

IN THE SUPREME COURT OF OHIO

PANTHER II TRANSPORTATION)
INC.)

CASE NO. 2012-1589
and 2012-1592

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

Appellee,

vs.

VILLAGE OF SEVILLE BOARD)
OF INCOME TAX REVIEW)

and)

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

Appellants)

**MERIT BRIEF OF APPELLANT VILLAGE OF SEVILLE BOARD OF
INCOME TAX REVIEW**

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STATEMENT OF FACTS

This case originates from the Village of Seville Board of Income Tax Review. On March 5, 2007, Appellee, Panther II Transportation, Inc. (“Panther”), made a claim for a refund to Appellant Nassim M. Lynch and the Central Collection Agency (“CCA”) who is the tax administrator for The Village of Seville, Ohio (“Seville”). (Supp. 1) Panther requested a refund of \$161,761.00 in net profit taxes paid to Seville for the tax years 2005 and 2006. *Id.* Panther alleged that Panther pays annual charges imposed by *R.C. 4921.18*¹ on each tractor or trailer used by Panther as a Motor Transportation Company (“MTC”). Panther then asserted that former *R.C. 4921.25*² preempts Seville’s ability to impose a net profits tax on Panther.

On August 2, 2007, CCA denied the request for refund. (Appx. 44) CCA denied the refund stating that Seville had the power to impose a net profits tax upon Panther, as *R.C. 4921.25* merely prohibits Seville from imposing taxes, fees, and charges upon a MTC that are related to licensing, registering or regulating of a MTC. *Id.* 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. (Supp. 3) The CCA Tax Administrator, Nassim M. Lynch, once again denied Panther’s request for refund. (Appx. 35).

Panther subsequently appealed the ruling of the CCA Tax Administrator to Appellant, Seville Income Tax Board of Review. (Supp. 6) 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

¹ On June 11, 2012, former *R.C.4921.18* was repealed and replaced with *R.C. 4921.19* to which no substantial changes were made with regard to the current issue.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² On June 11, 2012, former *R.C.4921.25* was repealed and replaced with *R.C. 4921.19* (J).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 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.

Administrator. (Appx. 32)

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. (Supp. 8) 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. (Appx. 24) A Correcting Order was issued August 30, 2011 to correct the Board’s statutory references in its earlier decision. (Appx. 13). The Board found that Ohio General Assembly has the constitutional authority to limit a municipality’s taxing authority pursuant to *Ohio Constitution, Article XVIII, Section 13*; and that in *R.C. 4921.25*, the Ohio General Assembly specifically preempted Seville’s ability to impose a net profits tax upon an MTC such as Panther. *Id.*

Both Seville and CCA filed timely Notices of Appeal from the Board’s decision to the Medina County Court of Appeals, Ninth Judicial District. (Supp. 12) 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. (Appx. 4) The Medina County Court of Appeals held that former *R.C. 4921.25* expressly prohibits all “taxes”, but expressly allows the imposition of municipal property taxes. *Id.* Applying the doctrine of *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of the other), the Medina County Court of Appeals held that since property taxes were excluded from the application of *R.C. 4921.25*, the Ohio General Assembly must have chosen to include the net profits tax imposed by Seville. *Id.*

Both Seville and CCA have timely filed Notices of Appeal from the Decision of the Medina County Court of Appeals. (Appx. 1) On March 13, 2013, the Supreme Court of Ohio granted jurisdiction to hear the case.

ARGUMENT

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. 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).

B. APPLICABLE LAW

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.

The instant issue is whether the Medina County Court of Appeals' and the Board's decisions were reasonable and lawful in determining that *R.C. 4921.25* expressly preempts Seville's ability to impose a net profits tax upon an MTC such as Panther, in the exercise its

Home Rule Powers granted under the Ohio Constitution.

R.C. 4921.25 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. 4921.18 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)

C. MUNICIPAL INCOME TAX AND HOME RULE

In *Haefner v. City of Youngstown*, 147 Ohio St. 58, 68 N.E. 2d 64 (1946), paragraph three of the syllabus, the Supreme Court held that “municipalities have power to levy excise taxes to raise revenue for purely local purposes; but under Section 13, Article XVIII of the Constitution, such power may be limited by express statutory provision or by implication flowing from state legislation which pre-empt the field by levying the same or a similar excise tax”.

In 1998, the Supreme Court overruled *Haefner, supra*, and held that there is no constitutional prohibition against double taxation. *Cincinnati Bell Telephone Co. v. City of Cincinnati*, 81 Ohio St. 3d 599, 607, 693 N.E.2d 212 (1998). 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. 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.)

Therefore, it is clear that Seville's net profits tax is applicable to Panther unless expressly preempted by the Ohio General Assembly.

In response to *Cincinnati Bell, supra*, the Ohio General Assembly amended *R.C. 718.01*³ and enacted *R.C. 715.013*. *R.C. 718.01* provides in the relevant part:

(D) (1) 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...

(F) A municipal corporation shall not tax any of the following:

(1) The military pay or allowances of members of the armed forces of the United States and of members of their reserve components, including the Ohio national guard;

(2) The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities;

(3) Except as otherwise provided in division (I) of this section, intangible income;

(4) Compensation paid under section 3501.28 or 3501.36 of the Revised Code to a person serving as a precinct election official, to the extent that such compensation does not exceed one thousand dollars annually. Such compensation in excess of one thousand dollars may be subjected to taxation by a municipal corporation. A municipal corporation shall not require the payer of such compensation to withhold any tax from that compensation.

(5) Compensation paid to an employee of a transit authority, regional transit authority, or regional transit commission created under Chapter 306. of the Revised Code for operating a transit bus or other motor vehicle for the authority or commission in or

³ On December 21, 2007, former *R.C. 718.01(F)* was recodified into *R.C. 718.01(H)*. Former *R.C. 718.01(F)* is applicable to the instant case.

through the municipal corporation, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to such a tax by reason of residence or domicile in the municipal corporation, or the headquarters of the authority or commission is located within the municipal corporation;

(6) The income of a public utility, when that public utility is subject to the tax levied under section 5727.24 or 5727.30 of the Revised Code, except a municipal corporation may tax the following, subject to Chapter 5745 of the Revised Code:

(a) Beginning January 1, 2002, the income of an electric company or combined company;

(b) Beginning January 1, 2004, the income of a telephone company.

As used in division (H) (6) of this section, “combined company,” “electric company,” and “telephone company” have the same meanings as in section 5727.01 of the Revised Code.

(7) On and after January 1, 2003, items excluded from federal gross income pursuant to section 107 of the Internal Revenue Code;

(8) On and after January 1, 2001, compensation paid to a nonresident individual to the extent prohibited under section 718.011 of the Revised Code;

(9)(a) Except as provided in division (H)(9)(b) and (c) of this section, an S corporation shareholder's distributive share of net profits of the S corporation, other than any part of the distributive share of net profits that represents wages as defined in section 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in section 1402(a) of the Internal Revenue Code.

(b) If, pursuant to division (H) of former section 718.01 of the Revised Code as it existed before March 11, 2004, a majority of the electors of a municipal corporation voted in favor of the question at an election held on November 4, 2003, the municipal corporation may continue after 2002 to tax an S corporation shareholder's distributive share of net profits of an S corporation.

(c) If, on December 6, 2002, a municipal corporation was imposing, assessing, and collecting a tax on an S corporation shareholder's distributive share of net profits of the S corporation to the extent the distributive share would be allocated or apportioned to this state under divisions (B) (1) and (2) of section 5733.05 of the Revised Code if the S corporation were a corporation subject to taxes imposed under Chapter 5733. of the Revised Code, the municipal corporation may continue to impose the tax on such distributive shares to the extent such shares would be so allocated or apportioned to this state only until December 31, 2004, unless a majority of the electors of the municipal corporation voting on the question of continuing to tax such shares after that date vote in favor of that question at an election held November 2, 2004. If a majority of those electors vote in favor of the question, the municipal corporation may continue after

December 31, 2004, to impose the tax on such distributive shares only to the extent such shares would be so allocated or apportioned to this state.

(d) For the purposes of division (D) of section 718.14 of the Revised Code, a municipal corporation shall be deemed to have elected to tax S corporation shareholders' distributive shares of net profits of the S corporation in the hands of the shareholders if a majority of the electors of a municipal corporation vote in favor of a question at an election held under division (H)(9)(b) or (c) of this section. The municipal corporation shall specify by ordinance or rule that the tax applies to the distributive share of a shareholder of an S corporation in the hands of the shareholder of the S corporation.

(10) Employee compensation that is not "qualifying wages" as defined in section 718.03 of the Revised Code;

(11) Beginning August 1, 2007, compensation paid to a person employed within the boundaries of a United States air force base under the jurisdiction of the United States air force that is used for the housing of members of the United States air force and is a center for air force operations, unless the person is subject to taxation because of residence or domicile. If the compensation is subject to taxation because of residence or domicile, municipal income tax shall be payable only to the municipal corporation of residence or domicile.

(12) Compensation paid to a person for personal services performed for a political subdivision on property owned by the political subdivision, regardless of whether the compensation is received by an employee of the subdivision or another person performing services for the subdivision under a contract with the subdivision, if the property on which services are performed is annexed to a municipal corporation pursuant to section 709.023 of the Revised Code on or after the effective date of the amendment of this section, unless the person is subject to such taxation because of residence or domicile. If the compensation is subject to taxation because of residence or domicile, municipal income tax shall be payable only to the municipal corporation of residence or domicile...

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.

As Seville has enacted an income and net profits tax, *R.C. 718.01(D) (1)* requires Seville to impose a net profits tax upon all businesses within its jurisdiction. In addition, there is no provision of *R.C. 718.01(F)* or *R.C. 715.013* that expressly exempts a MTC from municipal net profits tax. It is noteworthy that the Ohio General Assembly specifically expressly exempted electric companies and telephone companies from the imposition of municipal net profits taxes under certain circumstances. Both of these industries, like MTCs are regulated by the Public Utilities Commission of Ohio (“PUCO”).

R.C. 4921.18 formerly *G.C. 614-94* and *R.C. 4921.25* formerly *G.C. 614-98* were originally enacted in 1923 in *1923 Am H.B. 474*. The preamble to *1923 Am H.B. 474* provides 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).

At the time that *1923 Am H.B. 474* was enacted, there was no municipal income or net profits tax in existence in Ohio or anywhere else in the United States. In 1923, municipal income and net profits tax were illegal in Ohio. The Supreme Court in *State ex rel. Zielonka v. Carrel*, 99 Ohio St. 220, 124 N.E. 134 (1919), held that municipalities are without power to levy an income or inheritance tax. *Id.* at 228. The Supreme Court went on to state that “it would seem quite certain, then, that the state alone can initiate taxation of this character”. *Id.*

Accordingly, the Ohio General Assembly did not enact *G.C. 614-98* to expressly prohibit municipalities from imposing income and net profits taxes upon MTCs. Municipal income tax in the State of Ohio was at that time, unconstitutional.

The status of the illegality of municipal income taxes in Ohio did not change until 1946 when the City of Toledo adopted an income tax ordinance. *See, Angell v. City of Toledo*, 153 Ohio St. 179, 184, 91 N.E.2d 250, 253 (1950). In *Angell, supra*, the Supreme Court held that “Ohio municipalities have the power to levy and collect income taxes in the absence of the pre-emption by the General Assembly of the field of income taxation, and subject to the power of the General Assembly to limit the power of municipalities to levy taxes under Section 13 of Article XVIII or Section 6 of Article XIII of the Ohio Constitution”. “The state has not pre-empted the field of income taxation authorized by Sections 8⁴ and 9 of Article XII of the Constitution, and the General Assembly has not, under authority of Section 13 of Article XVIII or Section 6 of Article XIII of the Constitution, passed any law limiting the power of municipal corporations to levy and collect income taxes”. *Id.* at paragraphs one and two of the syllabus. (Emphasis added)

When *Angell, supra*, was decided, *R.C. 4921.25* was in existence for 27 years. The Supreme Court held that the State of Ohio had not passed any law that limited municipal corporations from levying and collecting income taxes. As a result, the decisions of the Medina County Court of Appeals and the Board are not reasonable and lawful. These decisions failed to follow the precedent set forth in *Angell, supra*. In addition, these decisions failed to acknowledge that the Ohio General Assembly must take an express action to enter the field of income or net profits taxation upon MTCs for the doctrine of state preemption to apply. A determination that *R.C. 4921.25* expressly preempted the constitutional municipal power to

⁴ On June 8, 1976, *Ohio Constitution, Art. XII, Section 8* was repealed and reestablished in *Ohio Constitution, Art XII, Section 3*.

impose net profits taxes upon MTCs is nonsensical. Municipal income and net profits tax did not exist in Ohio upon the enactment of *R.C. 4921.25*, and even if a municipality enacted a municipal income and net profits tax, the Supreme Court held that these types of taxes would be unconstitutional.

The Medina County Court of Appeals held that former *R.C. 4921.25* expressly prohibits all “taxes”, with the express exception of 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 Medina County 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. However, in order to apply this doctrine to *R.C. 4921.25* as enacted in 1923, the Ohio General Assembly would have contemplated the existence of municipal income and net profits tax in the future, where no municipal income and net profits tax existed in Ohio or anywhere else in the United States. The Ohio General Assembly would also have to have assumed that *Zielonka, supra*, holding that Ohio municipalities had no power to levy and collect an income and net profits tax, would be reversed by the Supreme Court in the future.

Moreover, if the doctrine of *expressio unius est exclusio alterius* is applicable to the interpretation *R.C. 4921.25*, the doctrine is also applicable to the interpretation of *R.C. 718.01(F)* and *R.C. 715.013*. Both of these statutes specifically address express exemptions from municipal income and net profits tax, including other PUCO regulated industries. Yet neither *R.C. 718.01(F)* nor *R.C. 715.013* specifically excludes MTCs from the imposition of municipal income and net profits tax. Pursuant to the doctrine of *expressio unius est exclusio alterius*, the Ohio General Assembly’s failure to address MTCs in *R.C. 718.01(F)* and *R.C. 715.013* implies

that the Ohio General Assembly expressly included MTCs as entities subject to municipal income and net profits tax.

Furthermore, the doctrine of *expressio unius est exclusio alterius* cannot be a mechanism to interpret *R.C. 4921.25*. The use of the doctrine as an aid of statutory interpretation is directly in contravention of the Home Rule Amendment of the *Ohio Constitution, Article XVIII, Sections 3 and 13*, as well as the holding of *Cincinnati Bell Telephone Co, supra*. The use of the doctrine presumes an implication rather than an expression. A state imposed exclusion to the constitutional power 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*.

The Medina County Court of Appeals use of an implied exclusion through an omission in *R.C. 4921.25* is not reasonable and lawful.

D. INTERPRETATION OF R.C. 4921.18 AND R.C. 4921.25

Seville agrees that *1923 Am H.B. 474* confers jurisdiction over MTCs to the PUCO for the supervision and regulation of such transportation. However, a review of the preamble to *1923 Am H.B. 474* only expressly provides for the taxing of motor propelled vehicles belonging to MTCs. There is no intent to expressly prohibit the taxing of income and net profits of MTCs. *R.C. 4921.18* expressly provides for the taxation of motor propelled vehicles by establishing a tax of either twenty dollars (\$20.00) or thirty dollars (\$30.00) per motor propelled vehicle.

Seville also admits that Seville is expressly preempted from imposing “taxes, fees and charges” upon each motor vehicle used by Panther pursuant to *R.C. 4921.18*. However, a full review of the relevant sections of *1923 Am.H.B. 474* reveal that there is no express preemption prohibiting Seville from imposing a net profits tax upon Panther.

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

The purpose of *R.C. 4921.25* is to prohibit a municipality 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 municipal income and net profits tax imposed upon a MTC.

R.C. 4921.25 also uses the term “exact” in relation to the prohibited “taxes” that a municipality may not impose upon MTCs. 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 a license fee upon each motor vehicle in *R.C. 4921.18*. Accordingly, it is illegal for a municipality to “exact” a similar fee for each motor vehicle. This exaction does not contemplate or imply the prohibition of the imposition of municipal income and net profits taxes.

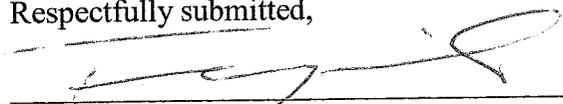
There is no express prohibition of a municipal income and net profits tax upon a MTC. Imposing such a prohibition by implication is not reasonable and lawful, and is a violation of the constitutional Home Rule powers granted to municipalities.

E. CONCLUSION

It is clear that the decisions of the Medina County Court of Appeals and the Board are unreasonable and unlawful and in violation of Seville's Home Rule powers under the Ohio Constitution. These decisions hold that *R.C. 4921.25* expressly preempts Seville's ability to impose an income and net profits tax upon Panther. *R.C. 4921.25*, originally enacted in 1923, does not expressly prohibit net income and profits tax upon a MTC. In 1923, there was no municipal income tax in existence in Ohio or the United States. In addition, the Supreme Court previously held that municipal income and net profits tax was unconstitutional. Therefore, it was impossible for the Ohio General Assembly to expressly prohibit municipal income and net profits taxes upon a MTC, as municipal income and net profits taxes were not in the contemplation of the Ohio General Assembly at the time *R.C. 4921.25* was enacted.

Furthermore, a clear and unambiguous reading of *R.C. 4921.18*, *R.C. 4921.25*, and the legislative history of *1923 Am H.B. 474*, clearly show that *R.C. 4921.25* was enacted to preempt a municipalities' ability to tax motor propelled vehicles and not a MTC's income and net profits. Absent a clear and express act of the Ohio General Assembly preempting MTCs from municipal income and net profits taxes, Panther is subject to Seville's net profits tax pursuant to *R.C. 718.01(D)(1)*. Accordingly, the decision of the Board and the Medina County Court of Appeals must be reversed.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing Merit Brief was sent by regular US Mail this 1st day of May 2013, to the following:

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**APPENDIX OF APPELLANT VILLAGE OF SEVILLE BOARD OF
INCOME TAX REVIEW**

COPY

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
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FILED
SEP 19 2012
CLERK OF COURT
SUPREME COURT OF OHIO

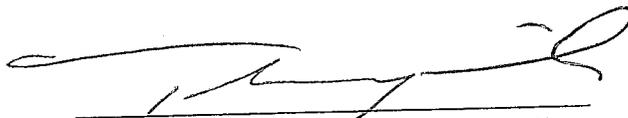
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Notice of Appeal of Appellant Village of Seville Board of Income Tax Review

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.



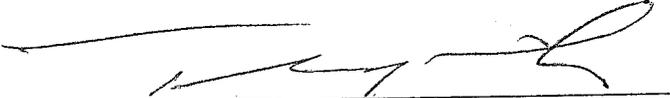
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COURT OF APPEALS

STATE OF OHIO
COUNTY OF MEDINA
PANTHER II TRANSPORTATION, INC.

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

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

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

Appellee

v.

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

Appellants

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.

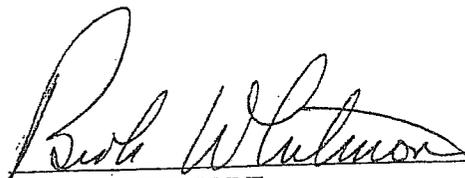
There were reasonable grounds for this appeal.

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.

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JAMES F. LANG and N. TREVOR ALEXANDER, Attorneys at Law, for Appellee.

OHIO BOARD OF TAX APPEALS

Panther II Transportation, Inc.,)	CASE NO. 2008-M-1247
)	
Appellant,)	(MUNICIPAL INCOME TAX)
)	
vs.)	CORRECTING ORDER
)	
Village of Seville Board of)	
Income Tax Review,)	
)	
Appellee.)	

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Entered AUG 30 2011

Ms. Margulies, Mr. Johrendt, and Mr. Williamson concur.

The board's decision and order issued on August 23, 2011 included misidentified revised code sections. Therefore, the board reissues its determination fully herein, correcting only the statutory references.

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed by Panther Transportation, Inc. ("Panther"), appellant. Panther challenges a decision of the Village of Seville ("Seville") Board of Income Tax Review. Seville's municipal board of appeal established by R.C. 718.11, in which the MBOA¹ denied the refund of certain income taxes paid by Panther to Seville. The tax years in issue are 2005 and 2006. Panther argues that any imposition of a net profit tax upon the corporation is in violation of the preclusion granted to motor transportation companies by virtue of R.C. 4921.25.

The matter is considered upon the notice of appeal, the statutory transcript certified to this board by the MBOA, the record of the hearing held before this board, and the briefs of the appellant, the Tax Administrator, and Seville.

A review of the record in this matter reveals that Panther is a motor transportation company which began operations in 1992. H.R. at 33. Originally, Panther operated only within the state of Ohio; in 1995, it began interstate operations. H.R. at 34. For the time pertinent to this appeal, Panther's interstate service was regulated by the Federal Highway Administration, a part of the Department of Defense, and its intrastate service by the Public Utilities Commission of Ohio ("PUCO"). At hearing, Panther provided evidence that the company was licensed by and in good standing with both entities. Appellant's Exs. A, C; Appellee Tax

¹ Although Seville has established a "board of tax review" for income tax purposes, we note that R.C. 718.11 and 5717.011 refer to such an entity as a "municipal board of appeal." For consistency, we shall refer to an entity issuing decisions under R.C. 718.11 as a municipal board of appeal, or MBOA, regardless of the actual name selected by the municipality.

Administrator's Ex. 14. As was explained by Mr. Allen H. Motter, vice president of legal and risk management for Panther, the federal and state licenses permit a motor transportation company to operate a business of transportation for hire. H.R. at 24. The licenses also provide a tracking mechanism for equipment used by the carrier. Id.

According to Mr. Motter, the primary interest of the PUCO (as well as its federal counterpart) is safety. H.R. at 25. Rate regulation, another primary component of licensing at one time, is no longer a focus, as motor transportation companies have tariffs on file, but are no longer required to have rates on file. H.R. at 27.

Mr. Motter explained that, except for the issuance of commercial driver's licenses, traditionally, federal regulations preempt state regulations regarding interstate transportation. H.R. at 30, 32. On an intrastate basis, the states have the ability to institute some safety regulations. H.R. at 31. However, according to Mr. Motter, municipalities within Ohio have very limited authority to regulate intrastate motor transportation companies. Id.

In both 2005 and 2006, Panther reported and paid income tax to Seville. It now believes that the taxes were paid in error. Panther bases its claim on R.C. 4921.25. That section provides:

"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. 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, bylaws, 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.” (Emphasis added.)

Panther argues that, by virtue of its status as a motor vehicle transportation company, any taxes assessed by a municipal corporation such as Seville are illegal.

In *Cincinnati Bell Tel. Co. v. City of Cincinnati* (1998), 81 Ohio St.3d 599, the Ohio Supreme Court concluded that preemption in the tax arena requires an express act of the General Assembly. In that appeal, a telephone company made a similar argument to the one before this board today; i.e., municipalities are preempted from imposing a net profits (income) tax on those entities required to pay a public utilities excise tax imposed by R.C. 5727.30. In thoroughly considering the matter, the court held that the “Home Rule Amendment,” Ohio Const. Sect. 3, Article XVIII, confers sovereignty upon municipalities to “exercise all powers of local self-government.” One such power is the power to tax. *Id.* at 602; *State ex rel. Zielonka v. Carrel* (1919), 99 Ohio St. 220.

The court then recognized an inconsistency within the Ohio Constitution, which also grants to the Ohio General Assembly the power to limit a

municipality's taxing authority. Section 6, Article XIII of the Ohio Constitution provides that "the General Assembly shall provide for the organization of cities, and incorporated villages, by general laws, and restrict their power of taxation *** so as to prevent the abuse of such power."

In harmonizing this apparent inconsistency, the court overturned earlier case law which had approved the doctrine of "implied preemption." That doctrine was first articulated in *Cincinnati v. Am. Tel. & Tel. Co.* (1925), 112 Ohio St. 493, wherein the court held that a local government such as a municipality was free to impose a tax only if the General Assembly had not entered the field by previously enacting a similar tax. Paragraph 2 of the syllabus provides:

"The power granted to the municipality by Section 3, Article XVIII, of the Constitution of the state of Ohio, to lay an occupational tax in the exercise of its powers of local self-government, does not extend to fields within such municipality which have already been occupied by the state."

In *Cincinnati Bell*, the court concluded that the Home Rule Amendment was a broad grant of power to the municipalities, and should only be restricted by an affirmative act of the General Assembly. The court then turned to R.C. 718.01(F) as an example of such an affirmative act:

"That the General Assembly is aware that it may exercise its limiting power by expressly preempting municipal taxation by statute is demonstrated by its passage of specific prohibitions on municipal taxation of certain types of income as provided in R.C. 718.01(F). Pursuant to R.C. 718.01(F), 'no municipal corporation shall tax' military pay, income of certain nonprofit organizations,

certain forms of intangible income, compensation paid to precinct election officials, and compensation paid to certain employees of transit authorities. Similarly, in providing for the collection of a state income tax, the General Assembly has expressly provided that 'the levy of this tax on income does not prevent a municipal corporation, a joint economic development zone created under section 715.691, or a joint economic development district created under section 715.70 or 715.71 or sections 715.72 to 715.81 of the Revised Code from levying a tax on income.' R.C. 5747.02(C)." Id. at 606.

It is clear that Seville's income tax is applicable to Panther unless expressly preempted by the General Assembly. Panther claims that R.C. 4921.25 is just such an express preemption. Panther argues that R.C. 4921.25 expressly exempts motor transportation companies from *all* municipal taxes, fees, and other exactions except for property tax.

The Tax Administrator's argument in favor of taxation is twofold. First, the Tax Administrator argues that R.C. 4921.18 imposes a license fee for the privilege of conducting a motor transportation business in Ohio. According to the Tax Administrator, the preemption contained in R.C. 4921.25 applies only to the imposition of taxes, fees and charges relating to licensing, registering or regulating the vehicles used by the motor transportation company. As a result, there is no express prohibition against the imposition of a net profits tax on the motor transportation company itself.

The Tax Administrator also argues that the General Assembly through R.C. 718.01(F)² has enacted a statute which expressly preempts a municipality from imposing tax on various types of income. The Tax Administrator argues that there is no prohibition in R.C. 718.01 of the taxation of a motor transportation company's net profits. Therefore, the Tax Administrator argues, the taxation of such income is not expressly preempted. Without express preemption, Seville is permitted to tax such income.

We begin our review of this matter by noting that when cases are appealed from a municipal board of review to the BTA, the burden of proof is on the appellant to establish its right to the relief requested. *City of Marion v. City of Marion Bd. of Review* (Aug. 10, 2007), BTA No. 2005-T-1464, unreported, appeal dismissed, Marion App. No. 9-07-37, 2008-Ohio-2496. See, also, *Tetlak v. Bratenahl* (2001), 92 Ohio St.3d 46, at 51, 2001-Ohio-129. Cf. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. In this regard, we will determine the weight and credibility to be accorded the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

Panther argues that the specific use of the word "tax" within the list of items included in R.C. 4921.25 requires a finding that any municipal tax (with the exception of general property tax) cannot be imposed upon a motor transportation company. The Tax Administrator, however, argues that income taxes may be

² Our consideration relates to the provisions of R.C. Chapter 718 as applicable during the tax year before us. The provisions of former R.C. 718.01(F) have since been recodified into R.C. 718.01(H).

imposed against a motor transportation company, because R.C. 4921.25 must be read in conjunction with other provisions within Chapter 4921. The administrator argues that the “taxes” assessed in Chapter 4921 are licensing fees, and, as such, only similar license fees are improperly assessed against a motor transportation company. The administrator also argues that only the specific types of income listed in R.C. 718.01 are exempt from municipal taxation.

There is no case law which directly addresses the R.C. 4921.25 preemption. There are, however, some basic statutory construction precepts which are relevant. The first is that in determining how to apply a statute, a tribunal’s “paramount concern is the legislative intent in enacting the statute.” *State ex rel. Steele v. Morrissey*, 103 Ohio St.3d 355, 2004-Ohio-4960, ¶ 21; *Dirksen v. Green Cty. Bd. of Revision*, 109 Ohio St.3d 470, 2006-Ohio-2990; *State v. Hairston*, 101 Ohio St.3d 308, 2004-Ohio-969.

Legislative intent is first to be sought from the language employed. “[I]f the words be free from ambiguity and doubt, and express plainly, clearly, and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation.” *Singluff v. Weaver* (1902), 66 Ohio St. 621, paragraph two of the syllabus.

In the present appeal, we find the language of the statute to be clear. R.C. 4921.25 specifically states that the fees and charges imposed under R.C. 4921.18 are in addition to all other taxes imposed by other sections of the Revised Code, except for assessments required by R.C. 4905.10. Therefore, R.C. 4921.25 recognizes

that a motor transportation company is responsible to the state for taxes imposed by law.

However, as to municipal corporations (i.e., cities), townships, and counties, governmental entities which are also constitutionally authorized to impose taxes upon their residents, the General Assembly expressly limits the taxes applicable to motor transportation companies. R.C. 4921.25 specifically exempts such companies from the taxes imposed by local authorities (except the general property tax) on public utility companies (R.C. 4905.03) and motor transportation companies (R.C. 4921.02 to 4921.32).

There appears to be no ambiguity in the statement preempting all taxes imposed by local authorities. While the Tax Administrator argues that the statute should be read in *pari materia* with R.C. 4921.18, which imposes what it contends is a motor vehicle licensing fee, we see no inconsistency in the General Assembly instituting a license fee and preempting a net profits tax. The General Assembly has been constitutionally authorized to limit a municipality's taxing authority. Sec. 13, Art. VIII, Ohio Const. Therefore, this board can find no impediment to the application of both R.C. 4921.18 and R.C. 4921.25.

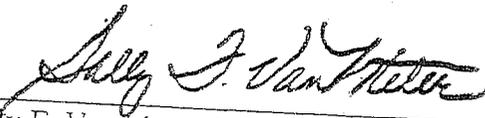
The Tax Administrator makes a number of other arguments as to the propriety of taxation in this instance, which we do not find compelling. While R.C. 718.01(D)(1) prohibits a municipal corporation from exempting a specific business or corporation from municipal income tax obligations, this subsection should not be read as inconsistent with the preemption found in R.C. 4921.25. Seville did not

legislatively exempt any business from income tax obligations – the General Assembly did. Next, the Tax Administrator criticizes Panther for suggesting that license fees it obligates its drivers to pay or reimburse the company for are a basis for preemption. However, we agree with Panther that it is not the payment of license fees pursuant to R.C. 4921.18 that causes R.C. 4921.25 to be applicable. It is the requirement that Panther obtain a certificate of public convenience and necessity that is the triggering event that causes R.C. 4921.25 to be applicable to Panther's municipal income tax obligations. The evidence at hearing, as well as the Tax Administrator's finding that Panther was a motor transportation company, is sufficient for this board to conclude that R.C. 4921.25 is applicable.

Finally, the Tax Administrator argues that Panther has failed to produce evidence of a constitutional violation. The Tax Administrator is correct in his argument that this board does not have the authority to reach constitutional claims, but instead serves as a receiver of evidence regarding such claims. *MCI Telecommunications Corp. v. Limbach* (1994), 68 Ohio St.3d 195. However, in this case, the board finds that R.C. 4921.25 provides the exemption from municipal taxation. Therefore, any constitutional claims are rendered moot.

As a result, this board concludes that Panther is correct in its claim that Seville unlawfully collected gross receipts taxes for tax years 2005 and 2006. Therefore, the determination of the Tax Administrator is hereby reversed.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.

A handwritten signature in cursive script, reading "Sally F. Van Meter".

Sally F. Van Meter, Board Secretary

OHIO BOARD OF TAX APPEALS

Panther II Transportation, Inc.,)	CASE NO. 2008-M-1247
)	
Appellant,)	(MUNICIPAL INCOME TAX)
)	
vs.)	DECISION AND ORDER
)	
Village of Seville Board of)	
Income Tax Review,)	
)	
Appellee.)	

APPEARANCES:

For the Appellant -	- Calfee, Halter & Griswold LLP
	James F. Lang
	1400 KeyBank Center
	800 Superior Avenue
	Cleveland, Ohio 44114

For the Appellee -	Robert J. Triozzi
Income Tax Administrator	Director of Law
	City of Cleveland Law Department
	Linda L. Bickerstaff
	Assistant Director of Law
	205 W. Saint Clair Avenue
	Cleveland, Ohio 44113

For the Village of -	Lesiak, Hensal & Hathcock
Seville	Theodore J. Lesiak
	3995 Medina Road, Suite 210
	Medina, Ohio 44256

Entered AUG 23 2011

Ms. Margulies, Mr. Johrendt, and Mr. Williamson concur.

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed by Panther Transportation, Inc. ("Panther"), appellant. Panther challenges a decision of the Village of Seville ("Seville") Board of Income Tax Review, Seville's municipal board of appeal established by R.C. 718.11,

in which the MBOA¹ denied the refund of certain income taxes paid by Panther to Seville. The tax years in issue are 2005 and 2006. Panther argues that any imposition of a net profit tax upon the corporation is in violation of the preclusion granted to motor transportation companies by virtue of R.C. 4921.25.

The matter is considered upon the notice of appeal, the statutory transcript certified to this board by the MBOA, the record of the hearing held before this board, and the briefs of the appellant, the Tax Administrator, and Seville.

A review of the record in this matter reveals that Panther is a motor transportation company which began operations in 1992. H.R. at 33. Originally, Panther operated only within the state of Ohio; in 1995, it began interstate operations. H.R. at 34. For the time pertinent to this appeal, Panther's interstate service was regulated by the Federal Highway Administration, a part of the Department of Defense, and its intrastate service by the Public Utilities Commission of Ohio ("PUCO"). At hearing, Panther provided evidence that the company was licensed by and in good standing with both entities. Appellant's Exs. A, C; Appellee Tax Administrator's Ex. 14. As was explained by Mr. Allen H. Motter, vice president of legal and risk management for Panther, the federal and state licenses permit a motor transportation company to operate a business of transportation for hire. H.R. at 24. The licenses also provide a tracking mechanism for equipment used by the carrier. Id.

¹ Although Seville has established a "board of tax review" for income tax purposes, we note that R.C. 718.11 and 5717.011 refer to such an entity as a "municipal board of appeal." For consistency, we shall refer to an entity issuing decisions under R.C. 718.11 as a municipal board of appeal, or MBOA, regardless of the actual name selected by the municipality.

According to Mr. Motter, the primary interest of the PUCO (as well as its federal counterpart) is safety. H.R. at 25. Rate regulation, another primary component of licensing at one time, is no longer a focus, as motor transportation companies have tariffs on file, but are no longer required to have rates on file. H.R. at 27.

Mr. Motter explained that, except for the issuance of commercial driver's licenses, traditionally, federal regulations preempt state regulations regarding interstate transportation. H.R. at 30, 32. On an intrastate basis, the states have the ability to institute some safety regulations. H.R. at 31. However, according to Mr. Motter, municipalities within Ohio have very limited authority to regulate intrastate motor transportation companies. *Id.*

In both 2005 and 2006, Panther reported and paid income tax to Seville. It now believes that the taxes were paid in error. Panther bases its claim on R.C. 4921.25. That section provides:

"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. 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, bylaws, 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.” (Emphasis added.)

Panther argues that, by virtue of its status as a motor vehicle transportation company, any taxes assessed by a municipal corporation such as Seville are illegal.

In *Cincinnati Bell Tel. Co. v. City of Cincinnati* (1998), 81 Ohio St.3d 599, the Ohio Supreme Court concluded that preemption in the tax arena requires an express act of the General Assembly. In that appeal, a telephone company made a similar argument to the one before this board today; i.e., municipalities are preempted from imposing a net profits (income) tax on those entities required to pay a public utilities excise tax imposed by R.C. 5727.30. In thoroughly considering the matter, the court held that the “Home Rule Amendment,” Ohio Const. Sect. 3, Article XVIII, confers sovereignty upon municipalities to “exercise all powers of local self-government.” One such power is the power to tax. *Id.* at 602; *State ex rel. Zielonka v. Carrel* (1919), 99 Ohio St. 220.

The court then recognized an inconsistency within the Ohio Constitution, which also grants to the Ohio General Assembly the power to limit a municipality’s taxing authority. Section 6, Article XIII of the Ohio Constitution provides that “the General Assembly shall provide for the organization of cities, and incorporated villages, by general laws, and restrict their power of taxation *** so as to prevent the abuse of such power.”

district created under section 715.70 or 715.71 or sections 715.72 to 715.81 of the Revised Code from levying a tax on income." R.C. 5747.02(C)." Id. at 606.

It is clear that Seville's income tax is applicable to Panther unless expressly preempted by the General Assembly. Panther claims that R.C. 4921.25 is just such an express preemption. Panther argues that R.C. 4921.25 expressly exempts motor transportation companies from *all* municipal taxes, fees, and other exactions except for property tax.

The Tax Administrator's argument in favor of taxation is twofold. First, the Tax Administrator argues that R.C. 4921.18 imposes a license fee for the privilege of conducting a motor transportation business in Ohio. According to the Tax Administrator, the preemption contained in R.C. 4921.25 applies only to the imposition of taxes, fees and charges relating to licensing, registering or regulating the vehicles used by the motor transportation company. As a result, there is no express prohibition against the imposition of a net profits tax on the motor transportation company itself.

The Tax Administrator also argues that the General Assembly through R.C. 718.01(F)² has enacted a statute which expressly preempts a municipality from imposing tax on various types of income. The Tax Administrator argues that there is no prohibition in R.C. 718.01 of the taxation of a motor transportation company's net profits. Therefore, the Tax Administrator argues, the taxation of such income is not

² Our consideration relates to the provisions of R.C. Chapter 718 as applicable during the tax year before us. The provisions of former R.C. 718.01(F) have since been recodified into R.C. 718.01(H).

expressly preempted. Without express preemption, Seville is permitted to tax such income.

We begin our review of this matter by noting that when cases are appealed from a municipal board of review to the BTA, the burden of proof is on the appellant to establish its right to the relief requested. *City of Marion v. City of Marion Bd. of Review* (Aug. 10, 2007), BTA No. 2005-T-1464, unreported, appeal dismissed, Marion App. No. 9-07-37, 2008-Ohio-2496. See, also, *Tetlak v. Bratenahl* (2001), 92 Ohio St.3d 46, at 51, 2001-Ohio-129. Cf. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. In this regard, we will determine the weight and credibility to be accorded the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

Panther argues that the specific use of the word "tax" within the list of items included in R.C. 4921.25 requires a finding that any municipal tax (with the exception of general property tax) cannot be imposed upon a motor transportation company. The Tax Administrator, however, argues that income taxes may be imposed against a motor transportation company, because R.C. 4921.25 must be read in conjunction with other provisions within Chapter 4921. The administrator argues that the "taxes" assessed in Chapter 4921 are licensing fees, and, as such, only similar license fees are improperly assessed against a motor transportation company. The administrator also argues that only the specific types of income listed in R.C. 718.01 are exempt from municipal taxation.

There is no case law which directly addresses the R.C. 4921.25 preemption. There are, however, some basic statutory construction precepts which are relevant. The first is that in determining how to apply a statute, a tribunal's "paramount concern is the legislative intent in enacting the statute." *State ex rel. Steele v. Morrissey*, 103 Ohio St.3d 355, 2004-Ohio-4960. ¶ 21; *Dirksen v. Green Cty. Bd. of Revision*, 109 Ohio St.3d 470, 2006-Ohio-2990; *State v. Hairston*, 101 Ohio St.3d 308, 2004-Ohio-969.

Legislative intent is first to be sought from the language employed. "[I]f the words be free from ambiguity and doubt, and express plainly, clearly, and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation." *Singluff v. Weaver* (1902), 66 Ohio St. 621, paragraph two of the syllabus.

In the present appeal, we find the language of the statute to be clear. R.C. 4921.25 specifically states that the fees and charges imposed under R.C. 4921.18 are in addition to all other taxes imposed by other sections of the Revised Code, except for assessments required by R.C. 4905.10. Therefore, R.C. 4921.25 recognizes that a motor transportation company is responsible to the state for taxes imposed by law.

However, as to municipal corporations (i.e., cities), townships, and counties, governmental entities which are also constitutionally authorized to impose taxes upon their residents, the General Assembly expressly limits the taxes applicable to motor transportation companies. R.C. 4721.25 specifically exempts such

is the triggering event that causes R.C. 4721.25 to be applicable to Panther's municipal income tax obligations. The evidence at hearing, as well as the Tax Administrator's finding that Panther was a motor transportation company, is sufficient for this board to conclude that R.C. 4721.25 is applicable.

Finally, the Tax Administrator argues that Panther has failed to produce evidence of a constitutional violation. The Tax Administrator is correct in his argument that this board does not have the authority to reach constitutional claims, but instead serves as a receiver of evidence regarding such claims. *MCI Telecommunications Corp. v. Limbach* (1994), 68 Ohio St.3d 195. However, in this case, the board finds that R.C. 4721.25 provides the exemption from municipal taxation. Therefore, any constitutional claims are rendered moot.

As a result, this board concludes that Panther is correct in its claim that Seville unlawfully collected gross receipts taxes for tax years 2005 and 2006. Therefore, the determination of the Tax Administrator is hereby reversed.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.


Sally F. VanMeter, Board Secretary

LAW

The appellant argues that Title 49 of the Ohio Revised Code, particularly O.R.C. §4921.25, precludes a local municipal net profit tax from being imposed on a transportation company governed by O.R.C. Title 49 and under the jurisdiction of the PUCO. In support of this argument, the appellant points to the language of O.R.C. §4921.25. O.R.C. §4921.25 provides as follows:

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.* 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.
(Emphasis added).

Relying upon the foregoing highlighted language, the appellant claims that a local municipality's net profit tax is illegal, as it is a tax exacted by a municipal corporation in contravention of this statutory provision. However, the appellant's reading of the statute in question is too restrictive, and fails to recognize the purpose behind Title 49, Chapter 21 of the Ohio Revised Code, to-wit: the establishment of the PUCO's jurisdiction over motor transportation companies for the supervision, regulation, and taxation of motor carrier vehicles (as set forth in the Preamble to H.B. 474, enacted in 1923, the precursor to O.R.C. §4921, et seq.⁵), as opposed to a local municipality's exercise of supervision or regulation of motor carrier vehicles, or a municipality's

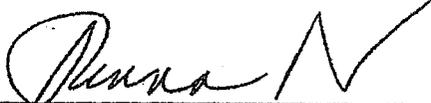
⁵ See, attachment to Appellant's Memorandum of March 19, 2008.

taxation of motor carrier vehicles. As noted by the Tax Administrator in the Final Administrative Ruling of December 28, 2007, which analysis is adopted herein, at page 2:

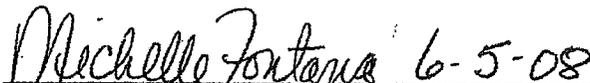
* * * Section 4921.25 only prohibits municipalities from imposing taxes, fees and charges relating to licensing, registering or regulation of entities covered by that Section that may conflict with the rules and regulations of the PUCO. Because the net profits tax does not relate to licensing, registering or regulation, no conflict with state law exists. State law only prohibits municipalities from levying a tax on income the same as or similar to the public utilities gross receipts excise tax imposed under Title 57 of the Revised Code. Since the tax levied under Section 4921.18 is not of that type, nothing prohibits the Village of Seville from levying its income tax.

The Board further notes that O.R.C. §718.01(D)(1) does not allow a municipality to exempt from a tax on income compensation for the net profit from a business or profession. This statute specifically obliges the Village of Seville to impose a net profit tax on appellant.

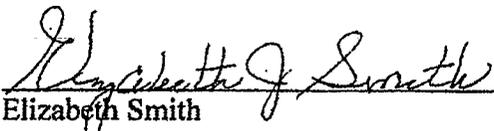
For the reasons noted herein, and for the reasons noted in the Final Administrative Ruling of December 28, 2007, the Village of Seville Board of Income Tax Review hereby AFFIRMS said decision denying the appellant's appeal.

 6/05/08

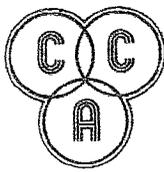
Glenn M. Roberts, Chair

 6-5-08

Michelle Fontana



Elizabeth Smith



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December 28, 2007

Mr. William G. Nolan
State and Local Tax Services
Ernst & Young LLP
Suite 1300
925 Euclid Avenue
Cleveland, Ohio 44115

Re: Panther II Transportation, Inc.
Taxpayer Id. No. 34-1711719
Taxable Years 2005-2006

Dear Mr. Nolan:

In response to your request on behalf of the referenced Taxpayer, this Final Administrative Ruling is hereby issued, denying Taxpayer's appeal of Tax Auditor decisions in all respects for the relevant tax years.

This Ruling is based solely upon and limited to the tax matters outlined in the Notice of Appeal dated August 16, 2007 and is released to you in accordance with the executed Power-of-Attorney on file with this office.

No opinion is expressed nor may an opinion be implied or otherwise construed to have been issued concerning tax matters not raised in the Notice of Appeal and not disclosed on the Taxpayer's filed returns or in previous correspondence for the relevant tax years. To the extent that omitted facts exist which would alter, change or otherwise modify the conclusions reached in this Ruling, no opinion is expressed nor may an opinion be implied or otherwise construed to exist with respect to those omitted facts or the impact of those omitted facts upon this Ruling.

The Issue Of State Implied Preemption Of A Municipality's Authority To Tax Has Long Been Settled And Only An Affirmative Express Act Of The General Assembly Or A Municipality's Own Income Tax Ordinance Can Limit That Authority.

The adjustments at issue concern denial of Taxpayer's request for refunds for TY2005-2006.

MEMBERS

Ada	Bradner	Cleveland	Geneva on the Lake	Limdale	Metamora	North Baltimore	Orwell	Rock Creek	Timberlake
Alger	Bratenahl	Creston	Grand Rapids	Madison	Middlefield	North Perry	Painesville	Rocky River	Wadsworth
Andover	Burton	Cridersville	Grand River	Medma	Munroe Falls	North Randall	Paulding	Russells Point	Warrensville Hts
Antwerp	Cairo	Elida	Highland Hills	Mentor	New Franklin	Norton	Perinsula	Seville	Willoughby
Barberton	Chardon	Gates Mills	Liberty Center	Mentor on the Lake	Northfield	Village of Oakwood	Perry	South Russell	Willoughby Hi**

At all relevant times, Taxpayer was located in and conducted business in the Village of Seville.

On March 5, 2007, you filed a request for refund on behalf of the Taxpayer in the amount of \$161,761, representing all net profit tax paid during TY2005-2006.

In the request for refund, you claimed that Taxpayer is a transportation company authorized to engage in highway transportation by (among other things) the Public Utilities Commission of Ohio ("PUCO"). You argued that Revised Code Section 4921.25 specifically preempts a local net profits tax on motor carriers subject to the tax imposed under Section 4921.18, therefore, Taxpayer was entitled to a refund.

The request for refund was correctly denied.

In denying the refund, it was explained that Section 4921.25 only prohibits municipalities from imposing taxes, fees and charges relating to licensing, registering or regulation of entities covered by that Section that may conflict with the rules and regulations of the PUCO. Because the net profits tax does not relate to licensing, registering or regulation, no conflict with state law exists. State law only prohibits municipalities from levying a tax on income the same as or similar to the public utilities gross receipts excise tax imposed under Title 57 of the Revised Code. Since the tax levied under Section 4921.18 is not of that type, nothing prohibits the Village of Seville from levying its income tax.

Revised Code Section 4921.25 titled "Fees and charges" states that:

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.

Section 4921.18 imposes an annual tax on each *vehicle* used by a motor transportation company that has been issued a PUCO certificate of public convenience and necessity. Likewise, Section 4921.10 provides that no motor transportation company shall commence operation without first obtaining such certificate of public convenience and necessity. Monies generated by Section 4921.18 are used for highway maintenance and repairs and to cover administrative expenses of the PUCO.

Despite your assertions to the contrary, there is no question that the purpose of Section 4921.18 is to levy a *license fee* and Section 4921.25 provides that the 4921.18 tax is in addition to all other license taxes, fees and charges imposed by other sections of the Revised Code. No reasonable reading of the Statute could lead to any other conclusion.

By its very definition, the term "license fee" requires payment of some fee as a prerequisite to engaging in the activity in question. Here, whenever a PUCO certificate has been issued, motor transportation companies are required to pay the tax under Section 4921.18 on each vehicle used by the company and no company can begin operation before the certificate is issued.

Exhibits attached to your Notice of Appeal also reveal what the Section 4921.18 tax is attributable to. Some Exhibits are copies of PUCO "Application for *Registration of Motor Carriers*" (emphasis added), others are PUCO "Annual Tax Form[s]" showing the number of vehicles being registered, while still others are copies of checks payable to PUCO "Motor Carrier *Reg[istration]* Division" paying the tax. These Exhibits show that Taxpayer paid the Section 4921.18 tax to *register* vehicles used by it in its business as a motor transportation company pursuant to PUCO regulations and requirements.

Consequently, the Statute states and does exactly what the General Assembly intended it to do, namely, impose a license fee on motor transportation companies that have been issued PUCO certificates of public convenience and necessity.

In the Notice of Appeal you reach other conclusions.

You essentially argue that by enacting Section 4921.25, the General Assembly intended to preempt all other local tax of whatever nature (except the general property tax) from being levied on entities covered by that Section.

You reach that conclusion by claiming that (i) nothing in Section 4921.25 states that it is limited to taxes, fees and charges the same as or similar to those imposed by the PUCO; (ii) since Section 4921.25 permits the general property tax, which tax does not relate to licensing, registering or regulation, the General Assembly intended the word "taxes" to be broadly defined and include all other tax; and (iii) even though Section 4921.25 permits taxes imposed by other sections of the Revised Code, since a municipal income tax is not imposed by a section of the Revised Code but rather pursuant to its home-rule authority, it cannot be levied.

Your analysis is not correct.

Chapter 4921 grants the PUCO regulatory power over motor transportation companies under Section 4921.04 of the Revised Code including (among other things) the power to fix and regulate rates, regulate service and safety, designate routes, etc. Under Section 4921.04(H), the PUCO is authorized to prescribe rules and regulations affecting motor transportation companies notwithstanding that municipalities are permitted to regulate and license such companies within their borders as well under Sections 715.22 and 715.66 of the Revised Code. In the event of a conflict, the rules and regulations of the PUCO shall control but even then, motor transportation companies remain subject to reasonable police regulations within a municipality's borders.

You claim that since nothing in Section 4921.25 states that it is limited to taxes, fees and charges relating to licensing, registering or regulation the same as or similar to those imposed by the PUCO, the Statute is not so limited.

The Statute however must be read in context with the entire Chapter.

Chapter 4921 deals with the power of the PUCO to supervise, license and regulate motor transportation companies. When read in context with the entire statutory scheme, it is clear that Section 4921.25 is limited to imposing taxes, fees or charges dealing with the licensing, registering and regulation of motor transportation companies that may conflict with similar taxes, fees or charges levied by the PUCO.

You also argue that since Section 4921.25 permits the general property tax, all other tax must be prohibited. You then state that because the general property tax does not relate to licensing, registering or regulation, the General Assembly intended the word "taxes" to be broadly defined to include all local tax of whatever nature.

Unfortunately, it appears that you have read into the Statute that which simply does not exist.

It seems clear why the phrase "except the general property tax" was included. It was included because even though the tax levied under Section 4921.18 is measured by and imposed on each motor *vehicle* used by a motor transportation company, it remains a *license fee*.

It is well-settled that a "property tax" must be based on the true value in money of the property; whereas a tax on a "privilege" must be based on the reasonable value of the privilege. The privilege in this case is the issuance of a PUCO certificate of public convenience and necessity which is required *before* a "motor transportation company" can operate.

This explains why the tax is either \$30 or \$20 per vehicle—it is measuring the value of the privilege not the value of the property itself. This also explains why Section 4921.25 specifically refers to Section 4503.04. Chapter 4503 deals with registering and licensing of motor vehicles and it too authorizes certain vehicle license taxes. And while Section 4921.25 is specifically limited to motor transportation companies issued a PUCO certificate, Section 4503.04 is not so limited.

So despite arguments to the contrary, the "except the general property tax" phrase does not demonstrate that all other tax is prohibited but rather, simply makes clear that the Section 4921.18 tax is not a property tax but a license tax.

Finally, you contend that even though Section 4921.25 permits taxes imposed by other sections of the Revised Code since a municipal income tax is not imposed by the Revised Code but rather pursuant to a municipality's home-rule authority, it is prohibited.

You reach that conclusion by focusing on language in Section 4921.25 that states "[t]he 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."

It seems clear that you have interpreted the language to mean that the power to tax and the power to regulate though license, is the same.

Again, your analysis is wrong.

"Exactions" are fees (not a tax) where the amount collected goes to cover the expense of issuing a license. It simply cannot be disputed that *licensing and regulating* are exercises of police power whereas levying a *tax*, is an exercise of taxing power.

Section 4921.25 is titled "Fees and charges." The first part of the Statute states that the Section 4921.18 fees and charges are "in addition to" other fees and charges *exacted* by other sections of the Revised Code. The second part states that fees and charges *exacted* by local authorities including municipalities are superseded by Section 4305.04 and other sections. As noted earlier, Chapter 4503 deals with registering and licensing of motor vehicles. So any argument that the Section 4921.25 language dealing with local authorities extends to more than licensing or registering fees *exacted* by them is simply not a reasonable or logical interpretation of the Statute.

To accept your argument, one would have to believe that even though the first part of the Statute is limited to fees dealing with licensing, registering or regulation, the second part dealing with local authorities is not limited at all, even though it too qualifies what is prohibited by using the word "exacted" again. Clearly, your suggestion is that the second use of the word "exacted" should simply be ignored.

The Agency declines to ignore the plain language of the Statute.

Any attempt to compare license "exactions" to an "income tax" is akin to comparing apples to oranges—the two are not the same and simply stating that they are, is of absolutely no consequence.

Moreover, it is well-settled that a municipality's authority tax may only be limited by an affirmative express act of the General Assembly or the municipality's own income tax ordinance.

Revised Code Sections 715.013 and 718.01(F) are both affirmative express acts of the General Assembly limiting a municipality's authority to tax. Section 715.013 states, in part, that:

(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 ... 5727 ... of the Revised Code.

Chapter 5727 deals with the public utilities gross receipts excise tax. Likewise, Section 718.01(F) states, in part, that:

(F) A municipal corporation shall not tax any of the following:

...
(6) The income of a public utility *when* that public utility is subject to the public utilities excise tax under section 5727.24 or 5727.30 of the Revised Code[.]

...
(Emphasis added.) Section 5727.24 levies the public utilities gross receipts excise tax on natural gas companies, while Section 5727.30 levies the tax on all other "public utilities" (except railroad companies) defined in Section 5727.01. Section 5727.01 states that:

As used in this chapter:

(A) Public utility means each person referred to as a telephone company, telegraph company, electric company, natural gas company, pipe-line company, water works company, water transportation company, heating company or rural electric company or railroad company.

Since the plain language of Sections 715.013 and 718.01(F)(6) only prohibits a municipality from taxing the income of a public utility *when* that public utility is subject to the public utilities gross receipts excise tax imposed under Title 57, absolutely nothing prohibits Seville from levying its tax.

Nothing in Chapter 5727 states, implies or otherwise even suggests that a "motor transportation company" is a "public utility" for purposes of the public utilities gross receipts excise tax. Nor have you ever alleged that Taxpayer is subject to the public utilities gross receipts excise tax under Title 57.

It is completely irrelevant that a "motor transportation company" is included in Title 49 Public Utilities Statutes. It is well-settled that statutory definitions given to the

term "public utility" in other chapters of the Revised Code are relevant solely to the chapter in which they are located.

So contrary to your assertions, Section 4921.25 simply does not represent an affirmative express act of the General Assembly preventing a municipality from levying its income tax.

The same is true with regard to Seville's Income Tax Ordinance—nothing in the Ordinance prohibits Seville from levying the net profit tax or requiring Taxpayer to file net profit tax returns.

There is no question that at all relevant times, Taxpayer was located in and conducted business in the Village of Seville.

According to filed tax returns, from January 1, 2005 through June 8, 2005, Taxpayer operated as an S corporation until that election was revoked effective June 9, 2005. As a result, for tax year 2005, Taxpayer filed two net profit tax returns, one for the short S corporation tax year from January 1, 2005 through June 8, 2005 and one for the C corporation tax year from June 9, 2005 through December 31, 2005. For tax year 2006, Taxpayer operated as a C corporation.

As you know, Seville Codified Ordinance ("C.O.") §2:03(A) levies a tax on the net profits of unincorporated business entities derived from business or other activities conducted within the Village and C.O. §5:01(A) requires those entities to file net profit tax returns. Likewise, CCA Article 3:03(A) provides that a municipality's tax is imposed on unincorporated entities conducting business or other activities within a municipality and CCA Article 7:01(A) requires those entities to file net profit tax returns as well. Under CCA Article 2:42, S corporations are specifically included in the definition of "unincorporated businesses" for purposes of Seville's net profits tax.

The same is true for corporations. Seville C.O. §2:05(A) imposes its income tax on the net profits of a corporation derived from business or other activities conducted within the Village and corporations are required to file net profit tax returns under C.O. §5:01(A). Similarly, CCA Article 3:07(A) states that a municipality's income tax is imposed on the net profits of a corporation derived from business or other activities conducted within a municipality and Article 7:01(A) requires corporations subject to the tax to file net profit tax returns.

So whether Taxpayer operated as an S corporation or C corporation, under Seville's Ordinance, all net profits derived from activities conducted within its borders are subject to tax and Taxpayer is required to file net profit tax returns.

Furthermore, under Revised Code Section 718.01(D)(1), state law provides that "no municipal corporation shall exempt from a tax on income ... the net profit from a business or profession." Consequently, not only does Seville have the authority to tax the income at issue, the state legislature has specifically declared that it has an *obligation* to do so.

Here, it is clear that Taxpayer is seeking an exemption from taxation. Whenever taxpayers claim an exemption or exclusion from tax, the claimed exemption or exclusion is strictly construed against the taxpayer. Inasmuch as neither state law, Seville's Income Tax Ordinance nor the Central Collection Agency's Rules and Regulations exempt Taxpayer from the net profits tax or from filing net profit tax returns, Taxpayer is required to pay all tax due and file tax returns in accordance with Seville's Ordinance.

Therefore, the Agency properly denied Taxpayer's requests for refunds.

For all of the foregoing reasons, the appeal filed on behalf of the Taxpayer is denied in all respects.

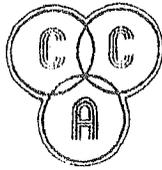
Insofar as this letter constitutes a Final Administrative Ruling issued by the Tax Administrator on all issues raised in the August 16, 2007 Notice of Appeal, Taxpayer has the right to appeal this Final Administrative Ruling to the Village of Seville Board of Income Tax Review, in accordance with the procedures outlined in the Village of Seville Income Tax Ordinance, applicable CCA Rules and Regulations and Section 718.11 of the Revised Code.

Sincerely,



Nassim M. Lynch,
Tax Administrator

cc: Karen A. Lucas, Clerk-Treasurer, Village of Seville
✓ Theodore J. Lesiak, Village of Seville Solicitor
Mr. Robert Meaker



CENTRAL COLLECTION AGENCY
DIVISION OF TAXATION

205 W. Saint Clair Ave.
Cleveland, OH 44113-1503

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Telephone (216) 664-2070

Toll Free (in Ohio) 1-800-223-6317

Fax (216) 420-8299

August 2, 2007

Mr. William G. Nolan
State and Local Tax Services
Ernst & Young LLP
Suite 1300
925 Euclid Avenue
Cleveland, Ohio 44115

Re: Panther II Transportation, Inc.
Taxpayer Id. No. 34-1711719
Taxable Years 2005-2006

Dear Mr. Nolan:

We have reviewed the requests for refund dated March 5, 2007 filed on behalf of the referenced Taxpayer. Those requests are denied.

You rely on Sections 4921.18(A) and 4921.25 of the Revised Code as authority for requesting the refunds. Your position is that Section 4921.25 (referred to as Section 4921.18 in the requests) specifically preempts the net profits tax since Taxpayer is required to pay certain taxes, fees and charges prescribed by the public utilities commission. That position is incorrect.

Section 4921.25 only prohibits municipalities from imposing taxes, fees and charges relating to licensing, registering or regulation of entities covered by that provision that may conflict with the rules or regulations prescribed by the public utilities commission. Because the net profits tax does not relate to licensing, registering or regulation, no conflict with state law exist. Moreover, municipalities are only prohibited from levying a tax on income the same as or similar to the public utilities gross receipts excise tax imposed under Title 57 of the Revised Code. Since the tax under Sections 4921.18(A) and 4921.25 is not of that type, absolutely nothing prohibits the Village of

MEMBERS

via	Bradner	Cleveland	Geneva on the Lake	Lindale	Metamora	North Baltimore	Orwell	Rock Creek	Timberlake
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Andover	Barton	Cridersville	Grand River	Medina	Munroe Falls	North Randall	Paulding	Russells Point	Warrensville Hts
Amwesp	Cairo	Elida	Highland Hills	Mentor	New Franklin	Norton	Peninsula	Seville	Willoughby
Amerton	Chardon	Gates Mills	Liberty Center	Mentor on the Lake	Northfield	Village of Oakwood	Perry	South Russell	Willoughby Hills

Mr. William G. Nolan
August 2, 2007
Page 2

Seville from levying its income tax in this case. Consequently, Taxpayer remains required to file net profit tax returns and pay tax due in accordance with the Village's income tax ordinance.

Sincerely,



Robert G. Meaker,
Chief, CCA Audit Department
City of Cleveland

cc: Karen A. Lucas, Clerk-Treasurer
Theodore J. Lesiak, Solicitor ✓

O Const XII Sec. 3 Estate and inheritance taxes; income taxes; excise and franchise taxes

Laws may be passed providing for:

(A) The taxation of decedents' estates or of the right to receive or succeed to such estates, and the rates of such taxation may be uniform or may be graduated based on the value of the estate, inheritance, or succession. Such tax may also be levied at different rates upon collateral and direct inheritances, and a portion of each estate may be exempt from such taxation as provided by law.

(B) The taxation of incomes, and the rates of such taxation may be either uniform or graduated, and may be applied to such incomes and with such exemptions as may be provided by law.

(C) Excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas, and other minerals; except that no excise tax shall be levied or collected upon the sale or purchase of food for human consumption off the premises where sold.

CREDIT(S)

(1976 HJR 15, adopted eff. 6-8-76)

O Const XII Sec. 9 Apportionment of income, estate and inheritance taxes

Not less than fifty per cent of the income, estate, and inheritance taxes that may be collected by the state shall be returned to the county, school district, city, village, or township in which said income, estate, or inheritance tax originates, or to any of the same, as may be provided by law.

CREDIT(S)

(1976 HJR 14, am. eff. 6-8-76; 113 v 798, am. eff. 11-4-30; 1912 constitutional convention, adopted eff. 1-1-13)

O Const XIII Sec. 6 Organization of municipal corporations; limitations on power to tax and contract debts

The general assembly shall provide for the organization of cities, and incorporated villages, by general laws; and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power.

CREDIT(S)

(1851 constitutional convention, adopted eff. 9-1-1851)

O Const XVIII Sec. 3 Municipal powers of local self-government

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.

CREDIT(S)

(1912 constitutional convention, adopted eff. 11-15-12)

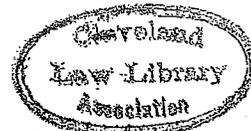
O Const XVIII Sec. 13 Laws limiting municipal power to tax and incur debts; financial reports; audits

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.

CREDIT(S)

(1912 constitutional convention, adopted eff. 11-15-12)

THE STATE OF OHIO



LEGISLATIVE ACTS

PASSED

Tax Admin
EXHIBIT
A

AND

JOINT RESOLUTIONS

Adopted

BY THE

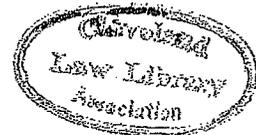
EIGHTY-FIFTH GENERAL ASSEMBLY

At Its Regular Session

BEGUN AND HELD IN THE CITY OF COLUMBUS,
JANUARY 1, 1923

45008.

VOLUME CX



Springfield, Ohio:
The Kelly-Springfield Printing Co.
State Printers.
1923

purposes, such part of the real property of such school district, located in the village of London, county of Madison, state of Ohio, as may not be necessary for school purposes, together with an easement over other land of such board of education for proper egress and ingress to such armory site. The site so transferred shall be first approved by the adjutant general of Ohio, and the deed transferring such site shall be subject to the approval of the attorney general.

H. H. GRISWOLD,
Speaker of the House of Representatives.

EARL D. BLOOM,
President of the Senate.

Passed April 6, 1923.

Filed in office of Secretary of State, April 27, 1923.

I hereby certify that the foregoing is a true copy of the engrossed bill.

THAD H. BROWN,
Secretary of State.

This bill was presented to the Governor, April 14th, 1923, and was not signed or returned to the house wherein it originated within ten days after being so presented, exclusive of Sundays and the day said bill was presented, and was filed in the office of the Secretary of State April 27, 1923.

PRICE RUSSELL,
Veto Clerk

[House Bill No. 474.]

AN ACT

To amend section 614-2 and section 6292 of the General Code, and to enact supplemental sections 614-84, 614-85, 614-86, 614-87, 614-88, 614-89, 614-90, 614-91, 614-92, 614-93, 614-94, 614-95, 614-96, 614-97, 614-98, 614-99, 614-100, 614-101 and 614-102 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 the provisions of this act and for the punishment of violations thereof, and providing for the taxing of motor propelled vehicles.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 614-2 and section 6292 of the General Code be amended and that supplemental sections 614-84, 614-85, 614-86, 614-87, 614-88, 614-89, 614-90, 614-91, 614-92, 614-93, 614-94, 614-95, 614-96, 614-97,

This act is not of a general and permanent nature and requires no sectional number.
C. C. CRABBE,
Attorney General.

614-98, 614-99, 614-100, 614-101 and 614-102 be enacted to read as follows:

Sec. 614-2. The following words and phrases used in this act unless the same is inconsistent with the text shall be construed as follows:

Definition
of terms.

The term "commission" when used in this act, or in chapter one, division two, title three, part first of the General Code and the acts amendatory or supplementary thereto means "The Public Utilities Commission of Ohio."

The term "commissioner" means one of the members of such commission.

Any person, or persons, firm or firms, co-partnership or voluntary association, joint stock association, company or corporation, wherever organized or incorporated:

When engaged in the business of transmitting to, from, through or in this state, telegraphic messages, is a telegraph company;

When engaged in the business of transmitting to, from, through or in this state, telephonic messages, is a telephone company and as such is declared to be a common carrier;

When engaged in the business of carrying and transporting persons or property or both, in motor propelled vehicles of any kind whatsoever, for hire, over any public street, road or highway in this state except as herein-after provided in section 614-84, is a motor transportation company and as such is declared to be a common carrier. The term "motor propelled vehicle" when used in this chapter means any automobile, automobile truck, motor bus, or any other self-propelled vehicle not operated or driven upon fixed rails or track;

When engaged in the business of supplying electricity for light, heat or power purposes to consumers within this state, is an electric light company;

When engaged in the business of supplying artificial gas for lighting, power or heating purposes to consumers within this state, is a gas company;

When engaged in the business of supplying natural gas for lighting, heating or power purposes to consumers within this state, is a natural gas company;

When engaged in the business of transporting natural gas or oil through pipes or tubing, either wholly or partly within this state, is a pipe line company;

When engaged in the business of supplying water through pipes or tubing, or in a similar manner to consumers within this state, is a water works company;

When engaged in the business of supplying water, steam or air through pipes or tubing to consumers within this state for heating or cooling purposes, is a heating or cooling company;

When engaged in the business of supplying messengers for any purpose, is a messenger company;

When engaged in the business of signalling or calling ^{Definitions.} by an electrical apparatus, or in a similar manner, for any purpose, is a signalling company;

When engaged in the business of operating, as a common carrier a railroad, wholly or partly within this state with one or more tracks upon, along, above or below any public road, street, alley way or ground, within any municipal corporation, operated by any motive power other than steam, and not a part of an interurban railroad, whether such railroad be termed street, inclined plane, elevated, or underground railroad, is a street railroad company;

When engaged in the business of operating as a common carrier whether wholly or partially within this state, a part of a street railway constructed or extended beyond the limits of a municipal corporation, and not a part of an interurban railroad is a suburban railroad company;

When engaged in the business of operating a railroad, wholly or partially within this state, with one or more tracks from one municipal corporation or point in this state to another municipal corporation or point in this state, whether constructed upon the public highways or upon private rights-of-way, outside of municipalities, using electricity or other motive power than animal or steam power for the transportation of passengers, packages, express matter, United States mail, baggage and freight, is an interurban railroad company, and included in the term "railroad" as used in section 501 of the General Code. The term "railroad," when used in this act, includes all railroads, interurban railroad companies, express companies, freight line companies, sleeping car companies, equipment companies, car companies, water transportation companies, and all persons and associations of persons, whether incorporated or not, operating such agencies for public use in the conveyance of persons or property within this state.

Sec. 614-84. (a) The term "corporation", used in this chapter, means a corporation, a company, an association or a joint stock association.

(b) The term "person", when used in this chapter, means an individual, a firm or co-partnership.

(c) The term "motor transportation company," when used in this chapter, means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any motor propelled vehicle not usually operated on or over rails, used in the business of transportation of persons or property or both, as a common carrier for compensation, over any public highway in this state; provided, however, that the term "motor transportation company" as used in this chapter shall not include any person or persons, firm or firms, co-partnership or voluntary association, joint stock association, company or cor-

Definitions.

poration, wherever organized or incorporated, in so far as they own, control, operate or manage a motor vehicle or motor vehicles used exclusively for the transportation of property and which are operated exclusively within the limits of a municipal corporation, and municipal corporations contiguous thereto, or in so far as they own, control, operate or manage taxicabs, hotel busses, school busses or sight-seeing busses, or busses owned and used exclusively in the promotion of city and suburban home development, or in so far as they own, control, operate or manage motor propelled vehicles, the major use of which is for the private business of the owners and the use of which for hire is casual or disassociated from such business.

(d) The term "public highway," when used in this chapter, means any public street, road or highway in this state, whether within or without the corporate limits of a municipality.

(e) The words "fixed termini" when used in this act shall be understood to refer to the points between which any motor transportation company usually or ordinarily operates or manages any motor propelled vehicle, and the words "regular route" shall be understood to refer to that portion of the public highway over which any motor transportation company usually or ordinarily operates or manages any motor propelled vehicle. Whether or not any motor propelled vehicle is operated by such motor transportation company "between fixed termini or over a regular route" within the meaning of this chapter shall be a question of fact and the finding of the commission thereon shall be a final order which may be reviewed as provided in section 614-89 of the General Code.

Motor vehicles.

Sec. 614-85. No corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, shall operate any motor propelled vehicle for the transportation of persons or property or both, for compensation, on any public highway in this state except in accordance with the provisions of this chapter.

Jurisdiction vested with "the public utilities commission."

Sec. 614-86. The public utilities commission of the state of Ohio is hereby vested with power and authority to supervise and regulate each such motor transportation company in this state; to fix, alter and regulate rates; to regulate the service and safety of operation of each such motor transportation company; to prescribe safety regulations, and designate stops for service and safety on established routes; to require the filing of annual and other reports and of other data by such motor transportation companies; to provide uniform accounting systems; and to supervise and regulate motor transportation companies in all other matters affecting the relationship between such companies and the public to the exclusion of all local authorities in this state. The commission, in the exercise of the jurisdiction conferred upon it by this chapter, shall

Scope of jurisdiction.

have the power and authority to prescribe rules and regulations affecting such motor transportation companies, notwithstanding the provisions of any ordinance, resolution, license or permit heretofore enacted, adopted or granted by any incorporated city or village, city and county, or county, and in case of conflict between any such ordinance, resolution, license or permit, the order, rule or regulation of the public utilities commission shall, in each instance prevail; provided that such local subdivisions may make reasonable local police regulations within their respective boundaries not inconsistent with the provisions of this chapter.

Sec. 614-87. No such motor transportation company shall begin to operate any motor propelled vehicle for the transportation of persons or property, or both, for compensation, between fixed termini or over a regular or irregular route in this state, without first obtaining from the public utilities commission a certificate declaring that public convenience and necessity require such operation. The commission shall have the power, after hearing, when the applicant requests a certificate to operate in a territory already served by a motor transportation company holding a certificate of public convenience and necessity from the commission, to grant a certificate only when the existing motor transportation company or companies serving such territory do not provide the service required or the particular kind of equipment necessary to furnish such service to the satisfaction of the commission, and in all other cases, with or without hearing, to issue such certificates as prayed for, or to refuse to issue the same, or to issue them for the partial exercise only of the privileges sought or to issue such certificates for the use of certain kinds of equipment and for the handling of certain kinds of material or merchandise over such routes, and may attach to the exercise of the rights granted by such certificates such terms and conditions as, in its judgment, the public convenience and necessity may require. Where a motor transportation company has been actually operating in good faith upon the date of filing this act in the office of the secretary of state, it shall file with the commission an affidavit showing its principal place of business, full information concerning the physical property, the route over which it has been operating, the schedule or schedules, together with a map of its route, showing the number of miles of route in each municipality and county into, through or along which such route runs or extends, a statement that it has been actually operating over such route or routes in good faith, together with the liability insurance policy or policies required under section 614-99 of the General Code, and thereupon a certificate of public convenience and necessity shall issue, if the commission shall find the statements in said affidavit to be true.

Conditions governing securing certificate of convenience and necessity.

Upon the payment of the fee provided under section 614-94 of the General Code to the commission, such motor transportation company may continue to operate and shall be governed in all respects as if such motor transportation company had made a written application.

The commission may at any time for a good cause suspend, and upon at least five days' notice to the grantee of any certificate and an opportunity to be heard, revoke, alter or amend any certificate issued under the provisions of this act.

Cancellation of
certificates.

On finding of the public utilities commission that any motor transportation company does not give convenient and necessary service in accordance with the order of such commission such motor transportation company shall be given a reasonable time, not less than sixty days, to provide such service before any existing certificate is cancelled or a new one granted over the route mentioned in the finding and order of or hearing before the public utilities commission.

Consent to
operate must be
first secured.

Sec. 614-88. Except as provided in section 614-84, no corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, shall operate any automobile, jitney, bus, truck, stage, auto stage, or rent for hire car, for the transportation of persons or property or both, for compensation, over any public street, road or highway in this state between fixed termini or over a regular or irregular route, over which any motor transportation company is operating under a certificate of convenience and necessity issued by the commission as provided in this act, until such corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, shall have secured a certificate of public convenience and necessity or permission from the commission to so operate, and then only in strict accordance with such rules as the commission may prescribe for such operation.

Applications
and complaints
made and filed
with commission.

Sec. 614-89. In all respects in which the public utilities commission has power or authority under this act, applications and complaints may be made and filed with such commission, processes issued, hearings held, opinions, orders and decisions made and filed, petitions for re-hearings filed and acted upon, and all proceedings before the supreme court of this state considered and disposed of by such court in the manner, under the conditions and subject to the limitations and with the effect specified in the sections of the General Code governing the supervision of other public utilities by the commission.

Rules governing
application for
certificates of
public conven-
ience and
necessity.

Sec. 614-90. The commission shall adopt rules prescribing the manner and form in which such motor transportation companies as defined in this act shall apply for the certificates of public convenience and necessity. Among other rules adopted there shall be the following:

(a) Application shall be made in writing on the blanks furnished by the commission and shall show the principal office or place of business and residence of such motor transportation company.

(b) Shall contain full information concerning the physical property used or to be used by the applicant.

(c) The complete route over which the applicant operates or desires to operate, showing the number of miles of said route in each municipality and county.

(d) The proposed time schedule or schedules or time cards of the applicant, if operating between fixed termini or over a regular route.

(e) The schedule or tariff showing the passenger or freight rates to be charged between the several points, if operating between fixed termini or over a regular route.

Sec. 614-91. Such application shall contain a map, showing the highway or highways and public places upon and over which such motor transportation company is to operate, and the number and kind of motor vehicles to be used in carrying on the business of such motor transportation company. The applicant shall give notice of the filing of such application by publication made once a week for three weeks immediately prior to the day set for said hearing, in a newspaper of general circulation published at the county seat of each county in or through which the applicant proposes to operate, or in one newspaper published in and of general circulation throughout the territory in or through which the applicant proposes to operate. Such published notice shall state the fact that such application has been made, the route proposed to be operated, the number of motor vehicles to be used, the number of trips to be made daily, and the name and address of the applicant. The commission shall, after the filing of such application, fix a date within thirty days for hearing upon the same, unless the commission in its discretion deems such hearing unnecessary and the best interests of the public require that said application be granted or rejected without such hearing. When a date for the hearing is fixed the commission shall give the applicant at least ten days' notice of such hearing. The applicant shall have the right, either before or after hearing or action by the commission to amend, modify or alter such application by filing with the commission an amendment to such application or a supplemental application which shall in turn be considered by the commission and be governed in the same manner as is provided in case of an original application.

Sec. 614-92. Except as otherwise expressly provided, it shall be unlawful for any motor transportation company as defined in this act to operate in this state on any route, other than the route provided for in the certificate granted by the commission; or to fail or refuse to operate on the whole of the route, in the manner and at the time specified

Publication
of notice of
application.

Hearing.

Operation
restricted to
specified routes.

in the certificate; except in case of emergency due to the act of God or unavoidable accident or casualty or the route becoming impassable, or in case it becomes necessary to make temporary detours; and it shall be unlawful for any such motor transportation company to neglect or refuse to comply with and obey any and all regulations and orders of the commission and other statutory laws and regulations of the state of Ohio governing and applying to such motor vehicles, provided, however, that nothing in this act shall prohibit a motor transportation company as defined hereunder and not operating between fixed termini from making casual trips over routes established hereunder.

New application
may be filed.

Sec. 614-93. Any motor transportation company as defined in this chapter may, at any time after a certificate is granted or refused, file a new application or supplement any former application, for the purpose of changing, extending or shortening the route, or increasing or decreasing the number of vehicles, or for the doing of any other act or thing which the applicant might be permitted to do under the general statutory laws and regulations of the state of Ohio.

Taxes paid to
treasurer of
state.

Sec. 614-94. Every motor transportation company now operating or which shall hereafter operate in this state shall at the time of the issuance of such certificate, and annually thereafter on or between January 1st and January 15th of each calendar year, pay to the treasurer of state the following taxes for the expense of the administration and enforcement of the provisions of sections 614-84 to 614-102 of the General Code, and for the maintenance and repair of the highways of the state; all taxes levied upon the issuance of a certificate to any motor transportation company shall be reckoned as from the beginning of the quarter in which such certificate is issued.

Rates.

For each motor propelled vehicle operating between fixed termini or over a regular route, carrying seven passengers or less, forty dollars; for each such motor propelled vehicle carrying more than seven but not more than twelve passengers, ninety dollars; for each such motor propelled vehicle carrying more than twelve but not more than eighteen passengers, one hundred and forty dollars; for each such motor propelled vehicle carrying more than eighteen but not more than twenty-four passengers, one hundred and eighty dollars; and for each such motor propelled vehicle carrying more than twenty-four passengers, two hundred and thirty dollars.

Rates.

For each motor propelled vehicle not operating between fixed termini or over a regular route, carrying seven passengers or less, twenty dollars; for each such motor propelled vehicle carrying more than seven but not more than twelve passengers, fifty dollars; for each such motor propelled vehicle carrying more than twelve but not more than eighteen passengers, ninety dollars; for each such

motor propelled vehicle carrying more than eighteen but not more than twenty-four passengers, one hundred and fifteen dollars; and for each such motor propelled vehicle carrying more than twenty-four passengers, one hundred and fifty dollars.

For each motor propelled vehicle used for transporting property between fixed termini or over a regular route the manufacturer's rated carrying capacity of which is one and three-fourths tons or less, forty dollars; for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than one and three-fourths tons but not more than two and one-half tons, eighty dollars; for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than two and one-half but not more than three and one-half tons, one hundred and forty dollars; and for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than three and one-half tons, two hundred dollars.

Rates.

For each motor propelled vehicle used for transporting property not between fixed termini or over a regular route the manufacturer's rated carrying capacity of which is one and three-fourths tons or less, twenty dollars; for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than one and three-fourths but not more than two and one-half tons, fifty dollars; for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than two and one-half but not more than three and one-half tons, one hundred dollars; and for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than three and one-half tons, one hundred and fifty dollars.

Rates.

For each motor propelled vehicle used by any such company for transporting both persons and property simultaneously the tax shall be computed on the basis of either tonnage or passenger capacity and the basis which yields the greater revenue shall apply.

A trailer used by a motor transportation company hereunder shall be taxed at a rate equal to twenty per cent of that levied upon the vehicle by which it is drawn.

Trailer.

In case of emergency, or unusual temporary demands for transportation, the taxes for additional motor propelled vehicles for limited periods shall be fixed by the commission in such reasonable amounts as may be prescribed by general rule or temporary order.

Sec. 614-95. The treasurer of state shall open an account with each municipal corporation and county into, through or along which the route of each such motor transportation company runs or extends, and shall apportion fifty per cent of the taxes imposed by section 614-94 in

Division of tax.

accordance with the lineal miles of route in each municipal corporation and county. The remaining fifty per cent of such taxes shall belong to the state of Ohio and shall be paid into the state treasury to the credit of the state maintenance and repair fund.

Duties of treasurer of state with regard to taxes.

The treasurer of state shall be the custodian of such funds and shall disburse the same in the manner provided in section 614-96 of the General Code. The treasurer of state is hereby authorized to deposit any portion of the funds due municipal corporations and counties into, through or along which the route runs or extends, not needed for immediate distribution, in the same manner and subject to all the provisions of law with respect to the deposit of active state funds by such treasurer; and all interest earned by such funds so deposited shall be collected by him and placed in the state treasury to the credit of the "state maintenance and repair fund." On the first business day of each month, the auditor of state on the requisition of the treasurer of state shall draw and transmit to the auditor of each county a warrant on the treasurer of state for the amount of the tax collections apportioned to the municipal corporations and counties into, through or along which the route of such motor transportation company runs and extends, accompanying the same with a statement showing the distribution of the amount represented thereby to each such municipal corporation or county. The county auditor shall certify the amount so transmitted into the county treasury to be disposed of as herein provided.

Sec. 614-96. The revenue collected under the provisions of section 614-94 of the General Code shall be distributed as follows:

Distribution of revenue.

(1) Fifty per centum of all taxes collected under section 614-94 of the General Code shall be for the use of the municipal corporations or counties into, through and along which the route of such motor transportation company runs and extends. Such moneys shall be paid into the treasury of the proper county as provided herein and the proper portions distributed to the municipal corporations in accordance with the miles of route in such municipal corporation. In the treasuries of such municipal corporations and counties, such money shall constitute a fund which shall be used for the maintenance and repair of public roads, highways and streets and for no other purpose, and shall not be subject to transfer to any other fund. "Maintenance and repair" as used in this section includes all work done upon any public road or highway or upon any street, in which the existing foundation thereof is used as the sub-surface of the improvement thereof, in whole or in substantial part.

(2) The "state maintenance and repair fund" shall be available for the use of the public utilities commission

of Ohio in defraying the expenses incident to maintaining the bureau of the department for carrying out and enforcing the provisions of sections 614-84 to 614-102, inclusive, of the General Code, including the payment of salaries, traveling expenses, printing and other expenses, and for the use of the director of highways and public works in the manner provided by law. The General Assembly shall make appropriations therefrom for such purpose.

Sec. 614-97. It shall be unlawful for any motor transportation company as defined in this chapter to cause, allow or permit any motor propelled vehicle operated by it as a motor transportation company to be driven by any person under the age of twenty-one years; and such person shall be an American citizen and shall be skilled in the art of driving such public motor vehicle, and without physical disabilities or personal habits which would disqualify him or make him an unsuitable person to serve as driver of such public motor vehicle.

For the purpose of determining the qualifications of such chauffeur or driver, the secretary of state shall be governed by section 6302 of the General Code, in so far as the same may be applicable. Upon the issuance of the certificate to drive, the applicant shall pay the registration fee and no further fee shall be charged or examination required by the state or any local authorities in the state. The term "local authorities" as used herein means all officers, boards and commissions of counties, cities, villages or townships. In case of sickness, accident or other emergency, any other licensed driver may be substituted.

Sec. 614-98. The fees and charges provided under section 614-94 of the General Code shall be in addition to taxes, fees and charges fixed and exacted by other provisions of the general laws of Ohio; except the assessments required by section 606 of the General Code, but all fees, license fees, annual payments, license tax, or taxes or other money exactions, except the general property tax, assessed, charged, fixed or exacted by local authorities, such as municipalities, townships, counties, or other local boards, or the officers of such subdivisions shall be deemed to be illegal and be superseded by this act. On such motor transportation company complying with the provisions of this act, all local ordinances, resolutions, by-laws and rules in force shall cease to be operative as to them, except that such local subdivisions may make reasonable local police regulations within their respective boundaries not inconsistent with the provisions of this act.

Sec. 614-99. No certificate of convenience and necessity shall be issued by the commission to any motor transportation company until such motor transportation company shall have filed with the commission a liability insurance policy or bond satisfactory to the commission in such sum and with such other terms and provisions as the commission may deem necessary adequately to protect the interests

Qualifications
of chauffeur or
driver.

Examination
and license of
drivers.

Fees, charges,
etc.

Insurance
policy or bond
must be filed
with commission.

of the public having due regard for the number of persons and amount of property affected, which policy, policies or bonds shall insure the motor transportation company against loss sustained by reason of the death of or injuries to persons and for loss of or damage to property resulting from the negligence of such motor transportation company.

Such policy or bond shall further provide that ten days' notice in writing shall be given to the public utilities commission of intention to cancel such policy of insurance.

If such policy or bond is cancelled during the term thereof or in event the same should lapse for any reason, the commission shall require such motor transportation company to replace such policy or bond with another fully complying with the requirements of this section, and in default thereof the certificate shall be deemed revoked.

Penalty for violation.

Sec. 614-100. Every officer, agent or employe of any corporation, and every other person who violates or fails to comply with or who procures, aids or abets in the violation of any provision of sections 614-84 to 614-102, inclusive, of the General Code, or who fails to obey, observe or comply with any order, decision, rule or regulation, direction, demand or requirement, or any part or provision thereof, of the public utilities commission, or who procures, aids or abets any corporation or person in his failure to obey, observe or comply with any such order, decision, demand or regulation, or any part or provision thereof, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

Interstate commerce only.

Sec. 614-101. Neither sections 614-84 to 614-102, inclusive, of the General Code, nor any provisions thereof, shall apply or be construed to apply to commerce with foreign nations or countries, or among the several states of this Union, except in so far as the same may be permitted under the provisions of the constitution of the United States and the acts of congress.

Each section and part thereof independent.

Sec. 614-102. Each section of this act, and every part thereof, is hereby declared to be independent sections and parts of sections, and the holding of any section or part thereof to be void or ineffective for any cause shall not affect any other section or part thereof.

Tax on motor vehicles.

Sec. 6292. Each owner of a motor vehicle shall pay or cause to be paid taxes as follows:

For each motor bicycle or motorcycle, two dollars and fifty cents; and for each side car, one dollar and fifty cents.

For each passenger car having twenty-five horse-power or less, eight dollars; for each such car having more than twenty-five and not more than thirty-five horse-power

twelve dollars; for each such car having more than thirty-five horse-power, twenty dollars.

For each commercial car having twenty-five horse-power or less eight dollars, and in addition thereto twenty cents for each one hundred pounds gross weight of vehicle and load or fractional part thereof.

For each commercial car having more than twenty-five and not more than thirty horse-power twelve dollars, and in addition thereto thirty cents for each one hundred pounds gross weight of vehicle and load or fractional part thereof.

For each commercial car having more than thirty horse-power twenty dollars, and in addition thereto eighty cents for each one hundred pounds gross weight of vehicle and load or fractional part thereof.

For each trailer of more than one ton gross weight, fifty cents for each one hundred pounds gross weight of vehicle and load or fractional part thereof.

For each trailer of less than one ton gross weight, twenty cents for each one hundred pounds gross weight of vehicle and load or fractional part thereof.

The minimum tax for any vehicle having motor power other than a motor bicycle or a motorcycle shall be eight dollars; and for each trailer, two dollars and fifty cents.

Each manufacturer or dealer shall pay or cause to be paid a tax of twenty dollars for each place of business in this state.

SECTION 2. That the original section 614-2, and section 6292 of the General Code be, and the same are hereby repealed. Repeal.

H. H. GRISWOLD,
Speaker of the House of Representatives.

EARL D. BLOOM,
President of the Senate.

Passed March 29, 1923.

Filed in office of Secretary of State, April 28, 1923.

I hereby certify that the foregoing is a true copy of the engrossed bill.

THAD H. BROWN,
Secretary of State.

This bill was presented to the Governor, April 14th, 1923, and was not signed or returned to the house wherein it originated within ten days after being so presented, exclusive of Sundays and the day said bill was presented, and was filed in the office of the Secretary of State, April 28, 1923.

PRICE RUSSELL,
Veto Clerk.

The sectional numbers in this bill are in conformity to the General Code.
W. C. SHAW,
Attorney General.

in the certificate; except in case of emergency due to the act of God or unavoidable accident or casualty or the route becoming impassable, or in case it becomes necessary to make temporary detours; and it shall be unlawful for any such motor transportation company to neglect or refuse to comply with and obey any and all regulations and orders of the commission and other statutory laws and regulations of the state of Ohio governing and applying to such motor vehicles, provided, however, that nothing in this act shall prohibit a motor transportation company as defined hereunder and not operating between fixed termini from making casual trips over routes established hereunder.

New application
 may be filed.

Sec. 614-93. Any motor transportation company as defined in this chapter may, at any time after a certificate is granted or refused, file a new application or supplement any former application, for the purpose of changing, extending or shortening the route, or increasing or decreasing the number of vehicles, or for the doing of any other act or thing which the applicant might be permitted to do under the general statutory laws and regulations of the state of Ohio.

Taxes paid to
 treasurer of
 state.

Sec. 614-94. Every motor transportation company now operating or which shall hereafter operate in this state shall at the time of the issuance of such certificate, and annually thereafter on or between January 1st and January 15th of each calendar year, pay to the treasurer of state the following taxes for the expense of the administration and enforcement of the provisions of sections 614-84 to 614-102 of the General Code, and for the maintenance and repair of the highways of the state; all taxes levied upon the issuance of a certificate to any motor transportation company shall be reckoned as from the beginning of the quarter in which such certificate is issued.

Rates.

For each motor propelled vehicle operating between fixed termini or over a regular route, carrying seven passengers or less, forty dollars; for each such motor propelled vehicle carrying more than seven but not more than twelve passengers, ninety dollars; for each such motor propelled vehicle carrying more than twelve but not more than eighteen passengers, one hundred and forty dollars; for each such motor propelled vehicle carrying more than eighteen but not more than twenty-four passengers, one hundred and eighty dollars; and for each such motor propelled vehicle carrying more than twenty-four passengers, two hundred and thirty dollars.

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motor propelled vehicle carrying more than eighteen but not more than twenty-four passengers, one hundred and fifteen dollars; and for each such motor propelled vehicle carrying more than twenty-four passengers, one hundred and fifty dollars.

For each motor propelled vehicle used for transporting property between fixed termini or over a regular route the manufacturer's rated carrying capacity of which is one and three-fourths tons or less, forty dollars; for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than one and three-fourths tons but not more than two and one-half tons, eighty dollars; for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than two and one-half but not more than three and one-half tons, one hundred and forty dollars; and for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than three and one-half tons, two hundred dollars.

Rates.

For each motor propelled vehicle used for transporting property not between fixed termini or over a regular route the manufacturer's rated carrying capacity of which is one and three-fourths tons or less, twenty dollars; for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than one and three-fourths but not more than two and one-half tons, fifty dollars; for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than two and one-half but not more than three and one-half tons, one hundred dollars; and for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than three and one-half tons, one hundred and fifty dollars.

Rates.

For each motor propelled vehicle used by any such company for transporting both persons and property simultaneously the tax shall be computed on the basis of either tonnage or passenger capacity and the basis which yields the greater revenue shall apply.

A trailer used by a motor transportation company hereunder shall be taxed at a rate equal to twenty per cent of that levied upon the vehicle by which it is drawn.

Trailer.

In case of emergency, or unusual temporary demands for transportation, the taxes for additional motor propelled vehicles for limited periods shall be fixed by the commission in such reasonable amounts as may be prescribed by general rule or temporary order.

~~Sec 614-95. The treasurer of state shall open an account with each municipal corporation and county into, through or along which the route of each such motor transportation company runs or extends, and shall apportion fifty per cent of the taxes imposed by section 614-94 in~~

Division of tax.

of Ohio in defraying the expenses incident to maintaining the bureau of the department for carrying out and enforcing the provisions of sections 614-84 to 614-102, inclusive, of the General Code, including the payment of salaries, traveling expenses, printing and other expenses, and for the use of the director of highways and public works in the manner provided by law. The General Assembly shall make appropriations therefrom for such purpose.

Sec. 614-97. It shall be unlawful for any motor transportation company as defined in this chapter to cause, allow or permit any motor propelled vehicle operated by it as a motor transportation company to be driven by any person under the age of twenty-one years; and such person shall be an American citizen and shall be skilled in the art of driving such public motor vehicle, and without physical disabilities or personal habits which would disqualify him or make him an unsuitable person to serve as driver of such public motor vehicle.

For the purpose of determining the qualifications of such chauffeur or driver, the secretary of state shall be governed by section 6302 of the General Code, in so far as the same may be applicable. Upon the issuance of the certificate to drive, the applicant shall pay the registration fee and no further fee shall be charged or examination required by the state or any local authorities in the state. The term "local authorities" as used herein means all officers, boards and commissions of counties, cities, villages or townships. In case of sickness, accident or other emergency, any other licensed driver may be substituted.

Qualifications
of chauffeur or
driver.

Examination
and license of
drivers.

Sec. 614-98. The fees and charges provided under section 614-94 of the General Code shall be in addition to taxes, fees and charges fixed and exacted by other provisions of the general laws of Ohio; except the assessments required by section 606 of the General Code, but all fees, license fees, annual payments, license tax, or taxes or other money exactions, except the general property tax, assessed, charged, fixed or exacted by local authorities, such as municipalities, townships, counties, or other local boards, or the officers of such subdivisions shall be deemed to be illegal and be superseded by this act. On such motor transportation company complying with the provisions of this act, all local ordinances, resolutions, by-laws and rules in force shall cease to be operative as to them, except that such local subdivisions may make reasonable local police regulations within their respective boundaries not inconsistent with the provisions of this act.

Fees, charges,
etc.

Sec. 614-99. No certificate of convenience and necessity shall be issued by the commission to any motor transportation company until such motor transportation company shall have filed with the commission a liability insurance policy or bond satisfactory to the commission in such sum and with such other terms and provisions as the commission may deem necessary adequately to protect the interests

Insurance
policy or bond
must be filed
with commission.

715.013 Taxes that may not be levied by municipal corporation

(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., 5726., 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.

CREDIT(S)

(2012 H 510, eff. 3-27-13; 2003 H 95, eff. 9-26-03; 1999 S 3, eff. 10-5-99; 1998 H 770, eff. 9-16-98)

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY AND FILED
 WITH THE SECRETARY OF STATE THROUGH FEBRUARY 12, 2008 ***
 *** ANNOTATIONS CURRENT THROUGH JANUARY 1, 2008 ***
 *** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH FEBRUARY 20, 2008 ***

TITLE 7. MUNICIPAL CORPORATIONS
 CHAPTER 718. MUNICIPAL INCOME TAXES

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ORC Ann. 718.01 (2008)

§ 718.01. Uniform rates; limitations without vote; prohibitions

(A) As used in this chapter:

(1) "Adjusted federal taxable income" means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

(a) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.

(b) Add an amount equal to five per cent of intangible income deducted under division (A)(1)(a) of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in *section 1221 of the Internal Revenue Code*;

(c) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in *section 1221 or 1231 of the Internal Revenue Code*;

(d) (i) Except as provided in division (A)(1)(d)(ii) of this section, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in *section 1221 or 1231 of the Internal Revenue Code*;

(ii) Division (A)(1)(d)(i) of this section does not apply to the extent the income or gain is income or gain described in *section 1245 or 1250 of the Internal Revenue Code*.

(e) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;

(f) In the case of a real estate investment trust and regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a

ORC Ann. 718.01

deduction in the computation of federal taxable income;

(g) If the taxpayer is not a C corporation and is not an individual, the taxpayer shall compute adjusted federal taxable income as if the taxpayer were a C corporation, except:

(i) Guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member, or former member shall not be allowed as a deductible expense; and

(ii) Amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee of the taxpayer, amounts paid or accrued to or for health insurance for an owner or owner-employee, and amounts paid or accrued to or for life insurance for an owner or owner-employee shall not be allowed as a deduction.

Nothing in division (A)(1) of this section shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

Nothing in this chapter shall be construed as limiting or removing the ability of any municipal corporation to administer, audit, and enforce the provisions of its municipal income tax.

- (2) "Internal Revenue Code" means the Internal Revenue Code of 1986, *100 Stat. 2085, 26 U.S.C. 1*, as amended.
- (3) "Schedule C" means internal revenue service schedule C filed by a taxpayer pursuant to the Internal Revenue Code.
- (4) "Form 2106" means internal revenue service form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.
- (5) "Intangible income" means income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701. of the Revised Code, and patents, copyrights, trademarks, tradenames, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. "Intangible income" does not include prizes, awards, or other income associated with any lottery winnings or other similar games of chance.
- (6) "S corporation" means a corporation that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.
- (7) For taxable years beginning on or after January 1, 2004, "net profit" for a taxpayer other than an individual means adjusted federal taxable income and "net profit" for a taxpayer who is an individual means the individual's profit required to be reported on schedule C, schedule E, or schedule F, other than any amount allowed as a deduction under division (E)(2) or (3) of this section or amounts described in division (H) of this section.
- (8) "Taxpayer" means a person subject to a tax on income levied by a municipal corporation. Except as provided in division (L) of this section, "taxpayer" does not include any person that is a disregarded entity or a qualifying subchapter S subsidiary for federal income tax purposes, but "taxpayer" includes any other person who owns the disregarded entity or qualifying subchapter S subsidiary.
- (9) "Taxable year" means the corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.
- (10) "Tax administrator" means the individual charged with direct responsibility for administration of a tax on income levied by a municipal corporation and includes:

ORC Ann. 718.01

(a) The central collection agency and the regional income tax agency and their successors in interest, and other entities organized to perform functions similar to those performed by the central collection agency and the regional income tax agency;

(b) A municipal corporation acting as the agent of another municipal corporation; and

(c) Persons retained by a municipal corporation to administer a tax levied by the municipal corporation, but only if the municipal corporation does not compensate the person in whole or in part on a contingency basis.

(11) "Person" includes individuals, firms, companies, business trusts, estates, trusts, partnerships, limited liability companies, associations, corporations, governmental entities, and any other entity.

(12) "Schedule E" means internal revenue service schedule E filed by a taxpayer pursuant to the Internal Revenue Code.

(13) "Schedule F" means internal revenue service schedule F filed by a taxpayer pursuant to the Internal Revenue Code.

(B) No municipal corporation shall tax income at other than a uniform rate.

(C) No municipal corporation shall levy a tax on income at a rate in excess of one per cent without having obtained the approval of the excess by a majority of the electors of the municipality voting on the question at a general, primary, or special election. The legislative authority of the municipal corporation shall file with the board of elections at least seventy-five days before the day of the election a copy of the ordinance together with a resolution specifying the date the election is to be held and directing the board of elections to conduct the election. The ballot shall be in the following form: "Shall the Ordinance providing for a per cent levy on income for (Brief description of the purpose of the proposed levy) be passed?"

For the Income Tax
Against the Income Tax

In the event of an affirmative vote, the proceeds of the levy may be used only for the specified purpose.

(D) (1) 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.

(2) (a) For taxable years beginning on or after January 1, 2004, no municipal corporation shall tax the net profit from a business or profession using any base other than the taxpayer's adjusted federal taxable income.

(b) Division (D)(2)(a) of this section does not apply to any taxpayer required to file a return under *section 5745.03 of the Revised Code* or to the net profit from a sole proprietorship.

(E) (1) The legislative authority of a municipal corporation may, by ordinance or resolution, exempt from withholding and from a tax on income the following:

(a) Compensation arising from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option; or

(b) Compensation attributable to a nonqualified deferred compensation plan or program described in *section 3121(v)(2)(C) of the Internal Revenue Code*.

(2) The legislative authority of a municipal corporation may adopt an ordinance or resolution that allows a

taxpayer who is an individual to deduct, in computing the taxpayer's municipal income tax liability, an amount equal to the aggregate amount the taxpayer paid in cash during the taxable year to a health savings account of the taxpayer, to the extent the taxpayer is entitled to deduct that amount on internal revenue service form 1040.

(3) The legislative authority of a municipal corporation may adopt an ordinance or resolution that allows a taxpayer who has a net profit from a business or profession that is operated as a sole proprietorship to deduct from that net profit the amount that the taxpayer paid during the taxable year for medical care insurance premiums for the taxpayer, the taxpayer's spouse, and dependents as defined in *section 5747.01 of the Revised Code*. The deduction shall be allowed to the same extent the taxpayer is entitled to deduct the premiums on internal revenue service form 1040. The deduction allowed under this division shall be net of any related premium refunds, related premium reimbursements, or related insurance premium dividends received by the taxpayer during the taxable year.

(F) If an individual's taxable income includes income against which the taxpayer has taken a deduction for federal income tax purposes as reportable on the taxpayer's form 2106, and against which a like deduction has not been allowed by the municipal corporation, the municipal corporation shall deduct from the taxpayer's taxable income an amount equal to the deduction shown on such form allowable against such income, to the extent not otherwise so allowed as a deduction by the municipal corporation.

(G) (1) In the case of a taxpayer who has a net profit from a business or profession that is operated as a sole proprietorship, no municipal corporation may tax or use as the base for determining the amount of the net profit that shall be considered as having a taxable situs in the municipal corporation, an amount other than the net profit required to be reported by the taxpayer on schedule C or F from such sole proprietorship for the taxable year.

(2) In the case of a taxpayer who has a net profit from rental activity required to be reported on schedule E, no municipal corporation may tax or use as the base for determining the amount of the net profit that shall be considered as having a taxable situs in the municipal corporation, an amount other than the net profit from rental activities required to be reported by the taxpayer on schedule E for the taxable year.

(H) A municipal corporation shall not tax any of the following:

(1) The military pay or allowances of members of the armed forces of the United States and of members of their reserve components, including the Ohio national guard;

(2) The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities;

(3) Except as otherwise provided in division (I) of this section, intangible income;

(4) Compensation paid under *section 3501.28* or *3501.36 of the Revised Code* to a person serving as a precinct election official, to the extent that such compensation does not exceed one thousand dollars annually. Such compensation in excess of one thousand dollars may be subjected to taxation by a municipal corporation. A municipal corporation shall not require the payer of such compensation to withhold any tax from that compensation.

(5) Compensation paid to an employee of a transit authority, regional transit authority, or regional transit commission created under Chapter 306. of the Revised Code for operating a transit bus or other motor vehicle for the authority or commission in or through the municipal corporation, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to such a tax by reason of residence or domicile in the municipal corporation, or the headquarters of the authority or commission is located within the municipal corporation;

(6) The income of a public utility, when that public utility is subject to the tax levied under *section 5727.24* or *5727.30 of the Revised Code*, except a municipal corporation may tax the following, subject to Chapter 5745. of the Revised Code:

ORC Ann. 718.01

(a) Beginning January 1, 2002, the income of an electric company or combined company;

(b) Beginning January 1, 2004, the income of a telephone company.

As used in division (H)(6) of this section, "combined company," "electric company," and "telephone company" have the same meanings as in *section 5727.01 of the Revised Code*.

(7) On and after January 1, 2003, items excluded from federal gross income pursuant to *section 107 of the Internal Revenue Code*;

(8) On and after January 1, 2001, compensation paid to a nonresident individual to the extent prohibited under *section 718.011 of the Revised Code*;

(9) (a) Except as provided in division (H)(9)(b) and (c) of this section, an S corporation shareholder's distributive share of net profits of the S corporation, other than any part of the distributive share of net profits that represents wages as defined in *section 3121(a) of the Internal Revenue Code* or net earnings from self-employment as defined in *section 1402(a) of the Internal Revenue Code*.

(b) If, pursuant to division (H) of former *section 718.01 of the Revised Code* as it existed before March 11, 2004, a majority of the electors of a municipal corporation voted in favor of the question at an election held on November 4, 2003, the municipal corporation may continue after 2002 to tax an S corporation shareholder's distributive share of net profits of an S corporation.

(c) If, on December 6, 2002, a municipal corporation was imposing, assessing, and collecting a tax on an S corporation shareholder's distributive share of net profits of the S corporation to the extent the distributive share would be allocated or apportioned to this state under divisions (B)(1) and (2) of *section 5733.05 of the Revised Code* if the S corporation were a corporation subject to taxes imposed under Chapter 5733. of the Revised Code, the municipal corporation may continue to impose the tax on such distributive shares to the extent such shares would be so allocated or apportioned to this state only until December 31, 2004, unless a majority of the electors of the municipal corporation voting on the question of continuing to tax such shares after that date vote in favor of that question at an election held November 2, 2004. If a majority of those electors vote in favor of the question, the municipal corporation may continue after December 31, 2004, to impose the tax on such distributive shares only to the extent such shares would be so allocated or apportioned to this state.

(d) For the purposes of division (D) of *section 718.14 of the Revised Code*, a municipal corporation shall be deemed to have elected to tax S corporation shareholders' distributive shares of net profits of the S corporation in the hands of the shareholders if a majority of the electors of a municipal corporation vote in favor of a question at an election held under division (H)(9)(b) or (c) of this section. The municipal corporation shall specify by ordinance or rule that the tax applies to the distributive share of a shareholder of an S corporation in the hands of the shareholder of the S corporation.

(10) Employee compensation that is not "qualifying wages" as defined in *section 718.03 of the Revised Code*;

(11) Beginning August 1, 2007, compensation paid to a person employed within the boundaries of a United States air force base under the jurisdiction of the United States air force that is used for the housing of members of the United States air force and is a center for air force operations, unless the person is subject to taxation because of residence or domicile. If the compensation is subject to taxation because of residence or domicile, municipal income tax shall be payable only to the municipal corporation of residence or domicile.

(I) Any municipal corporation that taxes any type of intangible income on March 29, 1988, pursuant to Section 3 of Amended Substitute Senate Bill No. 238 of the 116th general assembly, may continue to tax that type of income after 1988 if a majority of the electors of the municipal corporation voting on the question of whether to permit the taxation

of that type of intangible income after 1988 vote in favor thereof at an election held on November 8, 1988.

(J) Nothing in this section or *section 718.02 of the Revised Code* shall authorize the levy of any tax on income that a municipal corporation is not authorized to levy under existing laws or shall require a municipal corporation to allow a deduction from taxable income for losses incurred from a sole proprietorship or partnership.

(K) (1) Nothing in this chapter prohibits a municipal corporation from allowing, by resolution or ordinance, a net operating loss carryforward.

(2) Nothing in this chapter requires a municipal corporation to allow a net operating loss carryforward.

(L) (1) A single member limited liability company that is a disregarded entity for federal tax purposes may elect to be a separate taxpayer from its single member in all Ohio municipal corporations in which it either filed as a separate taxpayer or did not file for its taxable year ending in 2003, if all of the following conditions are met:

(a) The limited liability company's single member is also a limited liability company;

(b) The limited liability company and its single member were formed and doing business in one or more Ohio municipal corporations for at least five years before January 1, 2004;

(c) Not later than December 31, 2004, the limited liability company and its single member each make an election to be treated as a separate taxpayer under division (L) of this section;

(d) The limited liability company was not formed for the purpose of evading or reducing Ohio municipal corporation income tax liability of the limited liability company or its single member;

(e) The Ohio municipal corporation that is the primary place of business of the sole member of the limited liability company consents to the election.

(2) For purposes of division (L)(1)(e) of this section, a municipal corporation is the primary place of business of a limited liability company if, for the limited liability company's taxable year ending in 2003, its income tax liability is greater in that municipal corporation than in any other municipal corporation in Ohio, and that tax liability to that municipal corporation for its taxable year ending in 2003 is at least four hundred thousand dollars.

HISTORY:

127 v 91 (Eff 9-17-57); 129 v 582 (Eff 1-10-61); 132 v S 500 (Eff 6-5-68); 135 v S 44 (Eff 9-11-73); 135 v H 916 (Eff 9-13-74); 136 v H 1 (Eff 6-13-75); 138 v H 1062 (Eff 3-23-81); 139 v H 65 (Eff 2-11-82); 141 v S 238 (Eff 5-23-86); 142 v S 386 (Eff 3-29-88); 146 v H 555 (Eff 3-6-96); 147 v H 215 (Eff 9-29-97); 147 v S 130 (Eff 9-18-97); 147 v H 770 (Eff 9-16-98); 148 v S 3 (Eff 7-6-99); 148 v H 283 (Eff 9-29-99); 148 v H 477 (Eff 7-26-2000); 148 v H 483 (Eff 1-1-2002); 148 v S 287, § 9 (Eff 12-21-2000); 149 v S 180, Eff 4-9-2003; 150 v H 95, § 1, eff. 6-26-03; 150 v H 127, § 1, eff. 3-11-04; 150 v H 362, § 1, eff. 12-30-04; 152 v H 119, § 101.01, eff. 6-30-07; 152 v H 24, § 1, eff. 12-21-07.

NOTES:

Section Notes

The provisions of § 3 of 152 v H 24 read as follows:

LEXSTAT OHCODE 4921.18

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY AND FILED
WITH THE SECRETARY OF STATE THROUGH FEBRUARY 12, 2008 ***

*** ANNOTATIONS CURRENT THROUGH JANUARY 1, 2008 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH FEBRUARY 20, 2008 ***

TITLE 49. PUBLIC UTILITIES
CHAPTER 4921. PUBLIC UTILITIES COMMISSION -- MOTOR TRANSPORTATION COMPANIES

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ORC Ann. 4921.18 (2008)

§ 4921.18. Taxes

(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.

(B) A trailer used by a motor transportation company or common carrier by motor vehicle shall not be taxed under this section.

(C) The annual tax levied by this section does not apply in those cases where the commission finds that the movement of agricultural commodities or foodstuffs produced therefrom requires a temporary and seasonal use of vehicular equipment for a period of not more than ninety days. In such event the tax on such vehicular equipment shall be twenty-five per cent of the annual tax levied by this section. If any vehicular equipment is used in excess of such ninety-day period the annual tax levied by this section shall be paid.

(D) Any motor-propelled or motor-drawn vehicle used for transporting persons, commercial tractor as defined in *section 4501.01 of the Revised Code*, or motor truck used for the transportation of property, with respect to which the tax imposed by this section has been paid, may be used by another motor transportation company or common carrier, or by a private motor carrier or contract carrier, without further payment of the tax imposed by this section or by *section 4923.11 of the Revised Code*.

(E) The commission shall account for the taxes collected pursuant to this section, and shall pay such taxes to the treasurer of state pursuant to *section 4923.12 of the Revised Code* on or before the fifteenth day of each month for the

taxes collected in each preceding month.

(F) All taxes levied upon the issuance of a certificate to any motor transportation company or common carrier by motor vehicle shall be reckoned as from the beginning of the quarter in which such certificate is issued or the use of equipment under any existing certificate began.

HISTORY:

GC § 614-94; 110 v 211; 115 v 254; 116 v 478; 119 v 339; Bureau of Code Revision, 10-1-53; 125 v 1135 (Eff 1-19-54); 129 v 1601 (Eff 10-25-61); 129 v 381 (Eff 7-1-62); 130 v PtII, 238 (Eff 12-2-64); 133 v S 150 (Eff 11-5-69); 137 v H 1 (Eff 8-26-77); 139 v H 694 (Eff 11-15-81); 146 v H 670 (Eff 12-2-96); 149 v H 94. Eff 9-5-2001.

NOTES:

Section Notes

The effective date is set by section 204 of HB 94.

Related Statutes & Rules

Cross-References to Related Statutes

Bus taxation proration and reciprocity agreement; exemptions; fees, *RC § 4503.81*.

Exemption from tax imposed by *RC § 4921.18* provisions, *RC § 4923.11*.

Fees and charges; local ordinances, *RC § 4923.13*.

Fees and charges under *RC § 4921.18* are in addition to those fixed in other sections, *RC § 4921.25*.

Fees to be paid to the treasurer of state, *RC § 4923.12*.

Local subdivision may make reasonable local police rules, *RC § 4923.03*.

No additional tax paid by city transit company, *RC § 4921.20*.

Prohibition, *RC § 4921.32*.

Ohio Constitution

Authorizing bond issue or other obligations for highway construction, *OConst art VIII, § 2g*.

Capital improvement bonds, *OConst art VIII, § 2i*.

4921.19 Taxes

(A) Every for-hire motor carrier operating in this state shall, at the time of the issuance of a certificate of public convenience and necessity under section 4921.03 of the Revised Code, pay to the public utilities commission, for and on behalf of the treasurer of state, the following taxes:

- (1) For each motor 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 other motor vehicle transporting property, twenty dollars.

(B) Every for-hire motor carrier operating in this state solely in intrastate commerce shall, annually between the first day of May and the thirtieth day of June, pay to the commission, for and on behalf of the treasurer of state, the following taxes:

- (1) For each motor 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 other motor vehicle transporting property, twenty dollars.

(C) After a for-hire motor carrier has paid the applicable taxes under division (B) of this section and all requirements under division (C) of section 4921.13 of the Revised Code have been met, the commission shall issue the carrier a tax receipt. The carrier shall carry a copy of the tax receipt in each motor vehicle operated by the carrier. The carrier shall maintain the original copy of the tax receipt at the carrier's primary place of business.

(D) A trailer used by a for-hire motor carrier shall not be taxed under this section.

(E) The annual tax levied by division (B) of this section does not apply in those cases where the commission finds that the movement of agricultural commodities or foodstuffs produced therefrom requires a temporary and seasonal use of vehicular equipment for a period of not more than ninety days. In such event, the tax on the vehicular equipment shall be twenty-five per cent of the annual tax levied by division (B) of this section. If any vehicular equipment is used in excess of the ninety-day period, the annual tax levied by this section shall be paid.

(F) All taxes levied by division (B) of this section shall be reckoned as from the beginning of the quarter in which the tax receipt is issued or as from when the use of equipment under any existing tax receipt began.

(G) The fees for unified carrier registration pursuant to section 4921.11 of the Revised Code shall be identical to those established by the unified carrier registration act board as approved by the federal motor carrier safety administration for each year.

(H)(1) The fees for uniform registration and a uniform permit as a carrier of hazardous materials pursuant to section 4921.15 of the Revised Code shall consist of the following:

- (a) A processing fee of fifty dollars;
- (b) An apportioned per-truck registration fee, which shall be calculated by multiplying the percentage of a registrant's activity in this state times the percentage of the registrant's business that is hazardous-materials-related, times the number of vehicles owned or operated by the

registrant, times a per-truck fee determined by order of the commission following public notice and an opportunity for comment.

(i) The percentage of a registrant's activity in this state shall be calculated by dividing the number of miles that the registrant travels in this state under the international registration plan, pursuant to section 4503.61 of the Revised Code, by the number of miles that the registrant travels nationwide under the international registration plan. Registrants that operate solely within this state shall use one hundred per cent as their percentage of activity. Registrants that do not register their vehicles through the international registration plan shall calculate activity in the state in the same manner as that required by the international registration plan.

(ii) The percentage of a registrant's business that is hazardous-materials-related shall be calculated, for less-than-truckload shipments, by dividing the weight of all the registrant's hazardous materials shipments by the total weight of all shipments in the previous year. The percentage of a registrant's business that is hazardous-materials-related shall be calculated, for truckload shipments, by dividing the number of shipments for which placarding, marking of the vehicle, or manifesting, as appropriate, was required by regulations adopted under sections 4 to 6 of the "Hazardous Materials Transportation Uniform Safety Act of 1990," 104 Stat. 3244, 49 U.S.C. App. 1804, by the total number of the registrant's shipments that transported any kind of goods in the previous year. A registrant that transports both less-than-truckload and truckload shipments of hazardous materials shall calculate the percentage of business that is hazardous-materials-related on a proportional basis.

(iii) A registrant may utilize fiscal year, or calendar year, or other current company accounting data, or other publicly available information, in calculating the percentages required by divisions (H)(1)(b)(i) and (ii) of this section.

(2) The commission, after notice and opportunity for a hearing, may assess each carrier a fee for any background investigation required for the issuance, for the purpose of section 3734.15 of the Revised Code, of a uniform permit as a carrier of hazardous wastes and fees related to investigations and proceedings for the denial, suspension, or revocation of a uniform permit as a carrier of hazardous materials. The fees shall not exceed the reasonable costs of the investigations and proceedings. The fee for a background investigation for a uniform permit as a carrier of hazardous wastes shall be six hundred dollars plus the costs of obtaining any necessary information not included in the permit application, to be calculated at the rate of thirty dollars per hour, not exceeding six hundred dollars, plus any fees payable to obtain necessary information.

(I) The application fee for a certificate for the transportation of household goods issued pursuant to sections 4921.30 to 4921.38 of the Revised Code shall be based on the certificate holder's gross revenue, in the prior year, for the intrastate transportation of household goods. The commission shall establish, by order, ranges of gross revenue and the fee for each range. The fees shall be set in amounts sufficient to carry out the purposes of sections 4921.30 to 4921.38 and 4923.99 of the Revised Code and, to the extent necessary, the commission shall make changes to the fee structure to ensure that neither over nor under collection of the fees occurs. The fees shall also take into consideration the revenue generated from the assessment of forfeitures under section 4923.99 of the Revised Code regarding the consumer protection provisions applicable to for-hire motor carriers engaged in the transportation of household goods.

(J) The fees and taxes provided under this section 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

and 4905.03 and Chapter 4921. of the Revised Code. On compliance with sections 4503.04 and 4905.03 and Chapter 4921. of the Revised Code, all local ordinances, resolutions, by laws, and rules in force shall cease to be operative as to the persons in compliance, except that such local subdivisions may make reasonable local police regulations within their respective boundaries not inconsistent with sections 4503.04 and 4905.03 and Chapter 4921. of the Revised Code.

CREDIT(S)

(2012 H 487, eff. 6-11-12)

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY AND FILED
 WITH THE SECRETARY OF STATE THROUGH FEBRUARY 12, 2008 ***
 *** ANNOTATIONS CURRENT THROUGH JANUARY 1, 2008 ***
 *** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH FEBRUARY 20, 2008 ***

TITLE 49. PUBLIC UTILITIES
 CHAPTER 4921. PUBLIC UTILITIES COMMISSION -- MOTOR TRANSPORTATION COMPANIES

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ORC Ann. 4921.25 (2008)

§ 4921.25. Fees and charges

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. 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.

HISTORY:

GC § 614-98; 110 v 211; Bureau of Code Revision. Eff 10-1-53.

Case Notes & OAGs

ANALYSIS Authority of the PUCO Preemption Private or proprietary undertaking

AUTHORITY OF THE PUCO.

The township's prohibition of conducting a trucking business in a residential zone and of parking semis overnight was not inconsistent with the authority of the PUCO. The fact that a person leases his truck to a motor carrier certificate holder does not make his business a public utility under *RC § 519.21.1: Coventry Township v. Ecker, 101 Ohio App. 3d 38, 654 N.E.2d 1327, 1995 Ohio App. LEXIS 516 (1995)*.

PREEMPTION.



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Current through Legislation by the 129th Ohio General Assembly and filed with the Secretary of State through file 27
 The provisions of 2011 SB 5 are subject to referendum and will not become effective unless approved at the November
 2011 General Election

*** Annotations current through July 22, 2011 ***

TITLE 57. TAXATION
 CHAPTER 5717. APPEALS

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ORC Ann. 5717.04 (2011)

§ 5717.04. Appeal from decision of board of tax appeals to supreme court; parties who may appeal

The proceeding to obtain a reversal, vacation, or modification of a decision of the board of tax appeals shall be by appeal to the supreme court or the court of appeals for the county in which the property taxed is situate or in which the taxpayer resides. If the taxpayer is a corporation, then the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the supreme court or to the court of appeals for the county in which the property taxed is situate, or the county of residence of the agent for service of process, tax notices, or demands, or the county in which the corporation has its principal place of business. In all other instances, the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the court of appeals for Franklin county.

Appeals from decisions of the board determining appeals from decisions of county boards of revision may be instituted by any of the persons who were parties to the appeal before the board of tax appeals, by the person in whose name the property involved in the appeal is listed or sought to be listed, if such person was not a party to the appeal before the board of tax appeals, or by the county auditor of the county in which the property involved in the appeal is located.

Appeals from decisions of the board of tax appeals determining appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be instituted by any of the persons who were parties to the appeal or application before the board, by the person in whose name the property is listed or sought to be listed, if the decision appealed from determines the valuation or liability of property for taxation and if any such person was not a party to the appeal or application before the board, by the taxpayer or any other person to whom the decision of the board appealed from was by law required to be sent, by the director of budget and management, if the revenue affected by the decision of the board appealed from would accrue primarily to the state treasury, by the county auditor of the county to the undivided general tax funds of which the revenues affected by the decision of the board appealed from would primarily accrue, or by the tax commissioner.

Appeals from decisions of the board upon all other appeals or applications filed with and determined by the board may be instituted by any of the persons who were parties to such appeal or application before the board, by any persons

to whom the decision of the board appealed from was by law required to be sent, or by any other person to whom the board sent the decision appealed from, as authorized by *section 5717.03 of the Revised Code*.

Such appeals shall be taken within thirty days after the date of the entry of the decision of the board on the journal of its proceedings, as provided by such section, by the filing by appellant of a notice of appeal with the court to which the appeal is taken and the board. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten days of the date on which the first notice of appeal was filed or within the time otherwise prescribed in this section, whichever is later. A notice of appeal shall set forth the decision of the board appealed from and the errors therein complained of. Proof of the filing of such notice with the board shall be filed with the court to which the appeal is being taken. The court in which notice of appeal is first filed shall have exclusive jurisdiction of the appeal.

In all such appeals the tax commissioner or all persons to whom the decision of the board appealed from is required by such section to be sent, other than the appellant, shall be made appellees. Unless waived, notice of the appeal shall be served upon all appellees by certified mail. The prosecuting attorney shall represent the county auditor in any such appeal in which the auditor is a party.

The board, upon written demand filed by an appellant, shall within thirty days after the filing of such demand file with the court to which the appeal is being taken a certified transcript of the record of the proceedings of the board pertaining to the decision complained of and the evidence considered by the board in making such decision.

If upon hearing and consideration of such record and evidence the court decides that the decision of the board appealed from is reasonable and lawful it shall affirm the same, but if the court decides that such decision of the board is unreasonable or unlawful, the court shall reverse and vacate the decision or modify it and enter final judgment in accordance with such modification.

The clerk of the court shall certify the judgment of the court to the board, which shall certify such judgment to such public officials or take such other action in connection therewith as is required to give effect to the decision. The "taxpayer" includes any person required to return any property for taxation.

Any party to the appeal shall have the right to appeal from the judgment of the court of appeals on questions of law, as in other cases.

HISTORY:

GC § 5611-2; 107 v 550; 116 v 104(123), § 2; 118 v 344(355); 119 v 34(49); Bureau of Code Revision, 10-1-53; 125 v 250 (Eff 10-2-53); 135 v S 174 (Eff 12-4-73); 137 v H 634 (Eff 8-15-77); 140 v H 260 (Eff 9-27-83); 142 v H 231. Eff 10-5-87; 153 v H 1, § 101.01, eff. 10-16-09.

NOTES:

Section Notes

The effective date is set by § 812.10 of 153 v H 1.

EFFECT OF AMENDMENTS

153 v H 1, effective October 16, 2009, substituted "sent" for "certified" throughout the third, fourth, and sixth paragraphs; and made a stylistic change.

Related Statutes & Rules

Cross-References to Related Statutes

Application for exemption; rights of board of education, *RC § 5715.27*.

Assessment of real property; rules and procedures, *RC § 5715.01*.

Cigarette distributor license, suspension for delinquency, *RC § 5743.61*.