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FILED
IN COUNTY CLERKS OFFICE

AM JUN 29 1992 PM

PIERCE COUNTY WASHINGTON
TED RUTT COUNTY CLERK (RUTT)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

ACF INDUSTRIES, INC.,
GENERAL AMERICAN TRANSPORTATION
CORPORATION, RAILBOX COMPANY,
RAILGON COMPANY, TTX COMPANY
AND UNION TANK CAR COMPANY,

Plaintiffs,

vs.

ADAMS COUNTY, BENTON COUNTY,
CHELAN COUNTY, CLARK COUNTY,
COLUMBIA COUNTY, COWLITZ
COUNTY, DOUGLAS COUNTY, FERRY
COUNTY, FRANKLIN COUNTY, GRANT
COUNTY, GRAYS HARBOR COUNTY,
KING COUNTY, KITTITAS COUNTY,
Klickitat County, LEWIS COUNTY,
LINCOLN COUNTY, MASON COUNTY,
OKANOGAN COUNTY, PACIFIC
COUNTY, PEND OREILLE COUNTY,
PIERCE COUNTY, SKAGIT COUNTY,
SKAMANIA COUNTY, SNOHOMISH
COUNTY, SPOKANE COUNTY, STEVENS
COUNTY, THURSTON COUNTY,
WALLA WALLA COUNTY, WHATCOM
COUNTY, WHITMAN COUNTY, and
YAKIMA COUNTY,

Defendants.

NO.

92 2 06368 4

SUMMONS

TO: All Defendants above-named

A lawsuit has been started against you in the
above-entitled court by ACF Industries, Inc., General American
Transportation Corporation, Railbox Company, Railgon Company,

SUMMONS - 1
9134Y

Registered
Indexed, Dir
In direct
Filed
Mailed

COPY

EISENHOWER & CARLSON
ATTORNEYS AT LAW
1200 FIRST INTERSTATE PLAZA
1201 PACIFIC AVENUE
TACOMA WASHINGTON 98402
TELEPHONE 206-572-4500
FAX 206-272-5712

GARY M. OLSON

JUL 10 1992

FILED FOR RECORD
BY ACF

1 TTX Company and Union Tank Car Company, Plaintiffs.

2 Plaintiffs' claims are stated in the written Complaint, a copy
3 of which is served upon you with this Summons.

4 In order to defend against this lawsuit, you must respond
5 to the Complaint by stating your defense in writing, and serve
6 a copy upon the person signing this Summons within twenty (20)
7 days after the service of this Summons, excluding the day of
8 service, if served within the State of Washington (or within
9 sixty (60) days after said service, if served out of the State
10 of Washington), or a default judgment may be entered against
11 you without notice. A default judgment is one where Plaintiffs
12 are entitled to what they ask for because you have not
13 responded. If you serve a Notice of Appearance on the
14 undersigned person, you are entitled to notice before a default
15 judgment may be entered.

16 You may demand that the Plaintiffs file this lawsuit with
17 the Court. If you do so, the demand must be in writing and
18 must be served upon the person signing this Summons. Within
19 fourteen (14) days after you serve the demand, the Plaintiffs
20 must file this lawsuit with the Court, or the service on you of
21 this Summons and Complaint will be void.

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

25 *****

26 *****

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SUMMONS - 2
9134Y

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FAX 206-572-5732

1 This Summons is issued pursuant to Rule 4 of the Superior
2 Court Civil Rules of the State of Washington.

3 DATED this 29th day of June, 1992.

4 EISENHOWER & CARLSON

5
6 By: Ronald A. Roberts
7 RONALD A. ROBERTS, WSBA #3119
8 Of Attorneys for Plaintiffs
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SUMMONS - 3
9134Y

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Plaintiffs,

vs.

ADAMS COUNTY, BENTON COUNTY,
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COLUMBIA COUNTY, COWLITZ COUNTY,
DOUGLAS COUNTY, PERRY COUNTY,
FRANKLIN COUNTY, GRANT COUNTY,
GRAYS HARBOR COUNTY, KING COUNTY,
KITTITAS COUNTY, KLIKITAT COUNTY
LEWIS COUNTY, LINCOLN COUNTY
MASON COUNTY, OKANOGAN COUNTY
PACIFIC COUNTY, PEND OREILLE COUNTY,
PIERCE COUNTY, SKAGIT COUNTY,
SKAMANIA COUNTY, SNOHOMISH COUNTY,
SPOKANE COUNTY, STEVENS COUNTY,
THURSTON COUNTY, WALLA WALLA COUNTY,
WHATCOM COUNTY, WHITMAN COUNTY,
and YAKIMA COUNTY,

Defendants.

92 2 06368

NO.

COMPLAINT FOR REFUND
OF TAXES

COMPLAINT FOR REFUND OF
TAXES

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COPY

1 Plaintiff alleges:

2 1. This is an action pursuant to R.C.W. 84.68.020 for
3 the refund of certain ad valorem property taxes paid during 1991.

4 2. Plaintiff, ACF Industries, Inc. ("ACF"), is a New
5 Jersey corporation with its principal offices located in the State
6 of Missouri.

7 3. Plaintiff, General American Transportation
8 Corporation ("GATC"), is a New York corporation with its principal
9 offices located in the State of Illinois.

10 4. Plaintiff, Railbox Company ("Railbox"), is a
11 Delaware corporation with its principal offices located in the
12 State of Illinois.

13 5. Plaintiff, Railgon Company ("Railgon"), is a
14 Delaware corporation with its principal offices located in the
15 State of Illinois.

16 6. Plaintiff, TTX Company ("TTX"), is a Delaware
17 corporation with its principal offices located in the State of
18 Illinois. Prior to July 1, 1991, TTX Company operated under the
19 name of Trailer Train Company.

20 7. Plaintiff, Union Tank Car Company ("Union Tank") is
21 a Delaware corporation with its principal offices located in the
22 State of Illinois.

23 8. The defendant Counties are all municipal
24 corporations of the State of Washington.

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1 9. 49 U.S.C. §11503 (hereinafter referred to as
2 "Section 306") prohibits a state, political subdivision of a state,
3 or any governmental entity or person acting on behalf of such state
4 or subdivision, from committing any of the following acts:

5 a. The assessment (but only to the extent of any
6 portion based upon excessive values as hereinafter
7 described), for purposes of a property tax levied by any
8 taxing district, of transportation property at a value
9 which bears a higher ratio to the true market value of
10 such transportation property than the ratio which the
11 assessed value of all other commercial and industrial
12 property in the same assessment jurisdiction bears to the
13 true market value of all such other commercial and
14 industrial property.

15 b. The levy or collection of any tax on an assessment
16 which is unlawful under subdivision (a).

17 c. The levy or collection of any ad valorem property
18 tax on transportation property at a tax rate higher than
19 the tax rate generally applicable to commercial and
20 industrial property in the same assessment jurisdiction.

21 d. The imposition of any other tax which results in
22 discriminatory treatment of a common carrier by railroad
23 subject to (the Interstate Commerce Act).

24 (Section 306(1)).

25 10. Section 306(3)(c) defines "commercial and industrial
26 property" to mean "all property, real or personal, other than
27 transportation property and land used primarily for agricultural
28 purposes or primarily for the purpose of growing timber, which is
29 devoted to a commercial or industrial use and which is subject to
30 a property tax levy."

31 11. Section 306(3)(d) defines "transportation property"
32 to mean "transportation property, as defined in regulations of the
33 [Interstate Commerce] Commission, which is owned or used by common

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1 carrier by railroad subject to this part or which is owned by the
2 National Railroad Passenger Corporation." All railroad cars that
3 are owned by ACF, GATC, Railbox, Railgon, TTX and Union Tank and
4 that are subject to taxation under the Revised Code of Washington
5 are rail "transportation property" within the meaning of Section
6 306(3)(d).

7 12. Under R.C.W. 84.12.270, the Department of Revenue
8 for the State of Washington ("Department") is responsible for the
9 valuation and assessment of the plaintiffs' rail transportation
10 property in Washington. Under R.C.W. 84.12.350 and 84.12.370, the
11 Department is required to further apportion and certify the value
12 of the plaintiffs' rail transportation property to the counties in
13 which such property is located. The county officials apply the tax
14 levy and collect the ad valorem taxes on rail transportation
15 property apportioned and distributed to their respective counties
16 by the Department.

17 13. All of the property of the plaintiffs assessed by
18 the Department for the 1990 tax year and apportioned and
19 distributed to the counties is "rail transportation property" as
20 that term is used in Section 306(3)(d).

21 14. Under R.C.W. 84.40.030 and 84.36.005, all real and
22 personal property in the State of Washington, except that which is
23 expressly exempted by law is subject to ad valorem taxation and
24 must be valued at 100% of its "true and fair value" and assessed on
25 the same basis.

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1 15. The following types of tangible, personal property,
2 among others, are exempt from ad valorem taxation in Washington:

3 (a) commercial vessels and fishing boats (R.C.W.
4 84.36.080(1));

5 (b) growing crops (R.C.W. 84.40.030(3));

6 (c) agricultural products (R.C.W. 84.36.470; 84.36.140);

7 (d) ships and vessels under construction (R.C.W.
8 84.36.079);

9 (e) business inventory (R.C.W. 84.36.477);

10 (f) nursery stock (R.C.W. 84.40.220); and

11 (g) cargo containers used in ocean commerce (R.C.W.
12 84.36.105).

13 16. In addition, substantial amounts of other commercial
14 and industrial property, including non-agricultural machinery and
15 equipment, is in effect valued at far less than the statutory 100%
16 required by law because of underreporting by the taxpayers and
17 undervaluation by the local assessors.

18 17. The Department valued all of the plaintiffs' rail
19 transportation personal property at no less than 100% of its true
20 market value, and apportioned to the Counties their share of those
21 values for the 1990 assessment year for taxes payable in 1991.

22 18. On April 15, 1991, ACF paid its entire 1990 ad
23 valorem taxes under protest to the following defendants in the
24 following amounts:

25

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28 COMPLAINT FOR REFUND OF
TAXES

County	Dollar Amount	County	Dollar Amount
Adams	8,118.22	Benton	6,472.86
Chelan	3,118.94	Clark	1,259.57
Columbia	367.90	Cowlitz	1,215.34
Douglas	446.37	Ferry	1,221.25
Franklin	4,188.16	Grant	4,107.98
Grays Harbor	1,827.78	King	4,965.58
Kittitas	1,453.00	Klickitat	3,585.26
Lewis	1,824.80	Lincoln	5,036.80
Mason	482.26	Okanogan	2,637.29
Pacific	1,107.20	Pend Oreille	59.08
Pierce	3,602.24	Skagit	2,239.60
Skamania	973.66	Snohomish	4,780.93
Spokane	10,085.40	Stevens	2,298.84
Thurston	2,064.46	Walla Walla	6,719.22
Whatcom	2,680.98	Whitman	14,502.90
Yakima	4,767.15		

19. On April 26, 1991, GATC paid the first installment of its 1990 ad valorem personal property taxes under protest and on October 15, 1991, GATC paid its second installment of the 1990 ad valorem property taxes under protest to the following defendants in the following amounts:

County	Dollar Amount	County	Dollar Amount
Adams	7,317.61	Benton	8,203.32
Chelan	3,952.78	Clark	1,596.32
Columbia	466.24	Cowlitz	1,540.28
Douglas	565.68	Ferry	1,547.73
Franklin	5,307.82	Grant	5,206.18
Grays Harbor	2,333.52	King	6,293.09
Kittitas	1,841.45	Klickitat	4,543.73
Lewis	2,312.66	Lincoln	6,383.34
Mason	611.20	Okanogan	3,342.34
Pacific	1,403.20	Pend Oreille	68.36
Pierce	4,565.26	Skagit	2,838.33
Skamania	1,233.95	Snohomish	6,059.07
Spokane	12,781.71	Stevens	4,052.50
Thurston	2,616.40	Walla Walla	7,984.69
Whatcom	3,397.73	Whitman	18,738.20
Yakima	6,041.16		

COMPLAINT FOR REFUND OF TAXES

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1 20. On April 29, 1991, Railbox paid the first
2 installment of its 1990 ad valorem property taxes under protest and
3 on October 28, 1991, paid the second installment of its 1990 ad
4 valorem property taxes under protest to the following counties in
5 the following amounts:

6	County	Dollar Amount	County	Dollar Amount
7	Adams	3,390.11	Benton	3,800.48
	Chelan	1,832.08	Clark	739.53
8	Columbia	215.99	Cowlitz	713.60
	Douglas	262.06	Ferry	717.03
9	Franklin	2,459.04	Grant	2,412.00
	Grays Harbor	1,080.62	King	2,915.49
10	Kittitas	853.13	Klickitat	2,105.03
	Lewis	1,071.43	Lincoln	2,957.36
11	Mason	283.15	Okanogan	1,548.51
	Pacific	650.07	Pend Oreille	31.70
12	Pierce	2,115.02	Skagit	1,314.91
	Skamania	571.66	Snohomish	2,807.07
13	Spokane	5,921.53	Stevens	1,762.74
	Thurston	1,212.14	Walla Walla	3,699.17
14	Whatcom	1,574.13	Whitman	7,674.41
	Yakima	2,798.99		

15
16 21. On April 29, 1991, plaintiff, Railgon, paid the
17 first installment of its 1990 ad valorem property taxes under
18 protest and on October 28, 1991 paid the second installment of its
19 1990 ad valorem property taxes under protest to the following
20 counties in the following amounts:

21	County	Dollar Amount	County	Dollar Amount
22	Clark	283.58	Cowlitz	273.64
	Grays Harbor	413.50	King	1,117.99
23	Lewis	410.87	Pierce	811.04
	Skagit	504.21	Snohomish	1,076.42
24	Thurston	464.82	Whatcom	603.61

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1 22. On April 29, 1991, TTX paid the first installment of
2 its 1990 property ad valorem taxes under protest and on October 28,
3 1991 paid the second installment of its 1990 ad valorem property
4 taxes under protest to the following counties in the following
5 amounts:

6	<u>County</u>	<u>Dollar Amount</u>	<u>County</u>	<u>Dollar Amount</u>
7	Adams	15,580.49	Benton	17,466.36
	Chelan	8,415.94	Clark	3,398.83
8	Columbia	992.63	Cowlitz	3,279.48
	Douglas	1,204.45	Ferry	3,295.37
9	Franklin	11,301.28	Grant	11,084.68
	Grays Harbor	4,968.24	King	13,399.08
10	Kittitas	3,920.80	Klickitat	9,674.41
	Lewis	4,924.06	Lincoln	13,591.20
11	Mason	1,301.37	Okanogan	7,116.29
	Pacific	2,987.68	Pend Oreille	-0-
12	Pierce	9,720.24	Skagit	6,043.27
	Skamania	2,627.32	Snohomish	12,900.80
13	Spokane	27,214.51	Stevens	6,557.75
	Thurston	5,570.74	Walla Walla	17,000.77
14	Whatcom	7,234.35	Whitman	36,221.32
	Yakima	12,863.61		

15
16 23. On April 24, 1991, Union Tank paid the first
17 installment of its 1990 ad valorem property taxes under protest and
18 on October 31, 1991, paid the second installment of its 1990 ad
19 valorem property taxes under protest to the following counties in
20 the following amounts:

21	<u>County</u>	<u>Dollar Amount</u>	<u>County</u>	<u>Dollar Amount</u>
22	Adams	5,644.27	Benton	6,327.48
	Chelan	3,048.86	Clark	1,231.29
23	Columbia	359.59	Cowlitz	1,208.53
	Douglas	436.33	Ferry	1,250.08
24	Franklin	4,094.08	Grant	4,015.66
	Grays Harbor	1,799.90	King	4,854.04
25	Kittitas	1,420.38	Klickitat	3,508.72
	Lewis	1,783.88	Lincoln	4,775.18

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1	Mason	471.46	Okanogan	2,685.64
	Pacific	1,082.38	Pend Oreille	58.24
2	Pierce	3,521.32	Skagit	2,369.44
	Skamania	951.81	Snohomish	4,673.54
3	Spokane	9,858.92	Stevens	2,662.66
	Thurston	2,018.10	Walla Walla	6,158.82
4	Whatcom	2,620.82	Whitman	14,727.24
	Yakima	4,660.12		

5
6 24. The grounds of the protest for each of the
7 plaintiffs is that the Washington Department of Revenue assessed
8 each of the plaintiffs in an excessive and unlawful amount.

9 25. Section 306 prohibits any state from assessing rail
10 transportation property at a value that has a higher ratio to the
11 true market value of the rail transportation property than the
12 ratio that the assessed value of other commercial and industrial
13 property of the same type in the same jurisdiction has to the true
14 market value of other commercial and industrial property.

15 26. For the 1990 assessment year, the ratio of the
16 assessed value to the true market value of other commercial and
17 industrial personal property in the State of Washington was no more
18 than 30%. The ratio of the assessed value to the true market value
19 of rail transportation personal property of the plaintiffs was no
20 less than 100% before equalization. Therefore, the assessment of
21 the plaintiffs' rail transportation personal property for the 1990
22 assessment year violates Section 306.

23 27. The assessment of the plaintiffs' rail
24 transportation personal property in excess of 30% of its true
25 market value when other commercial and industrial personal

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1 property is exempt, underreported and undervalued, results in
2 discriminatory treatment of common carriers by railroad and
3 violates Section 306(1)(d) and is unlawful and excessive.

4 WHEREFORE, plaintiffs pray for judgment against each of
5 the defendants in the amount of the taxes paid in each of the
6 Counties as set forth above or; in the alternative, such portion as
7 shall be proven at trial to have been levied contrary to law,
8 together with interest as allowed by statute.

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19 1211 Connecticut Avenue, N.W.
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26 Morgan Keegan Tower
27 Memphis, Tennessee 38103
28 (901) 576-8088

By: 

COMPLAINT FOR REFUND OF
TAXES

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