

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

UNION PACIFIC RAILROAD
COMPANY AND SOO LINE
RAILROAD COMPANY,

Civil No. 04-0924 (JRT/JSM)

Plaintiffs,

v.

AMENDED JUDGMENT

DAN SALOMONE, MINNESOTA
DEPARTMENT OF REVENUE AND
THE STATE OF MINNESOTA,

Defendants.

Eugene Ritti and Richard Smith, **HAWLEY TROXELL ENNIS & HAWLEY**, 877 Main Street, Suite 1000, Boise, ID 83702; Patrick Sweeney and Rodney Honkanen, **SPENCE RICKE SWEENEY & GERNES**, 325 Cedar Street, Suite 600, St. Paul, MN 55101, for plaintiffs.

Barry Greller, **OFFICE OF THE MINNESOTA ATTORNEY GENERAL**, 445 Minnesota Street, Suite 900, St. Paul, MN 55101, for defendants.

On February 13, 2004, Plaintiffs filed a complaint for injunctive and declaratory relief, and the parties thereafter filed cross-motions for summary judgment. On August 22, 2006, the Court granted Defendants' motion for summary judgment and entered judgment in favor of Defendants.

Plaintiffs filed an appeal to the United States Court of Appeals for the Eighth Circuit, and on November 6, 2007, the Eighth Circuit reversed this Court's judgment and remanded the case to this Court for entry of an appropriate judgment under the provisions

of Section 306(d) of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. § 11501 (2006) (“Section 306”).

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this Court’s August 22, 2006, Judgment [Docket No. 48] is vacated; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs are granted a declaration that the imposition, assessment, levy or collection of Minnesota sales and use tax by Defendants, and anyone acting in concert or participation with them, on purchases of diesel fuel used for railroad transportation purposes while exempting any member of the competitive class, including but not limited to motor carriers and/or air carriers, from those taxes violates the provisions of Section 306 and is, therefore, prohibited;

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that Defendants, and anyone acting in concert or participation with them, are permanently enjoined from imposing, assessing, levying or collecting from Plaintiffs any Minnesota sales and use tax (including any interest or penalty thereon) regarding Plaintiffs’ purchases of diesel fuel used for railroad transportation purposes while exempting any member of the competitive class, including but not limited to motor carriers and air carriers, from those taxes.

DATED: February 5, 2010
at Minneapolis, Minnesota.

s/John R. Tunheim
JOHN R. TUNHEIM
United States District Judge