

IN THE SUPREME COURT OF OHIO

12-1589

PANTHER II TRANSPORTATION)
INC.)

CASE NO.

APPEAL FROM THE MEDINA
COUNTY COURT OF APPEALS
NINTH JUDICIAL DISTRICT
CASE NOS. 11CA0092-M,
11CA0093-M

Plaintiff/Appellee,)

vs.)

VILLAGE OF SEVILLE BOARD)
OF INCOME TAX REVIEW)

and)

INCOME TAX ADMINISTRATOR)
NASSIM M. LYNCH)
AND THE CENTRAL COLLECTION)
AGENCY)

Defendants/Appellants)

NOTICE OF APPEAL OF APPELLANT VILLAGE OF SEVILLE BOARD
OF INCOME TAX REVIEW

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FILED
SEP 19 2012
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SUPREME COURT OF OHIO

RECEIVED
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SUPREME COURT OF OHIO

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And the Central Collection Agency**

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Panther II Transportation, Inc.**

Notice of Appeal of Appellant Village of Seville Board of Income Tax Review

NOW COMES the Defendant/Appellant, Village of Seville Board of Income Tax Review, by and through undersigned Counsel, and, hereby, gives notice to the Court of its appeal from the Final Judgment rendered on August 6, 2012 in the Medina County Court of Appeals, Ninth Judicial District, Case Nos. 11CA0092-M and 11CA0093-M. The Judgment Entry of the Medina County Court of Appeals is attached hereto and made a part hereof.

This case raises a substantial constitutional question and is one of public or great general interest.



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CERTIFICATE OF SERVICE

A copy of the foregoing Notice of Appeal was sent by certified US Mail this 17th day of September, 2012, to the following:

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COURT OF APPEALS

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STATE OF OHIO

COUNTY OF MEDINA

PANTHER II TRANSPORTATION, INC.

Appellee

v.

VILLAGE OF SEVILLE BOARD OF
INCOME TAX REVIEW, et al.

Appellants

)
)ss: FILED
DAVID B. WAUSWORTH
MEDINA COUNTY
CLERK OF COURTS

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

C.A. No. 11CA0092-M
11CA0093-M

APPEAL FROM JUDGMENT
ENTERED IN THE
OHIO BOARD OF TAX APPEALS
COUNTY OF MEDINA, OHIO
CASE No. 2008-M-1247

DECISION AND JOURNAL ENTRY

Dated: August 6, 2012

WHITMORE, Presiding Judge.

{¶1} Appellants, the Village of Seville Board of Income Tax Review (“Seville”) and Income Tax Administrator Nassim M. Lynch and the Central Collection Agency (collectively, “Central Collection”), now appeal from the judgment of the Ohio Board of Tax Appeals. This Court affirms.

I

{¶2} Plaintiff-Appellee, Panther II Transportation, Inc. (“Panther II”), is a motor vehicle transportation company that leases tractors from owner-operators to haul its trailers for both interstate and intrastate highway travel. As a motor vehicle transportation company, Panther II is subject to the regulation of the Public Utilities Commission of Ohio (“PUCO”) and pays an annual state tax for the issuance of a certificate of public convenience. In 2005 and 2006, Panther II also paid a tax on its local net profits to the Village of Seville, the municipality in which it was headquartered.

{¶3} In March 2007, Panther II filed a refund claim with the Village of Seville for the return of the taxes it paid on its net profits. Panther II argued that the Village of Seville could not levy a local net profits tax upon it because state law preempted the municipality's tax. Central Collection, the tax administrator for the Village of Seville, denied Panther II's refund claim. Panther II appealed Central Collection's final administrative ruling to Seville, which affirmed the administrative ruling and denied Panther II's refund. Panther II then appealed to the Ohio Board of Tax Appeals. The Board of Tax Appeals reversed Central Collection's ruling and determined that state law preempted the Village of Seville's local tax against Panther II.

{¶4} Seville and Central Collection now appeal from the Board of Tax Appeals' decision and collectively raise seven assignments of error for our review. For ease of analysis, we consolidate the assignments of error.

II

Seville Board's Assignment of Error

THE OHIO BOARD OF TAX APPEALS ERRED IN DETERMINING THAT PLAINTIFF/APPELLEE IS NOT SUBJECT TO MUNICIPAL INCOME TAXATION PURSUANT TO R.C. 4921.25[.]

Central Collection's Assignment of Error Number One

THE OHIO BOARD OF TAX APPEALS' DECISION IS UNREASONABLE AND UNLAWFUL AS A MATTER OF LAW IN HOLDING THAT R.C. 4921.25 PREEMPTS A MUNICIPALITY'S NET PROFITS INCOME TAX AS THAT TAX IS APPLIED TO PANTHER AND OTHER MOTOR TRANSPORTATION COMPANIES DEFINED UNDER R.C. CHAPTER 4921.

Central Collection's Assignment of Error Number Two

THE OHIO BOARD OF TAX APPEALS' DECISION IS UNREASONABLE AND UNLAWFUL AS A MATTER OF LAW IN HOLDING THAT R.C. 4921.25 IS AN AFFIRMATIVE EXPRESS ACT OF THE GENERAL ASSEMBLY UNDER SECTION 13, ARTICLE XVIII OF THE OHIO CONSTITUTION THAT LIMITS AND RESTRICTS A MUNICIPALITY'S POWER TO IMPOSE AN INCOME TAX.