

IN THE SUPREME COURT OF OHIO

PANTHER II TRANSPORTATION)
INC.)

CASE NO. **12-1589**

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)

**MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT
VILLAGE OF SEVILLE BOARD OF INCOME TAX REVIEW**

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EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This case involves a critical issue as to whether the powers of a municipality to tax granted under the Home Rule Provision of the Ohio Constitution can be abrogated by the Ohio General Assembly by implication rather than a clear express intent. *Ohio Constitution, Article XVIII, Section 3* provides:

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

Ohio Constitution, Article XVIII, Section 13 provides:

Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities.

This Court has previously held that in *Cincinnati Bell Telephone Co. v. City of Cincinnati*, 81 Ohio St. 3d 599, 693 N.E.2d 212 (1998) that there is no constitutional prohibition against double taxation. *Id.* at 607. There is no constitutional provision that directly prohibits both the state and municipalities from occupying the same area of taxation at the same time. *Id.* Rather, the Constitution presumes that both the state and municipalities may exercise full taxing powers, unless the Ohio General Assembly has acted expressly to preempt municipal taxation. *Id.*

The Medina County Court of Appeals, Ninth Judicial District and the Ohio Board of Tax Appeals have held that the former version of *R.C. 4921.25* prohibits the Village of Seville (“Seville”) from imposing net profits tax upon a Motor Transportation Company (“MTC”).

However, it is clear that in 1923 the intent of Ohio General Assembly in enacting *R.C. 4921.25* was to prohibit municipalities from entering into the field of the Public Utilities Commission of Ohio (“PUCO”) to charge additional fees upon vehicles owned by MTCs. There is no express intent to prohibit the imposition of net profits taxes.

The decision of the Ohio Court of Appeals found such a preemption in *R.C. 4921.25* by applying the doctrine of *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of the other). By definition, this is not the Ohio General Assembly expressly acting to prohibit net profits taxes upon a MTC. The rights of taxation granted under the Ohio Constitution to a municipality cannot be abrogated by implication.

This is especially true where the Ohio General Assembly has enacted *R.C. 718.01(D)(1)* prohibiting a municipality from exempting a business from net profits taxes. In addition, *R.C. 718.01(H)* provides a list of exclusions to a municipal net profits tax and MTCs are not included. Moreover, the Ohio General Assembly specifically acted in *R.C. 715.013* to exclude the PUCO regulated industries of electric companies and telephone companies from municipal net profits taxation. Once again, the Ohio General assembly chose not to include MTCs.

According to its website, the PUCO registers more than 58,000 general freight carriers, more than 2,500 hazardous materials transporters, more than 1,000 towing companies and more than 300 household goods movers. The decision of the Ohio Court of Appeals and the Ohio Board of Tax Appeals will obviously have significant adverse implications upon the majority of Ohio municipalities if municipalities are not permitted to impose net profits taxes on MTCs.

In the case *sub judice*, Plaintiff-Appellee Panther II Transportation, Inc. (“Panther”), an MTC, made a claim for a refund to Defendant-Appellant Nassim M. Lynch and the Central Collection Agency (“CCA”) who is the tax administrator for Seville. Panther requested a refund

of \$161,761.00 in net profit taxes paid to Seville for the tax years 2005 and 2006.

Over the last three years, two major taxpayers in Seville have ceased their Seville operations representing a loss of 6% of Seville's income and net profits tax. Seville's local government distribution is down by 33% from the 2008 level, and Seville's real estate tax income is down 6% since 2005. Seville has also lost 90% of Seville's interest income since 2007. Revenue losses such as these are occurring in municipalities all over the State of Ohio.

In this declining economic period, Ohio municipal corporations must have the ability to maintain revenue sources permitted under the Ohio Constitution, such as imposition of net profits taxes upon MTCs. Income sources such as the net profits tax are a necessity for municipalities to continue to perform the basic services of government.

There is no express prohibition of a municipal net profits tax upon a MTC. Imposing such a prohibition by implication is not only a violation of Home Rule rights under the Ohio Constitution, but also a potential economic disaster for Ohio municipalities.

STATEMENT OF THE CASE AND FACTS

On March 5, 2007, Panther made a claim for a refund to CCA which is the tax administrator for the Seville. Panther requested a refund of \$161,761.00 in net profit taxes paid to Seville for the tax years 2005 and 2006. Panther raised the issue that it believed that the annual charges imposed by former R.C. 4921.18 on each tractor or trailer used by Panther as a MTC preempted Seville's ability to impose a net profits tax.

On August 2, 2007, CCA denied the request for refund. On August 16, 2007, Panther requested a Ruling of the CCA Tax Administrator pursuant to Article 13 of the CCA regulations

raising the identical issue. The CCA Tax Administrator once again denied Panther's request for refund.

Panther subsequently appealed the ruling of the CCA Tax Administrator to Defendant-Appellant, Seville Income Tax Board of Review. A hearing was held on the matter on March 5, 2008, and the Seville Board of Income Tax Review affirmed the decision of the CCA Tax Administrator.

Once again, Panther appealed the decision of the Seville Board of Income Tax Review to the State of Ohio Board of Tax Appeals ("Board") raising the identical issues. A hearing was held on the matter, and the Board issued a Decision and Order dated August 23, 2011 reversing the decision of the CCA Tax Administrator denying the refund. A Correcting Order was issued August 30, 2011 to correct the Board's statutory references in its earlier decision.

Both Seville and CCA filed timely Notices of Appeal from the Board's decision to the Medina County Court of Appeals, Ninth Judicial District. On August 6, 2012, the Medina County Court of Appeals, Ninth Judicial District affirmed the decision of the Board allowing the refund claimed by Panther. *See Decision and Journal Entry, Aug. 6, 2012, Appendix p. 1.*

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition Of Law No. I:

Former R.C. 4921.25 does not preempt the imposition of municipal net profits tax upon a motor transportation company.

A) APPLICABLE LAW AND STANDARD OF REVIEW

Appeals of a decision of the Board may be taken to the Ohio Court of Appeals or the Supreme Court of Ohio pursuant to *R.C. 5717.04*. Under *R.C. 5717.04*, the Court's statutorily

mandated duties in reviewing a decision of the Board are limited to determining whether the Board's decision is reasonable and lawful, and not to act as a trier of fact *de novo*. 3535 *Salem Corp. v. Lindley, Tax Commr.* 58 Ohio St. 2d 210, 212, 389 N.E.2d 508 (1979).

*R.C. 4921.18*¹ provides in part:

A) Every motor transportation company or common carrier by motor vehicle operating in this state shall, at the time of the issuance of a certificate of public convenience and necessity to it and annually thereafter on or between the first and the fifteenth days of July of each year, pay to the public utilities commission, for and on behalf of the treasurer of state, the following taxes: (1) For each motor-propelled or motor-drawn vehicle used for transporting persons, thirty dollars; (2) For each commercial tractor, as defined in section 4501.01 of the Revised Code, used for transporting property, thirty dollars; (3) For each motor truck transporting property, twenty dollars.... (Emphasis added)

*R.C. 4921.25*² provides in part:

The fees and charges provided under section 4921.18 of the Revised Code shall be in addition to taxes, fees, and charges fixed and exacted by other sections of the Revised Code, except the assessments required by section 4905.10 of the Revised Code, but all fees, license fees, annual payments, license taxes, or taxes or other money exactions, except the general property tax, assessed, charged, fixed, or exacted by local authorities such as municipal corporations, townships, counties, or other local boards, or the officers of such subdivisions are illegal and, are superseded by sections §4503.04, §4905.03, and §4921.02 to §4921.32, inclusive, of the Revised Code. (Emphasis added)

R.C. 718.01(D) (1) provides:

Except as otherwise provided in this section, no municipal corporation shall exempt from a tax on income compensation for personal services of individuals over eighteen years of age or the net profit from a business or profession.

¹ On June 11, 2012, former *R.C.4921.18* was repealed and replaced with *R.C. 4921.19* to which no substantial changes were made with regard to the current issue. References to *R.C. 4921.18* will be to *R.C. 4921.18* in effect prior to June 11, 2012.

² On June 11, 2012, former *R.C.4921.25* was repealed and replaced with *R.C. 4921.19 (J)*. The significant change to this section with regard to this issue was that the term "charges" in the first sentence was replaced by the term "taxes". References to *R.C. 4921.25* will be to *R.C. 4921.25* in effect prior to June 11, 2012.

R.C. 718.01(H) sets forth specific instances where a municipal corporation is not permitted to impose taxes, but does not include the taxation of net profits of MVCs.

R.C. 715.013 provides:

(A) Except as otherwise expressly authorized by the Revised Code, no municipal corporation shall levy a tax that is the same as or similar to a tax levied under Chapter 322., 3734., 3769., 4123., 4141., 4301., 4303., 4305., 4307., 4309., 5707., 5725., 5727., 5728., 5729., 5731., 5735., 5737., 5739., 5741., 5743., or 5749. of the Revised Code.

(B) This section does not prohibit a municipal corporation from levying a tax on any of the following:

(1) Amounts received for admission to any place;

(2) The income of an electric company or combined company, as defined in section 5727.01 of the Revised Code;

(3) On and after January 1, 2004, the income of a telephone company, as defined in section 5727.01 of the Revised Code.

B) ARGUMENT

In *Cincinnati Bell Telephone Co. v. City of Cincinnati* 81 Ohio St. 3d 599, 693 N.E.2d 212 (1998), the Ohio Supreme Court held that there is no constitutional prohibition against double taxation. *Id.* at 607. There is no constitutional provision that directly prohibits both the state and municipalities from occupying the same area of taxation at the same time. *Id.* Rather, the Constitution presumes that both the state and municipalities may exercise full taxing powers, unless the Ohio General Assembly has acted expressly to preempt municipal taxation, pursuant to its constitutional authority to do so. *Id.* Therefore, it is clear that Seville's net profits tax is applicable to Panther unless expressly preempted by the Ohio General Assembly. In addition, it is also clear that it would be illegal for Seville to exempt Panther from the net profits tax without such an express exemption pursuant to *R.C. 718.01(D)(1)*.

A review of *R.C. 718.01(H)* shows that there is no express provision that renders Panther, as a MTC, expressly exempt from Seville's net profits tax that it is required to impose pursuant to *R.C. 718.01(D) (1)*. Furthermore, the Ohio General Assembly in *R.C. 715.013* has taken steps to expressly prohibit municipal taxation of other businesses like MTCs which are subject to regulation by the Ohio Public Utilities Commission ("PUCO"), i.e. electric companies and telephone companies.

Panther has asserted and the Court of Appeals and the Ohio Board of Tax Appeals have agreed that the Ohio General Assembly limits Seville's ability to impose a net profits tax upon Panther as a MTC pursuant to *R.C. 4921.25*. The Court of Appeals held that former *R.C. 4921.25* expressly prohibits all "taxes", but expressly allowed the imposition of municipal property taxes. Applying the doctrine of *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of the other), the Court of Appeals held that since property taxes were excluded from the application of *R.C. 4921.25*, the Ohio General Assembly could have chosen to exclude other taxes such as the net profits tax imposed by Seville.

The holding of the Court of Appeals and the Ohio Board of Tax Appeals is directly in contravention of the Home Rule Amendment of the *Ohio Constitution, Article XVIII, Sections 3 and 13*. See, *Cincinnati Bell Telephone Co, supra*. A state imposed exclusion to the ability of a municipality to levy net profits tax upon an MTC must be expressly stated and not implied through an omission in *R.C. 4921.25*.

To determine if the decision of the Court of Appeals and the Ohio Board of Tax Appeals was lawful and reasonable, i.e. constitutional, we must look to the preamble to *H.B. 474* enacted in 1923 which established *G.C. 614-98*, the predecessor to *R.C. 4921.25*. The preamble states in

the relevant part:

To amend...and enact...sections ... of the General Code, defining motor transportation companies, conferring jurisdiction upon the Public Utilities Commission over the transportation of persons or property for hire in motor vehicles, and providing for the supervision and regulation of such transportation, for the enforcement of provisions of this act and for the punishment of violations thereof, and providing for the taxing of motor propelled vehicles. (Emphasis added).

It is clear that the Act confers jurisdiction over MTC's to the PUCO for the supervision and regulation of such transportation, but only expressly provides for the taxing of motor propelled vehicles belonging to MTC's. There is no intent to expressly prohibit the taxing of net profits of MTCs. *R.C. 4921.18* specifically provides for such taxation of motor propelled vehicles by establishing a tax of either twenty dollars (\$20.00) or thirty dollars (\$30.00) per motor propelled vehicle.

Merely because the Ohio General Assembly has entered the field of regulation of MTC's under the PUCO, does not limit a municipality's constitutional power to tax MTC's. *See, Cincinnati Bell Telephone Co, supra, at 605.* The taxing authority of a municipality may be preempted or otherwise prohibited only by an express act of the General Assembly. *Id.* at the syllabus; *See, also, S.B. Carts v. Village of Put-In-Bay*, 161 Ohio App. 3d 691,694, 2005 Ohio 3065; 831 N.E.2d 1052 (6th Dist.)

The Ohio General Assembly has expressly acted to prohibit the local taxation by a municipality of the net profits of various industries, including PUCO regulated industries, and income of certain individuals. *See, R.C. 715.013* and *R.C. 718.01(H)*. In addition, the Ohio General Assembly has acted to impose a "tax" upon the use by a MTC of each motor propelled vehicle. Nevertheless, the Ohio General Assembly has not expressly acted to prohibit the

taxation of net profits of a MTC. *See, R.C. 4921.25.* Accordingly, the Seville net profit tax upon Panther is valid and the decision holding that Seville is preempted from imposing its net profits tax upon Panther is unconstitutional and not reasonable and lawful.

While it is true that *R.C. 4921.18* and *R.C. 4921.25* enacted in 1923 do use the word “tax”, this “tax” is specific to a “tax” on each motor propelled vehicle and not expressly specific to taxation of net profits of MTC’s. This language in *R.C. 4921.18* and *R.C. 4921.25* is consistent with the legislative history of H.B. 474 in the preamble to the Act. A “tax” on each motor vehicle does not apply to prohibit Seville from taxing the net profits of Panther as a MTC. The “tax” imposed by *R.C. 4921.18* is a PUCO imposed “fee or charge” upon each motor propelled vehicle. *See, R.C. 4921.25.*³

The purpose of *R.C. 4921.25* is to prohibit local government from imposing a similar “fees and charges” upon each motor propelled vehicle with the exception of personal property tax. This includes locally imposed fees, license fees, annual payments, licenses taxes, or taxes or other money exactions upon these motor propelled vehicles. *See, R.C. 4921.25.* This does not include net profits tax imposed by local government upon a MTC, and the Court of Appeals may not do so by implication where the clear meaning of the term “taxes” is set forth in the Act of the Ohio General Assembly.

R.C. 4921.25 uses the term “exact” with regard to the prohibited “taxes” that a municipality may not impose upon MTC’s. Black’s Law Dictionary defines “exaction” as the “wrongful act of an officer compelling payment of a fee for his services under color of official authority where no payment is due.” The State of Ohio, through the PUCO, has already imposed

³ Please note that the Ohio General Assembly in 2012 HB 487, § 101.01, has only now used the term taxes to describe these “fees and charges” upon motor propelled vehicles.

a license fee upon each motor vehicle in *R.C. 4921.18*. Accordingly, it is illegal for a local municipality to “exact” a similar fee for each motor vehicle. This exaction does not contemplate or imply the prohibition of the imposition of local net profits taxes.

CONCLUSION

As is set forth above, this case involves matters of public and great general interest and a substantial constitutional question. Accordingly, Defendant/Appellant Seville requests that this Court accept jurisdiction in this case in order to allow these important issues presented to be reviewed on the merits.

Respectfully submitted,



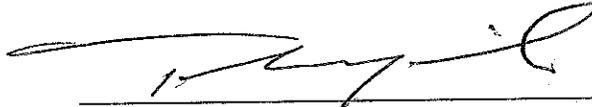
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CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum in Support of jurisdiction was sent by regular US Mail this 17th day of September, 2012, to the following:

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Theodore J. Lesiak 0041998

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

FILED
DAVID B. WADSWORTH
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.

Central Collection's Assignment of Error Number Three

THE OHIO BOARD OF TAX APPEALS' DECISION IS UNREASONABLE AND UNLAWFUL AS A MATTER OF LAW WHERE (A) THE WORD "TAX" HAS DIFFERENT MEANINGS DEPENDING UPON THE CONTEXT IN WHICH THE WORD IS USED; (B) THERE IS A CLEAR DISTINCTION BETWEEN A LICENSE FEE OR TAX EXACTED IN THE EXERCISE OF A MUNICIPALITY'S POLICE POWER AND A TAX LEVIED UNDER ITS TAXING POWER; (C) R.C. 4921.25 ONLY DEALS WITH THE LICENSING AND REGULATION OF MOTOR TRANSPORTATION COMPANIES; (D) THE R.C. 4921.18 TAX IS CLEARLY A LICENSE TAX; AND (E) R.C. 4921.25 THEREFORE DOES NOT PREEMPT A MUNICIPALITY'S RIGHT TO TAX UNDER ITS TAXING POWER.

Central Collection's Assignment of Error Number Four

THE OHIO BOARD OF TAX APPEALS' DECISION IS UNREASONABLE AND UNLAWFUL AS A MATTER OF LAW WHERE THE EXPRESS STATUTORY PROHIBITIONS PREEMPTING THE MUNICIPAL TAX ARE FOUND IN R.C. 718.01(F) (SINCE RECODIFIED AS R.C. 718.01(H)).

Central Collection's Assignment of Error Number Five

THE OHIO BOARD OF TAX APPEALS' DECISION IS UNREASONABLE AND UNLAWFUL AS A MATTER OF LAW WHERE R.C. 718.01(D)(1) CLEARLY PROVIDES THAT "NO MUNICIPAL CORPORATION SHALL EXEMPT FROM A TAX ON INCOME . . . THE NET PROFIT FROM A BUSINESS OR PROFESSION."

Central Collection's Assignment of Error Number Six

THE OHIO BOARD OF TAX APPEALS' DECISION IS UNREASONABLE AND UNLAWFUL AS A MATTER OF LAW WHERE PANTHER DOES NOT OWN THE VEHICLES IT USES BUT INSTEAD UTILIZES OWNER-OPERATORS AND OTHER TRUCKING COMPANIES WHO ACTUALLY ARE RESPONSIBLE FOR PAYING THE R.C. 4921.18 LICENSE FEE.

{¶5} In all of the foregoing assignments of error, Seville and Central Collection argue that the Board of Tax Appeals erred by concluding that state law preempts the local net profits tax the Village of Seville levied against Panther II as a motor vehicle transportation company. We do not agree that the Board of Tax Appeals erred in its conclusion.

{¶6} Appeals taken from a tax board's decision are governed by Chapter 5717 of the Revised Code. *Elyria City School Dist. Bd. of Edn. v. Ellis*, 9th Dist. No. 07CA009191, 2008-Ohio-4293, ¶ 9. “[P]ursuant to R.C. 5717.04, our review of the [Board of Tax Appeals] decision is ‘limited to a determination, based on the record, of the reasonableness and lawfulness of the Board of Tax Appeals’ decision.” (Citations omitted.) *Nimon v. Zaino*, 9th Dist. No. 01CA007918, 2002 WL 276775, *1 (Feb. 27, 2002), quoting *Federated Dept. Stores v. Lindley*, 8 Ohio St.3d 35, 38 (1983). This Court will affirm the factual determinations of the Board of Tax Appeals so long as the record contains reliable and probative support for its determination. *Ellis* at ¶ 7. Yet, this Court “will not hesitate to reverse a [Board of Tax Appeals] decision that is based on an incorrect legal conclusion.” *Satullo v. Wilkins*, 111 Ohio St.3d 399, 2006-Ohio-5856, ¶ 14, quoting *Gahanna-Jefferson Local School Dist. Bd. of Edn. v. Zaino*, 93 Ohio St.3d 231, 232 (2001).

{¶7} The Home Rule Amendment embodied in Article XVIII, Section 3 of the Ohio Constitution, permits municipalities to exercise the powers of local self-government, including the power to tax. *Cincinnati Bell Tel. Co. v. Cincinnati*, 81 Ohio St.3d 599, 602 (1998). “[T]he intention of the Home Rule Amendment was to eliminate statutory control over municipalities by the General Assembly.” *Id.* at 605. Accordingly, while the General Assembly has the power to restrict a municipality's authority to tax, “a proper exercise of this limiting power requires an express act of restriction by the General Assembly” in the form of “an express statutory limitation.” *Id.* at 605-606. A municipality may enact a net profits tax “in the absence of an express statutory prohibition of the exercise of such power by the General Assembly.” *Id.* at 601. Where a direct conflict exists between a municipal ordinance and a state law, the state law

will prevail. *Wadsworth v. Stanley*, 9th Dist. Nos. 10CA0004-M, 10CA0005-M, 10CA0006-M & 10CA0007-M, 2010-Ohio-4663, ¶ 17.

{¶8} At issue in this appeal is the plain language of R.C. 4921.25. The relevant language of that statute reads:

The fees and charges provided under section 4921.18 of the Revised Code shall be in addition to taxes, fees, and charges fixed and exacted by other sections of the Revised Code, except the assessments required by section 4905.10 of the Revised Code, but all * * * taxes or other money exactions, except the general property tax, assessed, charged, fixed, or exacted by local authorities such as municipal corporations * * * are illegal and, are superseded by sections 4503.04, 4905.03, and 4921.02 to 4921.32, inclusive, of the Revised Code. On compliance by such motor transportation company with sections 4503.04, 4905.03, and 4921.02 to 4921.32, inclusive, of the Revised Code, all local ordinances, resolutions, by laws, and rules in force shall cease to be operative as to such company, except that such local subdivisions may make reasonable local police regulations within their respective boundaries not inconsistent with such sections.

R.C. 4921.25. R.C. 4921.18 governs the specific monetary sum a motor transportation company must annually pay to PUCO to receive its certificate of public convenience; a document necessary for the use of any motor vehicle or truck operated by the company in the state. By virtue of R.C. 4921.25's plain language, a motor transportation company's annual payment for its certificate of public convenience does not absolve it from the payment of other applicable state taxes, fees, and charges. Its status as a motor transportation company, however, subjects it to all the laws and regulations set forth by PUCO. Former R.C. 4905.03(A)(3); R.C. 4905.03(A)(2); R.C. 4921.01(D); R.C. 4921.02(A). R.C. 4921.25 specifically provides that PUCO's provisions supersede any tax a municipal corporation might wish to impose, with the exception of the general property tax. Any tax, other than the general property tax, is "illegal." R.C. 4921.25. Therefore, a motor transportation company that is subject to PUCO's laws and remains compliant with its statutory obligations is not subject to the taxes or laws of a municipal corporation, other than those specifically allowed by statute. *Id.* (exempting motor transportation

company from all taxes, except the general property tax, and all laws, except reasonable local police regulations). *Accord Coventry Twp. v. Ecker*, 101 Ohio App.3d 38, 44 (9th Dist.1995) (“[L]ocal subdivisions may make reasonable local police regulations relating to motor transportation companies so long as the local regulations are not inconsistent with the authority of [] PUCO.”).

{¶9} In support of their argument that the General Assembly did not expressly restrict municipalities from taxing the net profits of a motor transportation company, Seville and Central Collection first point to R.C. 718.01. That statute contains several provisions regarding the taxing power of municipal corporations. It provides that “[e]xcept as otherwise provided in this section, no municipal corporation shall exempt from a tax on income compensation * * * the net profit from a business.” R.C. 718.01(D)(1). The statute then goes on to provide a list of compensations and incomes that municipal corporations shall not tax. R.C. 718.01(H); Former R.C. 718.01(F). Seville and Central Collection argue that, because the net profits of a motor transportation company do not appear on the list of exempted items, Panther II’s net profits are not exempted from taxation and R.C. 718.01(D)(1) actually requires the Village of Seville to tax Panther II. Although R.C. 718.01 does contain a specific list of exemptions to the taxing authority of a municipal corporation, it also provides that “[n]othing in this section * * * shall authorize the levy of any tax on income that a municipal corporation is not authorized to levy under existing laws * * *.” R.C. 718.01(J); Former R.C. 718.01(H). The statute recognizes that its list of non-taxable compensations and incomes is not exhaustive and other existing laws may void a municipality’s taxing power. Accordingly, we are not persuaded that Seville had the authority to tax Panther II simply because Panther II’s net profits are not per se exempted from taxation under R.C. 718.01.

{¶10} The primary position of Seville and Central Collection is that when the General Assembly used the word “tax” in R.C. 4921.25 it was not referring to an income tax. Instead, they argue that the tax references in R.C. 4921.25 pertain to license and regulatory fees and charges. Seville and Central Collection point to R.C. 4921.18, which also uses the word “tax,” but which in actuality is a flat licensing fee unrelated to profit or income. Seville and Central Collection posit that the General Assembly’s intent in enacting R.C. 4921.25 was only to expressly prohibit municipalities from imposing any additional licensing or regulatory taxes upon motor transportation companies beyond those already imposed by PUCO. As such, they argue, R.C. 4921.25 does not prohibit Seville from taxing Panther II’s net profits. The plain language of R.C. 4921.25 does not support Seville and Central Collection’s argument.

{¶11} In prohibiting municipal corporations from assessing, charging, fixing or exacting taxes from motor transportation companies, R.C. 4921.25 specifically refers to “all fees, license fees, annual payments, license taxes, or taxes or other money exactions.” R.C. 4921.25. Had the General Assembly intended the word “tax” to mean license fees or charges, it would not have been necessary to separately prohibit the imposition of “license fees” and “license taxes” in addition to “taxes.” See *Leasure v. Adena Local School Dist.*, 9th Dist. No. 11CA3249, 2012-Ohio-3071, ¶ 17 (“To determine legislative intent, a court must first look to the words used in the statute.”). The statute plainly applies to “all * * * taxes.” More importantly, the statute exempts general property taxes from its ban on municipal tax. General property taxes are not simply license and regulatory fees and charges. If the General Assembly had intended R.C. 4921.25 only to exempt municipalities from imposing additional licensing or regulatory taxes, it would not have been necessary to exempt general property taxes from R.C. 4921.25’s application. Lastly, the fact that the General Assembly exempted general property taxes and not net profits

taxes is telling. “Under the general rule of statutory construction *expressio unius est exclusio alterius*, the expression of one or more items of a class implies that those not identified are to be excluded.” *In re Estate of Horton*, 9th Dist. Nos. 20695 & 20741, 2002 WL 465428, *3 (Mar. 27, 2002), quoting *State v. Droste*, 83 Ohio St.3d 36, 39 (1998). The General Assembly specifically chose to exempt general property taxes from its express statutory prohibition on “all * * * taxes” in R.C. 4921.25. Had the General Assembly wished to exempt other taxes in addition to general property taxes, it certainly could have done so. We agree with the conclusion of the Board of Tax Appeals that R.C. 4921.25 prohibits the Village of Seville from taxing Panther II’s net profits under the doctrine of express preemption. Consequently, all of the assignments of error raised by Seville and Central Collection lack merit.

III

{¶12} Seville and Central Collection’s assignments of error are overruled. The judgment of the Board of Tax Appeals is affirmed.

Judgment affirmed.

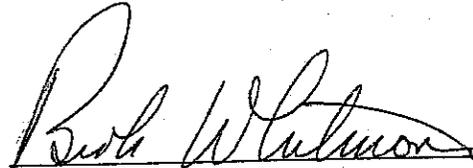
There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Ohio Board of Tax Appeals, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is

instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellants.



BETH WHITMORE
FOR THE COURT

MOORE, J.
BELFANCE, J.
CONCUR.

APPEARANCES:

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