upon the development and arbitrary manipulation of the allocation formula whereby a portion of BN's system-wide value was allocated to the State of Washington.

The errors, inconsistencies and distortions in the "income approach" utilized by the defendants, include, but are not limited to, the following:

(1) The defendants improperly used depreciation accounting rather than replacement-retirement-betterment accounting;

(2) The defendants improperly increased the income stream to be capitalized while simultaneously making inadequate additions to the capitalization rate;

(3) The defendants improperly added to the income stream depreciation and current and deferred federal income taxes;

(4) The defendants improperly utilized a limited life model to value BN.

The errors, inconsistencies and distortions in the "cost approach" utilized by the defendants include, but are not limited to, the following:

(1) A cost approach should not be utilized at all to value BN;



1 (2) An improper deduction for obsolescence was made by the  
2 defendants.

3 The errors, inconsistencies and distortions in the "stock  
4 and debt approach" utilized by the defendants include, but are  
5 not limited to, the following:

6 (1) The defendants improperly used an income influence  
7 method and a property influence method to value BN.

8 (2) The defendants undervalued the non-rail properties of  
9 Burlington Northern, Inc., and thereby overvalued the operating  
10 property of BN.

11 X.

12 Based upon the erroneous and unlawful valuation established  
13 by the DOR and BTA for BN's operating property and the resulting  
14 erroneous and unlawful assessment determined by the DOR and BTA,  
15 an erroneous and unlawful assessment has been transmitted to the  
16 defendant counties in which BN's operating property is located  
17 and has been entered on said counties' tax rolls. The first half  
18 of the total taxes based upon said erroneous and unlawful values  
19 was collected by said counties on or before April 30, 1985. The  
20 second installment has been ordered enjoined by the U.S. District  
21 Court for the Western District of Washington.

22 PRAYER FOR RELIEF

23 WHEREFORE, BN prays for relief as follows:

24 1. That the court reverse and set aside the decisions of  
25 the DOR and BTA;

26 2. That the court find BN's 1984 Washington value to be no  
more than \$184,349,000;

Complaint - 5

3. That the court order to be refunded to BN, with interest, any taxes unlawfully collected from BN, or to be collected should the federal preliminary injunction be dissolved, based upon the excessive valuation by the DOR and BTA;

4. That the court award its costs and attorneys' fees in bringing this action pursuant to any applicable statute and/or rule;

5. That the court award to BN such other relief which the court deems just and equitable.

DATED this 27 day of June, 1986.

Michael Holland  
of Attorneys for Plaintiff

101928

FILED IN 10000  
BY BURLINGTON NORTHERN  
RAILROAD  
SEP 26 9 52 AM '65  
J. New, Dep.  
G.A.H. 10/1/65

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

BURLINGTON NORTHERN RAILROAD  
COMPANY,

Plaintiff,

v.

DEPARTMENT OF REVENUE OF THE  
STATE OF WASHINGTON, et al.,  
Defendants.

NO. 86-2-11792-0  
SUMMONS

TO: SKAMANIA COUNTY,  
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In order to defend against the lawsuit, you must respond to the complaint by stating your defense in writing, and serve a copy upon the undersigned attorney for the plaintiff within 20 days after the service of this Summons, or within 60 days if this Summons was served outside the State of Washington, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what he asks for because you have not responded. If you serve a notice of appearance on the undersigned attorney, you are entitled to notice before a default judgment may be entered.

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SUMMONS - 1

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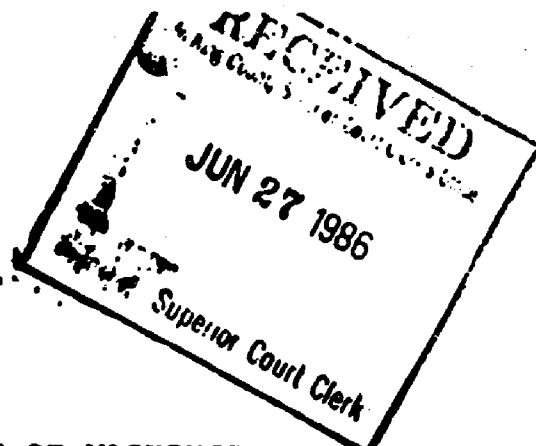
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DATED: 23 September 86

Michael P. Holland  
Michael Holland  
of Attorneys for Plaintiff  
Burlington Northern Railroad  
Company



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

BURLINGTON NORTHERN RAILROAD  
COMPANY,

Plaintiff,

v.

DEPARTMENT OF REVENUE OF THE  
STATE OF WASHINGTON, THE  
BOARD OF TAX APPEALS OF THE  
STATE OF WASHINGTON, AND THE  
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FRANKLIN, GRANT, GRAYS HARBOR,  
KING, KITSAP, KITTITAS,  
KLICKITAT, LEWIS, LINCOLN,  
MASON, OKANOGAN, PACIFIC,  
PEND OREILLE, PIERCE, SKAGIT,  
SKAMANIA, SNOHOMISH, SPOKANE,  
STEVENS, THURSTON, WALLA WALLA,  
WHATCOM, WHITMAN, YAKIMA,

Defendants.

86-2-11792-0

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Complaint - 5

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5. That the court award to BN such other relief which the court deems just and equitable.

DATED this 27 day of June, 1986.

**Michael Holland**  
**of Attorneys for Plaintiff**

Stevenson, Washington, 09-26-86

TO COUNTY AUDITOR DR.  
Skamania County, Washington

FILING  
RECORDING

FILE NO.

101928

AMOUNT

NC

Agree. & Lease

Liens

Mines

Deed

Mortgage

Satisfactions

Misc.

Surveys

Plats

WOC SUMMINGS

STATE OF WA.,

DEPT. OF REVENUE & AL

TO

BURTINGTON NORTHERN  
RAILROAD COMPANY

J. M. Gibson

COUNTY AUDITOR

By

d. J. Davis

DEPUTY

15284