



5. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax laws. 20 ILCS 5/5-15.

### **NOTICES**

6. On February 11, 2015, the Department denied Petitioner's claims for refund of \$452,823.00 and \$940,922.00. The Notices of Claim Denial ("Notices") are attached hereto as Exhibit A.

### **JURISDICTION**

7. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act ("Tribunal Act"), 35 ILCS 1010/1-1 to 35 ILCS 1010/1-100 and the Illinois Income Tax Act ("Income Tax Act"), 35 ILCS 5/101 et. seq.

8. This Tribunal has jurisdiction over this matter pursuant to Sections 1-45 and 1-50 of the Tribunal Act because Petitioner timely filed this petition within 60 days of the Notices.

### **BACKGROUND**

9. Grand Trunk Western Railroad Company is a direct wholly-owned subsidiary of Grand Trunk Corporation ("Borrower") and an indirect wholly-owned subsidiary of Canadian National Railway Company ("Parent").

10. Petitioner is a corporation organized under the laws of the State of Michigan.

11. Parent is a corporation organized under Canadian law whose shares are publicly traded on both the Toronto and New York stock exchanges.

12. On September 1, 2008, Grand Trunk Western Railroad Inc. was merged with and into its sister company St. Clair Tunnel Company ("SCTC"), a Michigan corporation.

13. SCTC was the surviving company in the merger and immediately changed its name to Grand Trunk Western Railroad Company.

14. Grand Trunk Western Railroad Inc. was the designated agent for Petitioner's Illinois unitary business group for tax years through December 31, 2007.

15. Grand Trunk Western Railroad Company is the designated agent for the same Illinois unitary business group for tax years 2008 and after.

16. Parent obtains publicly issued long-term debt financing to serve its capital needs and the needs of the Borrower, allowing for more favorable interest rates on the debt incurred.

17. Some of the funds obtained by Parent in the capital markets from unrelated creditors are provided to Borrower through intercompany debt financing to meet Borrower's debt capital needs.

18. Interest paid by Borrower to Parent provides funds for Parent's payment of interest on Parent's debt to unrelated third parties.

19. Petitioner filed a combined Illinois corporation income and replacement tax return for the Years in Issue, and Borrower was included in each combined return as a member of Petitioner's Illinois unitary business group.

20. During the Years in Issue, Borrower incurred and paid interest on indebtedness to Parent.

21. On its original timely-filed unitary returns for the Years in Issue, Petitioner reported this interest as an addition modification on Schedule 80/20, Related-Party Expenses.

22. Borrower's interest paid to Parent is exempt from add-back pursuant to Illinois Income Tax Act ("Act") Section 203(b)(2)(E-12)(ii) (35 ILCS 5/203(b)(2)(E-12)(ii)).

23. Petitioner subsequently filed amended returns for the Years in Issue to reverse the Schedule 80/20 related-party interest addition and requested a refund relating to this adjustment.

24. The Department denied Petitioner's refund claims on February 11, 2015. Exhibit A.

## COUNT I

### **The Interest Paid by Borrower to Parent is Exempt from Add-back**

25. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 20, inclusive, hereinabove.

26. The Act requires a taxpayer to make an addition modification in an amount equal to the amount otherwise allowed as a deduction in computing base income for interest paid, accrued, or incurred, directly or indirectly, to a foreign person who would be a member of the same unitary business group but for the fact that the foreign person's business activity outside the United States is 80% or more of the foreign person's total business activity. 35 ILCS 5/203(b)(2)(E-12).

27. The Act states that interest paid to a related party is exempt from add-back if the taxpayer can establish, based on a preponderance of the evidence, both of the following: (a) the related person, during the same taxable year, paid, accrued or incurred the interest to an unrelated third party; and (b) the transaction giving rise to the interest expense between the taxpayer and the related party did not have as a principal purpose the avoidance of Illinois income tax, and is paid pursuant to a contract or agreement that reflects an arm's-length interest rate and terms. 35 ILCS 5/203(b)(2)(E-12)(ii).

28. During the Years in Issue, the interest received by the Parent from the Borrower was paid or accrued to an unrelated third party.

29. There is a direct correlation between the amount of intercompany debt of Borrower to Parent for each year and the incremental long-term debt to third parties incurred by Parent for each year.

30. The principal purpose of Borrower's intercompany financing arrangement was to provide Borrower access to debt capital using the financial strength and borrowing power of its Parent in a way that achieved market and administrative efficiencies for the entire unitary group.

31. Borrower incurred interest on the intercompany debt to Parent at a rate of \$66 million per year while Parent incurred interest to third parties on its incremental debt at a rate of \$78 million per year.

32. The related party borrowing did not generate any greater Illinois tax deductions nor any lower Illinois tax liability for Petitioner than would have resulted from unrelated third party debt.

33. The intercompany debt transaction did not have as a principal purpose the avoidance of Illinois income tax.

34. Petitioner did not identify the interest as deductible until the Department initiated an audit of the Petitioner's returns for the Years in Issue.

35. Petitioner did not amend its returns or file refund claims attempting to deduct the interest in question until the Department audited its returns for the Years in Issue.

36. Parent issued third party debt at arm's-length interest rates of 6.20%, 6.71%, 5.85%, and 6.38%, whereas Borrower's intercompany debt to Parent was issued at interest rates of 6.15% and 6.51%.

37. The intercompany debt between Borrower and Parent is supported by an arm's-length interest rate and terms.

38. Petitioner is entitled to a refund because the interest paid by Borrower to Parent is exempt from add-back pursuant to the exception provided by the Act Section 203(b)(2)(E-12)(ii) (35 ILCS 5/203(b)(2)(E-12)(ii)).

39. The Department's denial of Petitioner's refund claims for the Years in Issue was in error.

**WHEREFORE**, Petitioner prays that the Tribunal enter an order that:

- (a) finds and declares that during the Years in Issue, Borrower's payment of interest to Parent was not subject to add-back pursuant to the exception set forth in the Act Section 203(b)(2)(E-12)(ii) (35 ILCS 5/203(b)(2)(E-12)(ii)).
- (b) enters judgment in favor of Petitioner and against the Defendants and orders Defendants to grant Petitioner's refund claims for the Years in Issue; and

- (c) grants such further relief as the Tribunal deems appropriate under the circumstances.

Respectfully submitted,

**GRAND TRUNK WESTERN RAILROAD  
COMPANY**

Petitioner

By:   
One of Petitioner's Attorneys

Fred O. Marcus (fmarcus@hmblaw.com)  
David A. Hughes (dhughes@hmblaw.com)  
Samantha K. Breslow (sbreslow@hmblaw.com)  
Horwood Marcus & Berk Chartered  
500 W. Madison Street, Suite 3700  
Chicago, IL 60661  
(312) 606-3200



**Illinois Department of Revenue**

101 W. Jefferson St.  
Springfield, IL 62702

**NOTICE OF DENIAL**

02/11/2015

GRAND TRUNK WESTERN RAILROAD INC  
ATTN: CANADIAN NATL RAILWAY/US PAYROLL  
17641 ASHLAND AVE  
HOMEWOOD, IL 60430-1339

FORM: IL-1120  
TRACK NUMBER: A361017344

FEIN: 01-0324809

TAXABLE YEAR ENDING  
12/31/2007

AMOUNT DENIED  
\$452,823.00

Pursuant to Section 909(e) of the Illinois Income Tax Act, notice is hereby given that your claim for refund of income tax overpayment in the amount of \$452,823.00 for the taxable year ending 12/31/2007 filed on 12/07/2012 is denied in full.

IF YOU DO NOT AGREE, Section 910(a) of the Act provides that the Department shall reconsider the denial if within 60 days of the date of this notice, the claimant or his authorized representative files a written protest setting forth the grounds upon which the protest is based and, if requested, shall grant the taxpayer or his authorized representative a hearing (under Section 914). Thus, if you disagree with the proposed denial of your claim, you may file a protest and, if desired, request a hearing. If an adequate and timely protest is not received, the denial of your claim to the extent shown above will become final as of the expiration of the aforementioned 60-day period pursuant to Section 909(f). A protest, if filed, should be forwarded to the address shown below.

Sincerely,

*Constance Beard 34*

Constance Beard  
Director

*Pat Edwards*

Enclosures: EAR-14  
IDR-867  
Return Envelope

NOTICE SECTION  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19012  
SPRINGFIELD, IL 62794-9012  
PHONE: 217 524-5292  
ATTENTION: JAR A361017344



## Illinois Department of Revenue

101 W. Jefferson St.  
Springfield, IL 62702

### NOTICE OF DENIAL

GRAND TRUNK WESTERN RAILROAD CO  
17641 ASHLAND AVE  
HOMEWOOD, IL 60430-1339

02/11/2015

FORM: IL-1120  
TRACK NUMBER: A439771136  
FEIN: 38-3062329

TAXABLE YEARS ENDING  
12/31/2008

AMOUNT DENIED  
\$940,922.00

Pursuant to Section 909(e) of the Illinois Income Tax Act, notice is hereby given that your claim for refund of income tax overpayment in the amount of \$943,450.00 for the taxable year ending 12/31/2008 filed on 12/12/2012 is denied to the extent shown above.

IF YOU DO NOT AGREE, Section 910(a) of the Act provides that the Department shall reconsider the denial if within 60 days of the date of this notice, the claimant or his authorized representative files a written protest setting forth the grounds upon which the protest is based and, if requested, shall grant the taxpayer or his authorized representative a hearing (under Section 914). Thus, if you disagree with the proposed denial of your claim, you may file a protest and, if desired, request a hearing. If an adequate and timely protest is not received, the denial of your claim to the extent shown above will become final as of the expiration of the aforementioned 60-day period pursuant to Section 909(f). A protest, if filed, should be forwarded to the address shown below.

Sincerely,

*Constance Beard*

Constance Beard  
Director

*[Handwritten signature]*

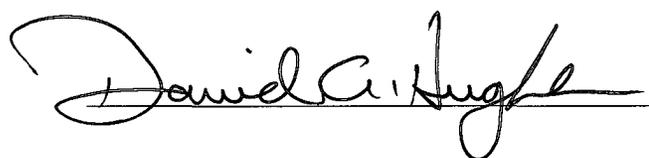
Enclosures: EAR-14  
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SPRINGFIELD, IL 62794-9012  
PHONE: 217 524-5292  
ATTENTION: JAR A439771136

**CERTIFICATE OF SERVICE**

Undersigned counsel of record hereby certifies that he caused a copy of the foregoing **Petition** to be served upon other counsel of record herein by causing the same to be delivered by messenger before the hour of 5:00 p.m. on the 9<sup>th</sup> day of April, 2015.

Illinois Department of Revenue  
Office of Legal Services  
100 W. Randolph St., 7-900  
Chicago, IL 60601

A handwritten signature in black ink, reading "David A. Hughes". The signature is written in a cursive style with a horizontal line underneath the name.

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

GRAND TRUNK WESTERN RAILROAD COMPANY, )  
FOR ITSELF AND AS SUCCESSOR TO GRAND )  
TRUNK WESTERN RAILROAD INC. )  
Petitioner, )  
v. )  
THE ILLINOIS DEPARTMENT OF REVENUE, )  
Defendant. )

No.

NOTICE OF FILING

To: Illinois Department of Revenue  
Office of Legal Services  
100 W. Randolph Street, Suite 7-900  
Chicago, IL 60601

PLEASE TAKE NOTICE that on the 9<sup>th</sup> day of April, 2015, we filed with the Illinois Independent Tax Tribunal, 160 N. LaSalle Street, Room N506, Chicago, IL 60601, Grand Trunk Western Railroad Company, for itself and as successor to Grand Trunk Western Railroad Inc.'s **Petition**, a copy of which accompanies this notice and is served on you herewith.

Respectfully submitted,

**GRAND TRUNK WESTERN RAILROAD  
COMPANY  
Petitioner**

By:   
One of Its Attorneys

Fred O. Marcus (fmarcus@hmblaw.com)  
David A. Hughes (dhughes@hmblaw.com)  
Samantha K. Breslow (sbreslow@hmblaw.com)  
HORWOOD MARCUS & BERK CHARTERED  
500 W. Madison Street, Suite 3700  
Chicago, IL 60661  
Phone: (312) 606-3200