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*P. Lowry*  
GARY H. OLSON

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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,  
KITITAS 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.

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NO.

SUMMONS

TO: The Above-Named Defendants.

A LAWSUIT has been started against you in the  
above-entitled court by Plaintiffs. Plaintiffs' claims are

SUMMONS - 1  
0212Y

1-5-1-601

*copy*

EISENHOWER & CARLSON  
ATTORNEYS AT LAW  
1200 FIRST INTERSTATE PLAZA  
1201 PACIFIC AVENUE  
TACOMA, WASHINGTON 98402  
TELEPHONE 263-5724-5900

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Filed  
Mailed

1 stated in the written Complaint, a copy of which is served upon  
2 you with this Summons.

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

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

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

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SUMMONS - 2  
0212Y

EISENHOWER & CARLSON  
ATTORNEYS AT LAW  
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1201 PACIFIC AVENUE  
TACOMA, WASHINGTON 98402  
TELEPHONE 206-572-4700

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

3 DATED this 30th day of June, 1993.

4 EISENHOWER & CARLSON  
5 Ronald A. Roberts, WSBA NO. 3119  
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7 1201 Pacific Avenue  
8 Tacoma, Washington 98402  
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23 By: 

24 RONALD A. ROBERTS

25 SUMMONS - 3  
26 0212Y

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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.

93 2 06399 2

NO. \_\_\_\_\_

COMPLAINT FOR REFUND  
OF TAXES

COMPLAINT FOR REFUND OF  
TAXES

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EISENHOWER & CARLSON  
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1201 PACIFIC AVENUE  
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1 Plaintiff alleges:

2 1. This is an action pursuant to R.C.W. 84.68.020 for the refund of certain  
3 ad valorem property taxes paid during 1992.

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

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

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

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

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

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

17 8. The defendant Counties are all municipal corporations of the State of  
18 Washington.

19 9. 49 U.S.C. §11503 (hereinafter referred to as "Section 306") prohibits a  
20 state, political subdivision of a state, or any governmental entity or person acting on behalf of  
21 such state or subdivision, from committing any of the following acts:

22 a. The assessment (but only to the extent of any portion based upon excessive  
23 values as hereinafter described), for purposes of a property tax levied by any  
24 taxing district, of transportation property at a value which bears a higher ratio to  
the true market value of such transportation property than the ratio which the

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COMPLAINT FOR REFUND OF  
TAXES

1 assessed value of all other commercial and industrial property in the same  
2 assessment jurisdiction bears to the true market value of all such other  
commercial and industrial property.

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

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

7 d. The imposition of any other tax which results in discriminatory treatment  
of a common carrier by railroad subject to [the Interstate Commerce Act].

8 (Section 306(1)).

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

13 11. Section 306(3)(d) defines "transportation property" to mean "transportation  
14 property, as defined in regulations of the [Interstate Commerce] Commission, which is owned  
15 or used by common carrier by railroad subject to this part or which is owned by the National  
16 Railroad Passenger Corporation." All railroad cars that are owned by ACF, GATC, Railbox,  
17 Railgon, TTX and Union Tank and that are subject to taxation under the Revised Code of  
18 Washington are rail "transportation property" within the meaning of Section 306(3)(d).

19 12. Under R.C.W. 84.12.270, the Department of Revenue for the State of  
20 Washington ("Department") is responsible for the valuation and assessment of the plaintiffs' rail  
21 transportation property in Washington. Under R.C.W. 84.12.350 and 84.12.370, the  
22 Department is required to further apportion and certify the value of the plaintiffs' rail  
23 transportation property to the counties in which such property is located. The county officials

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27 COMPLAINT FOR REFUND OF  
TAXES

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1 apply the tax levy and collect the ad valorem taxes on rail transportation property apportioned  
2 and distributed to their respective counties by the Department.

3           13. All of the property of the plaintiffs assessed by the Department for the  
4 1991 tax year and apportioned and distributed to the counties is "rail transportation property"  
5 as that term is used in Section 306(3)(d).

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

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

- 12           (a) commercial vessels and fishing boats (R.C.W. 84.36.080(1));
- 13           (b) growing crops (R.C.W. 84.40.030(3));
- 14           (c) agricultural products (R.C.W. 84.36.470; 84.36.140);
- 15           (d) ships and vessels under construction (R.C.W. 84.36.079);
- 16           (e) business inventory (R.C.W. 84.36.477);
- 17           (f) nursery stock (R.C.W. 84.40.220); and
- 18           (g) cargo containers used in ocean commerce (R.C.W. 84.36.105).

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

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27 COMPLAINT FOR REFUND OF  
28 TAXES

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1 17. The Department valued all of the plaintiffs' rail transportation personal  
2 property at no less than 100% of its true market value, and apportioned to the Counties their  
3 share of those values for the 1991 assessment year for taxes payable in 1992.

4 18. On April 24, 1992, ACF paid the first installment of its 1991 ad valorem  
5 personal property taxes under protest and on October 23, 1992, ACF paid its second installment  
6 of the 1991 ad valorem personal property taxes under protest to the following defendants in the  
7 following amounts:

8	<u>County</u>	<u>Dollar Amount</u>	<u>County</u>	<u>Dollar Amount</u>
9	Adams	5,606.51	Benton	6,765.98
	Chelan	2,487.20	Clark	1,227.14
10	Columbia	352.65	Cowlitz	1,425.74
	Douglas	415.41	Ferry	1,564.30
11	Franklin	4,590.42	Grant	4,313.28
	Grays Harbor	1,600.96	King	5,311.19
12	Kittitas	1,548.67	Klickitat	3,829.08
	Lewis	1,933.45	Lincoln	5,296.30
13	Mason	538.27	Okanogan	2,751.26
	Pacific	1,092.74	Pend Oreille	62.06
14	Pierce	4,007.14	Skagit	2,219.15
	Skamania	984.91	Snohomish	5,128.15
15	Spokane	9,175.04	Stevens	2,213.47
	Thurston	2,198.06	Walla Walla	4,851.63
16	Whatcom	2,911.55	Whitman	11,957.35
	Yakima	5,263.33		

17 19. On April 30, 1992, GATC paid the first installment of its 1991 ad valorem  
18 personal property taxes under protest and on October 31, 1992, GATC paid its second  
19 installment of the 1991 ad valorem property taxes under protest to the following defendants in  
20 the following amounts:

21	<u>County</u>	<u>Dollar Amount</u>	<u>County</u>	<u>Dollar Amount</u>
22	Adams	7,435.62	Benton	8,973.40
23	Chelan	3,297.72	Clark	1,627.52
	Columbia	467.67	Cowlitz	1,890.84
24	Douglas	550.94	Ferry	2,074.64

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27 **COMPLAINT FOR REFUND OF**  
28 **TAXES**

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1 (GATC continued)

2	County	Dollar Amount	County	Dollar Amount
3	Franklin	6,088.04	Grant	5,720.46
4	Grays Harbor	2,123.26	King	7,043.97
5	Kittitas	2,053.87	Klickitat	5,078.33
6	Lewis	2,564.29	Lincoln	7,024.22
7	Mason	713.89	Okanogan	3,648.82
8	Pacific	1,449.26	Pend Oreille	81.58
9	Pierce	5,314.48	Skagit	2,943.18
10	Skamania	1,306.21	Snohomish	6,801.20
11	Spokane	12,168.21	Stevens	4,634.00
12	Thurston	2,915.20	Walla Walla	6,009.63
13	Whatcom	3,861.46	Whitman	16,119.60
14	Yakima	6,804.59		

9 20. On April 28, 1992, Railbox paid the first installment of its 1991 ad  
10 valorem property taxes under protest and on October 28, 1992, paid the second installment of  
11 its 1991 ad valorem property taxes under protest to the following counties in the following  
12 amounts:

13	County	Dollar Amount	County	Dollar Amount
14	Adams	2,260.17	Benton	2,727.64
15	Chelan	1,002.74	Clark	494.71
16	Columbia	142.17	Cowlitz	574.76
17	Douglas	167.47	Ferry	630.59
18	Franklin	1,850.56	Grant	1,738.88
19	Grays Harbor	645.42	King	2,141.14
20	Kittitas	624.33	Klickitat	1,543.66
21	Lewis	779.44	Lincoln	2,135.12
22	Mason	217.00	Okanogan	1,109.13
23	Pacific	440.50	Skagit	894.61
24	Pierce	1,615.42	Snohomish	1,067.33
25	Skamania	397.05	Stevens	1,238.71
26	Spokane	3,698.78	Walla Walla	1,826.72
27	Thurston	886.12	Whitman	4,899.88
28	Whatcom	1,173.76	Yakima	2,068.36

22 21. On April 28, 1992, plaintiff, Railgon, paid the first installment of its 1991  
23 ad valorem property taxes under protest and on October 28, 1992 paid the second installment  
24

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27 COMPLAINT FOR REFUND OF  
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1 of its 1991 ad valorem property taxes under protest to the following counties in the following  
2 amounts:

3	<u>County</u>	<u>Dollar Amount</u>	<u>County</u>	<u>Dollar Amount</u>
4	Clark	208.35	Cowlitz	242.18
	Grays Harbor	271.92	King	901.81
5	Lewis	328.28	Pierce	680.40
	Skagit	376.77	Snohomish	870.72
6	Thurston	373.22	Whatcom	494.38

7 22. On April 28, 1992, TTX paid the first installment of its 1991 property ad  
8 valorem taxes under protest and on October 28, 1992 paid the second installment of its 1991 ad  
9 valorem property taxes under protest to the following counties in the following amounts:

11	<u>County</u>	<u>Dollar Amount</u>	<u>County</u>	<u>Dollar Amount</u>
12	Adams	14,549.63	Benton	17,558.60
	Chelan	6,452.66	Clark	3,184.59
13	Columbia	915.04	Cowlitz	3,699.94
	Douglas	1,078.04	Ferry	4,059.55
14	Franklin	11,912.66	Grant	11,193.18
	Grays Harbor	4,154.58	King	13,783.20
15	Kittitas	4,018.94	Klickitat	9,936.96
	Lewis	5,017.60	Lincoln	13,744.48
16	Mason	1,396.92	Okanogan	7,139.76
	Pacific	2,835.82	Pend Oreille	119.32
17	Pierce	10,399.08	Skagit	5,758.98
	Skamania	2,555.90	Snohemish	13,308.19
18	Spokane	23,810.17	Stevens	7,005.76
	Thurston	5,704.24	Walla Walla	11,759.26
19	Whatcom	7,555.86	Whitman	30,015.30
	Yakima	13,314.78		

20 23. On April 23, 1992, Union Tank paid the first installment of its 1991 ad  
21 valorem property taxes under protest and on October 19, 1992, paid the second installment of  
22 its 1991 ad valorem property taxes under protest to the following counties in the following  
23 amounts:

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28	114419	7

1	County	Dollar Amount	County	Dollar Amount
2	Adams	4,817.75	Benton	5,814.08
	Chelan	2,137.26	Clark	1,054.46
3	Columbia	303.01	Cowlitz	1,225.12
	Douglas	356.96	Ferry	1,344.21
4	Franklin	3,944.56	Grant	3,706.48
	Grays Harbor	1,375.70	King	4,563.94
5	Kittitas	1,330.75	Klickitat	3,290.36
	Lewis	1,353.92	Lincoln	4,551.16
6	Mason	462.54	Okanogan	2,364.12
	Pacific	939.01	Skagit	1,906.99
7	Pierce	3,443.36	Snohmish	4,406.63
	Skamania	846.33	Stevens	2,609.64
8	Spokane	7,884.04	Walla Walla	3,893.76
	Thurston	1,888.82	Whitman	10,210.63
9	Whatcom	2,501.92	Yakima	4,408.85

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11 24. The grounds of the protest for each of the plaintiffs is that the Washington  
12 Department of Revenue assessed each of the plaintiffs in an excessive and unlawful amount.

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

17 26. For the 1991 assessment year, the ratio of the assessed value to the true  
18 market value of other commercial and industrial personal property in the State of Washington  
19 was no more than 30%. The ratio of the assessed value to the true market value of rail  
20 transportation personal property of the plaintiffs was no less than 100% before equalization.  
21 Therefore, the assessment of the plaintiffs' rail transportation personal property for the 1991  
22 assessment year violates Section 306.

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

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27 COMPLAINT FOR REFUND OF  
28 TAXES

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

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

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26 By: *Ronald A. Roberts*

27 Date: *June 30, 1993*

28 **COMPLAINT FOR REFUND OF  
TAXES**

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