ORIGINAL

IN THE SUPREME COURT OF OHIO

PANTHER II TRANSPORTATION, INC.	)	
	)	CASE NOS. 2012-1589, 2012-1592
Plaintiff-Appellee,	)	(consolidated)
	)	
v.	)	
	)	On appeal from the Medina County Court
VILLAGE OF SEVILLE BOARD OF	)	of Appeals, Ninth Appellate District
INCOME TAX REVIEW, *et al.*,	)	Court of Appeals Case Nos. 11CA0092-M,
	)	11CA0093-M, consolidated
Defendants/Appellants.	)	
	)	

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STATEMENT OF FACTS

Since 1923, the Public Utilities Commission of Ohio has extensively regulated motor transportation companies – in common parlance, trucking companies or motor carriers – as public utilities. (Appx. 51-64.)[1] When the General Assembly placed motor transportation companies under the PUCO's state-wide regulatory oversight, it expressly preempted all local authorities from interfering with the PUCO's plenary regulatory authority in two ways. First, it declared that all local fees, taxes and other money exactions except for the general property tax were "illegal and, are superseded by" the state's regulation of motor transportation companies. (Appx. 62.) Second, it declared that all local ordinances, resolutions, by-laws and rules "shall cease to be operative" as to regulated motor transportation companies, except for reasonable local police regulations not inconsistent with the PUCO's regulatory authority. (Appx. 62.) Motor transportation companies operate throughout Ohio and will necessarily have numerous points of contact with local authorities. Without this double-barreled preemption, which was codified in R.C. § 4921.25 during the tax years at issue in this appeal,[2] local authorities would have been free to increase costs to motor carriers' customers through burdensome taxes and parochial regulations.

Panther II Transportation, Inc. ("Panther") is a motor transportation company that focuses on expedited and emergency transportation services. (Panther Supp. 2-3, 14.) Panther operates both intrastate, meaning that it picks up and delivers goods within Ohio and other states, and interstate, meaning that it picks up in one state and delivers in another state. (Panther Supp. 3.) Panther's intrastate operations are extensively regulated by the PUCO, which since 1995 has

[1] Citations to the Appendix and Supplement are to those filed by Seville, unless otherwise noted.

[2] Both preemption provisions have since been recodified as R.C. § 4921.19(J) pursuant to 129 H.B. 487, effective June 11, 2012. All references in this Brief to sections of Chapter 4921 of the Revised Code are to the sections as in effect during the tax years at issue – 2005 and 2006.

provided Panther its operating authority to provide intrastate service within Ohio through a Certificate of Public Convenience and Necessity. (Panther Supp. 3-5, 6-13.) The PUCO gives "a carrier a life." (Panther Supp. 8.) Any motor transportation company that fails to provide convenient, necessary and adequate service to the public can have its operating authority revoked by the PUCO. *See* R.C. §§ 4921.10, .12.

The PUCO licenses, permits and audits intrastate motor carriers. (Panther Supp. 4.) The PUCO taxes motor carriers based on their equipment, and also keeps track of the equipment. (*Id.*) The PUCO also promulgates all state regulations dealing with motor carriers and the state and, in particular, ensures that motor carriers operate safely. (Panther Supp. 8-11.) At all times relevant to this appeal, Panther was in compliance with Ohio's laws regulating motor transportation companies, including R.C. § 4921.18, pursuant to which the PUCO assesses a tax on motor transportation companies. (Panther Supp. 15-16, 17-18, 19-21.) During the tax years at issue, Panther paid this tax each year on approximately 500-600 trucks. (Panther Supp. 22-23.)

Prior to 1994, the PUCO also regulated the rates of motor transportation companies.[3] (Panther Supp. 11-13.) Motor carriers filed tariffs with the PUCO providing all terms and conditions, including rates, of the service they were offering to the public, and they were bound by law to only charge their filed rates. (Panther Supp. 13.) The PUCO ensured that all charges filed were just and reasonable and in the public interest. *See* R.C. § 4907.24; R.C. § 4921.23 (providing that rate schedules filed by motor transportation companies are governed by laws

[3] Rate-setting authority was largely preempted in 1994 by the Interstate Commerce Act, as amended by the Federal Aviation Administration Authorization Act. 49 U.S.C. § 14501(c)(1). This preemption does not apply to safety regulations, the intrastate transportation of household goods, or the regulation of prices charged by tow trucks engaged in non-consensual towing of motor vehicles. 49 U.S.C. § 14501(c)(2).

applicable to such schedules by railroads as provided in R.C. Chapter 4907). *See also* R.C. § 4921.03 (policy of state is to "[p]romote adequate, economical, and efficient service by such motor carriers, and reasonable charges therefor.").

In tax years 2005 and 2006, Panther paid a total of $161,761 in net profits tax to the Village of Seville. (Supp. 3.) Panther then sought a refund of all amounts paid on the basis of R.C. § 4921.25. (*See* Appx. 80; Supp. 3-5.) Panther's request for a refund was denied by the Central Collection Agency ("CCA") on August 2, 2007 and again on December 28, 2007 (Supp. 3, 6). Panther took an administrative appeal to the Seville Tax Board on January 25, 2008 (Supp. 6-7), which denied the appeal by decision dated June 5, 2008 (CCA Appx. 1-3). On August 1, 2008, Panther timely filed its Notice of Appeal to the Ohio Board of Tax Appeals ("BTA") from the Seville Tax Board's decision. (Supp. 8-11.)

The BTA concluded that R.C. § 4921.25 clearly, unambiguously and specifically exempts motor transportation companies from taxes imposed by local authorities and, thus, unanimously reversed the Seville Tax Board's decision. (Appx. 21-22.). On further appeal to the Ninth District Court of Appeals, the court unanimously agreed that R.C. § 4921.25 expressly preempts Seville's net profits tax as applied to Panther. (Appx. 8-11.)

ARGUMENT

Proposition of Law No. 1.

> **R.C. § 4921.25 bars political subdivisions from increasing the cost to public utility customers for motor carrier services by imposing any type of tax, fee or other money exaction, except the general property tax, on motor transportation companies regulated by the Public Utilities Commission of Ohio.**

The Ninth District Court of Appeals did not err in determining that R.C. § 4921.25 precluded Seville from imposing a net profits tax on Panther for tax years 2005 and 2006.[4] Since 1923, the PUCO has been charged with regulating Panther and other motor transportation companies as public utilities so as to promote "adequate, economical, and efficient service by such motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices." R.C. § 4921.03(B). One element of that expansive regulatory authority is R.C. § 4921.25, which bars political subdivisions from increasing the cost to public utility customers for motor carrier services by imposing any type of tax, fee or charge, except the general property tax, on motor transportation companies. Seville's net profits tax is just such a tax and, thus, is illegal and superseded by the state's regulation of motor transportation companies. Therefore, this Court should affirm the lower court's decision.

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[4] R.C. § 4921.25 reads in full: "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." This section was recodified as R.C. § 4921.19(J) pursuant to 129 H.B. 487, effective June 11, 2012.

A. The State Long-Ago Preempted All Fees, Taxes or Other Money Exactions Imposed by Local Authorities on Motor Transportation Companies.

The court of appeals correctly found that Seville's and CCA's interpretation of R.C. § 4921.25, which posits that "tax" does not mean "tax", is unreasonable on several grounds. Both Seville and the CCA have invented a limitation on the language of R.C. § 4921.25 that does not exist in the statute itself and directly conflicts with the statutory scheme adopted by the General Assembly in 1923 to regulate motor transportation companies. According to Seville and the CCA, R.C. § 4921.25 is limited to prohibiting taxes, fees or charges relating to the licensing, registering or regulation of motor transportation companies. Seville Brief, p. 12; CCA Brief, pp. 18-19. In other words, for Seville and CCA, "all taxes" does not mean "all taxes" but instead means "fees similar to the license fees imposed by R.C. § 4921.18." They then conveniently conclude that Seville's net profits tax is not such a fee and does not relate to the PUCO's regulation of Panther. This analysis is facile and wrong. R.C. § 4921.25 plainly states that <u>all</u> taxes, except the general property tax, assessed by Seville against Panther "are illegal and are superseded by" Ohio's state-wide regulation of motor carriers.

The CCA recognizes that Chapter 4921 of the Revised Code concerns the regulation of motor transportation companies (CCA Brief, pp. 11-15), but fails to demonstrate any understanding of what public utility regulation means. The state's preemption in 1923 of all fees, taxes and other money exactions, except for the property tax, imposed by local authorities on motor carriers was a necessary and essential element of state regulation, through the PUCO, of motor carriers. Motor carriers operate in many political subdivisions in Ohio. If political subdivisions had retained the authority to exact monies from each motor carrier conducting business in their subdivisions, each motor carrier's cost to provide service would have been subject to the whims, and budgetary impulses, of each and every such political subdivision. As

is common with taxes imposed on public utilities, these costs would have been passed through to the public utility's customers, and this would have violated Ohio's regulatory policy.

This Court recognized the preemptive effect of the Motor Transportation Act only thirteen years after its adoption by the General Assembly. In addition to the express preemption of taxes, fees and other money exactions in G.C. 614-98, the Act also provided in G.C. 614-86 that the PUCO's regulation of motor transportation companies is carried out "to the exclusion of all local authorities," and that all local regulations, except for general police regulations, are preempted.[5] As this Court observed, in citing to the General Code equivalents of R.C. § 4921.04 and 4921.25, respectively, "[i]t is most evident that the General Assembly since the creation of the Public Utilities Commission of Ohio has subordinated the right of the municipality to regulate transportation lines within its limits to the authority granted the Public Utilities Commission. A careful reading of sections 614-86 and 614-98, General Code, eradicates all doubt along this line." *City of Cleveland v. Pub. Util. Comm.*, 130 Ohio St. 503, 512, 200 N.E. 765 (1936) (emphasis added). *See also Cleveland Ry. Co. v. Village of North Olmsted*, 130 Ohio St. 144, 148, 198 N.E. 41 (1935) (noting that municipal bus line, if it had qualified as a PUCO-regulated motor transportation company, would be relieved by G.C. 614-98 from payment of Cleveland's license fee). The obvious preemptive effect of these statutes was noted again in 1950 by the Second Appellate District when it observed that G.C. 614-98 preempts municipal power to levy an income tax on motor carriers. *City of Springfield v. Krichbaum*, 88 Ohio App. 329, 330-31, 100 N.E.2d 281 (Clarke 1950) (a municipality's "power to levy a tax on . . . common carriers, Section 614-98, General Code, has been pre-empted by the state.").

[5] G.C. 614-86 was later recodified as R.C. § 4921.04.

What this Court understood then, and what Seville and CCA fail to understand today, is that preemption of local taxes and ordinances, except for local police regulations not in conflict with the PUCO's authority, was a necessary component of the PUCO's state-wide exercise of its jurisdiction. The PUCO's regulation of motor transportation companies was not limited to collecting $20 license fees, as suggested by Seville and CCA, but involved every facet of motor carrier operations:

> (A) Supervise and regulate each motor transportation company;
>
> (B) Fix, alter, and regulate rates;
>
> (C) Regulate the service and safety of operation of each motor transportation company;
>
> (D) Prescribe safety rules and designate stops for service and safety on established routes;
>
> (E) Prescribe safety rules applicable to the transportation and offering for transportation of hazardous materials in intrastate commerce within this state by motor transportation companies. The rules shall be consistent with, and equivalent in scope, coverage, and content to, the "Hazardous Materials Transportation Act," 88 Stat. 2156 (1975), 49 U.S.C. 1801, as amended, and regulations adopted under it. No person shall violate a rule adopted under this division or any order of the commission issued to secure compliance with any such rule.
>
> (F) Require the filing of annual and other reports and of other data by motor transportation companies;
>
> (G) Provide uniform accounting systems;
>
> (H) <u>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</u>, except as provided in this section and section 4921.05 of the Revised Code. <u>The commission</u>, in the exercise of the jurisdiction conferred upon it by this chapter and Chapters 4901., 4903., 4905., 4907., 4909., and 4923. of the Revised Code, <u>may prescribe rules affecting motor transportation companies, notwithstanding the provisions of any ordinance, resolution, license, or permit enacted, adopted, or granted by any township, municipal corporation, municipal</u>

> corporation and county, or county. In case of conflict between any such ordinance, resolution, license, or permit, the order or rule of the commission shall prevail. Local subdivisions may make reasonable local police rules within their respective boundaries not inconsistent with those chapters and rules adopted under them.

R.C. § 4921.04 (emphasis added). This authorizing section, in essentially the same form, has bestowed broad regulatory authority upon the PUCO over motor transportation companies since 1923, when it was codified as Section 614-86 of the General Code. *See Sylvania Busses v. City of Toledo*, 118 Ohio St. 187, 190-91, 160 N.E. 674 (1928); *see also* Appx. 55. Since 1923, the Motor Transportation Act has made "provision for regulation of motor transportation companies, governing the sphere of such operations, the kind and character of the service, the rates to be charged, and matters of taxation and insurance." *Craig v. Pub. Util. Comm.*, 115 Ohio St. 512, 514, 154 N.E. 795 (1926). The prohibition on local interference with motor carrier operations was not isolated to R.C. § 4921.25, but permeated the entire Motor Transportation Act.

The PUCO's regulation of motor transportation companies exclusively at the state level advances Ohio's economy, given that motor carriers are essential to keeping Ohio's economy moving. The state's public utility policy has long been to "regulate transportation by common and contract carriers by motor vehicle in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by such motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices." *H. & K. Motor Transp. v. Pub. Util. Comm.*, 135 Ohio St. 145, 154, 19 N.E.2d 956 (1939) (quoting G.C. 614-83, later recodified as R.C. § 4921.03). As this Court has explained, "the Legislature was not concerned so much with the question of who shall reap the emoluments of the transportation service as it was in securing consistently and continuously an adequate transportation service for the convenience of

the public." *McLain v. Pub. Util. Comm.*, 110 Ohio St. 1, 8, 143 N.E. 381 (1924). The PUCO was entrusted with ensuring that service was adequate and economical, which for many years required PUCO review of the reasonableness of rates charged by motor carriers. *See Federal Reserve Bank of Cleveland v. Pub. Util. Comm.*, 45 Ohio St. 2d 216, 219, 343 N.E.2d 114 (1976) (noting that, if the existing rate of a motor carrier is found to be unjust and reasonable, the PUCO is required to determine and fix a reasonable rate). *See also* R.C. § 4921.08(E), (F) (requiring tariff showing rates to be charged in order to obtain certificate of public convenience and necessity); R.C. § 4921.23; R.C. § 4907.28 (providing that charges must be no greater or lesser than as set forth in tariff).

The PUCO could not have effectively carried out the state's policies without preemption of local fees, taxes and other exactions as initially provided in G.C. 614-98 and later in R.C. § 4921.25. Take, for example, an intrastate bus company with offices in the largest ten cities in Ohio. If each municipality could lawfully exact monies – regardless of whether those exactions were named fees, taxes, payments or otherwise – from this public utility, it would prevent the PUCO from ensuring that the utility's customers obtained economical and reasonable rates. The municipalities would be expanding their municipal coffers at the expense of the utility's customers.

Knowing that local authorities can be creative in circumventing state authority, the General Assembly employed the "laundry list with summary term" approach to preempt all manner of exactions (except for the general property tax) both known and unknown. The General Assembly preempted all fees, and for good measure also preempted all license fees. It also preempted any requirement that a motor carrier make annual payments to a political subdivision, regardless of whether such a requirement was called a fee, a tax or something else

entirely. It also preempted all "license taxes" as well as all taxes. Then, to ensure that no demand for money had been missed, it preempted all other money exactions. While the term "exaction" can be synonymous to an extortion demand as noted by CCA (CCA Brief, p. 23), its purpose in R.C. § 4921.25 was to generally preempt any demand for money. The General Assembly used "exaction" here the same way the U.S. Supreme Court recently used it broadly as including taxes, fees and penalties. *See National Federation of Independent Business v. Sebelius*, 132 S.Ct. 2566, 183 L.Ed.2d 450 (2012) (holding that the exaction the Affordable Care Act imposes on those without health insurance is a tax). Indeed, in the case cited by CCA, *Marmet v. State*, 45 Ohio St. 63, 12 N.E. 463 (1887), the Court also used the term "exaction" broadly in reference to occupational taxes, assessments and license fees, without in any way limiting itself to those examples. *See id.* at 71-75. Given that the General Assembly made certain to preempt any possible demand for money (except the general property tax) that could be made upon motor transportation companies, Seville's and CCA's proposed interpretation of R.C. § 4921.25 is simply irrational.

While the General Assembly provided for <u>state</u> taxation of motor carriers, it declared as illegal any and all <u>local</u> exactions except for the local property tax: "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 . . . ." R.C. § 4921.25. As both the BTA and the court of appeals determined, this statute is "plain", "specific", "express", "clear" and has "no ambiguity" in preempting Seville's tax ordinance as applied to motor transportation companies. (Appx. 8, 10, 11, 20, 21.) Given the ninety-year

history of Ohio's state-wide regulation of motor transportation companies, the conclusion reached by the BTA and court of appeals is both obvious and sensible.

B. The State's Preemption of All Local Fees, Taxes, and Other Money Exactions Under R.C. § 4921.25 Is Not Limited By R.C. § 4921.18.

Seville and CCA ignore the state's history of public utility regulation and, as a result, improperly confuse and conflate R.C. § 4921.18 and R.C. § 4921.25. Both Revised Code sections are elements of the PUCO's expansive regulatory authority over motor transportation companies. Under R.C. § 4921.18, a motor transportation company must pay to the PUCO, for the state's general fund, an amount based on the number of motor-propelled vehicles it uses to transport persons or the number of commercial tractors it uses to transport property. R.C. § 4921.25 includes three provisions addressing costs imposed on motor transportation companies. The first applies to state-level action, and the next two apply to the exercise of taxing authority and police powers by political subdivisions:

1. A motor transportation company's payment under R.C. § 4921.18 does not affect liability for other taxes, fees, payments and charges exacted by the state in other sections of the Revised Code, except assessments under R.C. § 4905.10;

2. All fees, taxes and other exactions, except the general property tax, imposed by local authorities on motor transportation companies are illegal and superseded by Ohio's state-wide regulation of motor carriers; and

3. A motor transportation company that is in compliance with Ohio utility law is exempt from all local laws and rules, except for reasonable local police regulations not inconsistent with Ohio utility law.

With these three provisions, R.C. § 4921.25 limits governmental exactions from regulated motor transportation companies to those imposed by the state and the general property tax. This protects public utility customers and promotes local economic activity by preventing every political subdivision with some contact with a motor transportation company from using its taxing or police power to drive up transportation costs in Ohio.

Seville's net profits tax, as applied to Panther, is preempted by both the second and third provisions of R.C. § 4921.25. There is no dispute that Panther is a motor transportation company regulated by the PUCO under Chapter 4921 of the Ohio Revised Code, and there is no dispute that R.C. § 4921.25 applies to Panther's operations as a motor transportation company. Seville has only disputed whether its net profits tax comes within the scope of R.C. § 4921.25. Yet the statute's language is clear and unambiguous, and it must be applied to preempt Seville's net profits tax as applied to Panther. Seville's tax falls under the category of "taxes . . . assessed . . . by local authorities such as municipal corporations" and is, therefore, "illegal."

Moreover, Seville's tax is not a reasonable local police regulation, such as zoning regulations or safety rules. *See Coventry Twp. v. Ecker*, 101 Ohio App. 3d 38, 43-44, 654 N.E.2d 1327 (Summit App. 1995). Municipal police power is the authority to enact and enforce regulations to preserve and promote the public health, safety, morals and general welfare. Gotherman, Babbit & Lang, Local Government Law – Municipal, § 23:1 (1st ed. 2004 with 2012 update). As CCA recognizes, the police power does not include the power to tax for revenue purposes. *Id.* § 23:2; CCA Brief, p. 17. Thus, Seville's tax is doubly preempted as to Panther by R.C. § 4921.25, both as "taxes . . . assessed . . . by local authorities such as municipal corporations" and as "local ordinances, resolutions, by laws, and rules in force" at the time Panther is in compliance with Ohio's public utility laws.[6]

Whether the money paid under R.C. § 4921.18 is a fee or a tax is irrelevant. *See* CCA Brief, pp. 17-19. As the BTA found, there is "no inconsistency in the General Assembly

[6] CCA questions whether the third provision of R.C. § 4921.25 actually means what it says by asking whether it exempts motor transportation companies from local building and zoning ordinances. CCA Brief, p. 23. As clearly stated in R.C. § 4921.25, motor transportation companies are not exempt from reasonable local police regulations, provided they are not inconsistent with Ohio utility law.

instituting a license fee and preempting a net profits tax." (Appx. 21.) R.C. § 4921.25 does not equate the money paid under R.C. § 4921.18 with municipal taxes. It equates money paid under R.C. § 4921.18 with "taxes, fees, and charges fixed and exacted by other sections of the Revised Code." R.C. § 4921.18 only has meaning with regard to the first provision of R.C. § 4921.25, which is not at issue in this appeal. What is essential is the second provision of R.C. § 4921.25, which prohibits all fees, taxes and other exactions, however named, imposed by municipalities and other political subdivisions. Also essential is the third provision of R.C. § 4921.25, which prohibits local laws burdening the operation of regulated motor transportation companies – this would include anything that is not a money exaction covered in the immediately preceding sentence – except for reasonable local police regulations.

Seville and CCA ignore the plain language of R.C. § 4921.25 by claiming that R.C. § 4921.25 preempts only fees and charges that are similar to the fee on motor propelled vehicles assessed in R.C. § 4921.18. Seville Brief, p. 12; CCA Brief, p. 18-19. This is a grossly twisted – and obviously wrong – reading of R.C. § 4921.25, which declares that any local fee, tax or money exaction imposed on a motor transportation company, except the general property tax, is illegal. It does not say that a fee or charge of a "similar type" to that imposed by R.C. § 4921.18 is illegal. If the General Assembly had intended that the second provision of R.C. § 4928.25 prohibit only local license fees similar to that imposed under R.C. § 4921.18, the language of the second provision would have been quite different. Indeed, there would have been no reason to refer to "annual payments, . . . or taxes or other money exactions." And there would have been no reason to exclude "the general property tax" from this very limited reach, as construed by Appellants, of R.C. § 4921.25's second provision. The plain language of R.C. § 4921.25 simply does not support CCA's claims.

CCA's argument that "the general property tax" appears in the second provision of R.C. § 4921.25 "solely for the sake of clarity" is irrational. CCA Brief, pp. 25-26. If this provision were limited to license fees and taxes imposed on motor vehicles as claimed by CCA, there would be no reason to "clarify" that the general property tax is not a license fee or tax. As the court of appeals noted, "[g]eneral property taxes are not simply license and regulatory fees and charges." (Appx. 10.) It also begs the question as to why the General Assembly did not "clarify" that other types of payments, fees, taxes and other money exactions also are not covered. CCA appears to suggest that the General Assembly left a loophole for municipalities by allowing them to impose a personal property tax on the vehicles of motor transportation companies, but this reading conflicts with the entirety of the statute. The reference to "general property tax" can only mean the real property tax.

Seville's and CCA's reliance upon R.C. § 4921.18 also ignores the third provision of R.C. § 4921.25, which exempts motor transportation companies from "all local ordinances, resolutions, by laws, and rules in force," except for reasonable local police regulations not inconsistent with the PUCO's regulatory authority. CCA has not argued, and no reasonable party could argue, that this third provision is limited to local laws and rules of a type similar to R.C. § 4921.18. Appellants agree that Seville's ordinance imposing a net profits tax is not a local police regulation but an exercise of the taxing power (*see* CCA Brief, p. 17), so the limited exception for reasonable local police regulations does not apply here. Thus, under the third provision of R.C. § 4921.25, that ordinance "shall cease to be operative as to" Panther.

All of Appellants' arguments regarding the proper interpretation of R.C. § 4921.18 and its impact on R.C. § 4921.25 are red herrings intended to distract this Court from the clear language of R.C. § 4921.25 – in its second and third provisions – exempting Panther from

Seville's net profits tax. Because R.C. § 4921.25 renders illegal Seville's tax as applied to Panther, the court of appeals and BTA acted reasonably and lawfully in finding in favor of Panther.

C. Appellants Fail to Recognize That R.C. § 4921.25 Supports Statewide Public Utility Regulation of Motor Transportation Companies.

Under R.C. § 4921.25, political subdivisions are prohibited from burdening regulated motor transportation companies with added costs, regardless of whether the political subdivisions are acting pursuant to their taxing power or police power, because those added costs necessarily harm public utility customers and Ohio's economy. The General Assembly specifically limited municipal taxing power in the second provision of R.C. § 4921.25 and then also included a catch-all exemption in the third provision of R.C. § 4921.25. Because this appeal addresses Seville's taxing power, the General Assembly may restrict that power under Article XIII, Section 6, and Article XVIII, Section 13, of the Ohio Constitution.[7] Appellants have not disputed that the General Assembly may limit Seville's taxing power by an express act as provided in *Cincinnati Bell Tel. Co. v. Cincinnati*, 81 Ohio St.3d 599, 693 N.E.2d 212 (1998), syllabus.[8] In R.C. § 4921.25, the General Assembly expressly limited Seville's power to impose <u>any</u> fee, tax or other money exaction, except the general property tax, on motor transportation companies. There is no reason to believe that the General Assembly meant "any" to mean "only those similar to R.C. § 4921.18" or "any taxes that are not net profits taxes."

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[7] Because Chapter 4921 is a general law providing for state-wide regulation of motor transportation companies, the third provision of R.C. § 4921.25 preempting municipal police powers is consistent with Section 3, Art. XVIII, of the Ohio Constitution.

[8] CCA makes a throw-away argument that somehow home rule authority is in question (CCA Brief, p. 27), but *Cincinnati Bell* makes clear that municipal taxing authority may be limited without offending home rule.

The plain language of R.C. § 4921.25 does not support Seville's belief that R.C. § 4921.25 is limited to the taxation of "motor propelled vehicles." Seville Brief, p. 11. Seville's argument appears to be that R.C. § 4921.25 is limited to taxation of vehicles, not taxation of motor transportation companies. Yet the quoted term "motor propelled vehicles" as used in R.C. § 4921.18 applies only to bus transportation and, thus, does not apply to Panther, which uses commercial tractors to transport property. This term also does not appear anywhere in R.C. § 4921.25, while the term "motor transportation companies" does. The General Assembly authorized the PUCO to regulate motor transportation companies – *i.e.*, public utilities – pursuant to R.C. § 4921.01-.32, inclusive. The General Assembly taxed motor transportation companies like Panther in R.C. § 4921.18 based on the number of commercial tractors used, and in R.C. § 4921.25 it limited the authority of political subdivisions to impose on motor transportation companies any other fees, taxes, money exactions, laws or rules. Seville's argument simply makes no sense.

Appellants have consistently ignored the plain language of R.C. § 4921.25, which declares as illegal not only license fees and license taxes, but all other fees, annual payments, taxes and other money exactions. Much of R.C. § 4921.25 would be surplusage under Appellants' reading. Indeed, there would be no reason to provide in R.C. § 4921.25 that all fees, taxes and other money exactions "are superseded by sections 4503.04, 4905.03, and 4921.02 to 4921.32, inclusive of the Revised Code." R.C. § 4905.03's only relevance is that it defines motor transportation companies as public utilities. R.C. §§ 4921.02-.32 authorize the PUCO's broad regulation of public utilities that are motor transportation companies. Thus, any and all tools to extract money from public utilities, however creatively named by local authorities, are superseded by the PUCO's regulation of public utilities that are motor transportation companies.

Appellants simply ignore that the statutory provisions at issue support, and are a necessary part of, public utility regulation.

D. R.C. § 4921.25's Reference to "Taxes" Necessarily Includes Local Taxes Adopted After R.C. § 4921.25 Became Effective.

Both CCA and Seville argue that the General Assembly could not have intended when enacting G.C. 614-98 in 1923 to preempt municipal income taxes that did not exist in 1923. CCA Brief, pp. 24-25; Seville Brief, p. 9. Yet statutes operate prospectively, and it has long been accepted that statutes may apply to future circumstances not present at the time of enactment. *See* R.C. § 1.48; *Desenco, Inc. v. Akron*, 84 Ohio St.3d 535, 542-43, 706 N.E.2d 323 (1999). What matters is not whether the General Assembly intended in 1923 to preempt future municipal income taxes, but whether the language employed plainly preempted the application of Seville's not profits tax to Panther during the tax years at issue. The meaning of the language employed in both the second and third provisions of R.C. § 4921.25 is clear: local burdens placed on motor transportation companies will not be countenanced for as long as motor transportation companies are regulated as public utilities.

"The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction." *Tomasik v. Tomasik*, 111 Ohio St.3d 481, 2006-Ohio-6109, 857 N.E.2d 127, ¶ 14 (quoting *Slingluff v. Weaver*, 66 Ohio St. 621, 64 N.E. 574 (1902), paragraph two of the syllabus). Both G.C. 614-98 as enacted in 1923 and R.C. § 4921.25 as codified in 1953[9] declared that **all** local taxes imposed on motor transportation companies, except the general property tax, are illegal and superseded by Ohio's state-wide

[9] Seville notes that municipal income taxes began to be adopted in Ohio in the 1940s. Seville Brief, p. 9. The preemption language in R.C. § 4921.25 was codified several years after in 1953 and was recodified as recently as 2012.

regulation of motor carriers. These provisions also declared that all other local ordinances are ineffective as to motor transportation companies, except for reasonable local police regulations. Because the language employed in both the second and third provisions of R.C. § 4921.25 plainly preempts the application of Seville's tax ordinance to Panther, the Court's inquiry is complete.

E. Appellants' Reliance on R.C. § 715.013 and *Angell v. City of Toledo*, 153 Ohio St. 179, 91 N.E.2d 250 (1950), is Misplaced.

R.C. § 715.031 has no application here. Seville and CCA contend that R.C. § 715.013 has significance because it does not prohibit municipalities from levying an income tax. Seville Brief, p. 8; CCA Brief, p. 21. As Appellants note, the General Assembly adopted R.C. § 715.013 after this Court's decision in *Cincinnati Bell Tel. Co. v. Cincinnati*, 81 Ohio St.3d 599, 693 N.E.2d 212 (1998), that municipal taxing authority may be preempted only by an express act of the General Assembly. R.C. § 715.013 lists several chapters of the Ohio Revised Code that adopt state taxes that cannot be duplicated in any manner at the local level. There was no reason for the General Assembly to include the state income tax chapter in this list because municipal income taxes are not entirely preempted. R.C. § 715.013 prohibits municipal taxes that are the same as or similar to several categories of state taxes, not including the state income tax. Instead of preempting all local income taxes, the General Assembly has authorized municipal income taxes in Chapter 718 of the Revised Code with numerous carve-outs, including the carve-out found in R.C. § 4921.25 for motor transportation companies.

Similarly, *Angell v. City of Toledo*, 153 Ohio St. 179, 91 N.E.2d 250 (1950), has no application here. In *Angell*, this Court held that the General Assembly had not preempted the field of income taxation and had 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.*, syllabus para. 2. This holding was rendered upon the complaint of a non-resident of Toledo that Toledo's income tax on his wages earned at a business located in Toledo was unlawful. As such, the Court's holding addressed the question of whether the General Assembly had acted under the above-referenced sections of the Ohio Constitution to prohibit Toledo from adopting a tax on wages earned within Toledo. The fact that the General Assembly had not taken any such action is irrelevant to this appeal, which concerns a municipal tax on motor transportation companies. When *Angell* was decided, the General Assembly had not limited the authority of municipalities to levy and collect taxes generally on personal income, but the Court was well aware that the General Assembly had declared through G.C. 614-98 that any local fee, tax or other money exaction imposed specifically on motor transportation companies was illegal. *See City of Cleveland*, 130 Ohio St. at 512; *Cleveland Ry. Co.*, 130 Ohio St. at 148. Thus, the Second Appellate District noted in a decision issued the same year as *Angell* that municipalities are preempted from imposing an income tax on motor carriers. *Krichbaum*, 88 Ohio App. at 330-31.

F. The Provisions Of R.C. § 718.01 Do Not Require Imposition Of Seville's Tax On Panther.

The court of appeals properly rejected CCA's and Seville's argument that R.C. § 718.01(D) obligates Seville to impose a net profits tax on Panther. CCA Brief, p. 26; Seville Brief, p. 8. As the court observed, R.C. § 718.01(H)[10] expressly provided during the tax years at issue that municipalities are not permitted to levy a tax on income that is not authorized under existing laws. R.C. § 4921.25 was one such existing law.

[10] Since renumbered as R.C. § 718.01(J).

CCA's reliance upon R.C. § 718.01(F),[11] which prohibited municipalities from taxing several categories of income, is misguided. There was no need for the General Assembly to include an exemption for motor transportation companies in R.C. § 718.01(F) because the exemption had existed since 1923 in R.C. § 4921.25. In fact, Division (H) of R.C. § 718.01 provided that "[n]othing 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." So, contrary to Seville's claim, it is legal for Seville not to tax Panther. This is why Seville's Income Tax Ordinance and CCA's Rules and Regulations specifically exempt from Seville's net profits tax not just those categories of income defined in R.C. § 718.01(F) but also "net profits, the taxation of which is prohibited by the Constitution of the State of Ohio *or any act of the Ohio General Assembly limiting the power of Seville to impose net profits taxes.*" (Panther Supp. 26, 53.) Exemptions are not limited to those in R.C. § 718.01(F) but extend to any act of the General Assembly, which includes R.C. § 4921.25.

G. How A Motor Transportation Company Allocates The Cost Of The R.C. § 4921.18 Tax Is Not Relevant.

CCA argues that Panther's exemption from municipal taxation is "absurd" because Panther does not "ultimately" pay the R.C. § 4921.18 tax. CCA Brief, pp. 27-28. In fact, Panther does pay the tax – it paid the tax on 500-600 trucks during the tax years at issue. (Panther Supp. 22-23.) CCA claims that it demonstrated before the BTA that Panther does not pay the tax, but this is false and, notably, CCA does not cite the record to support this falsehood. What CCA is criticizing is Panther's business model under which it may require its contractors to reimburse Panther for taxes Panther paid. This argument is based on the false assumption that payment of the R.C. § 4921.18 tax is a trade off for the municipal tax exemption. It is not.

[11] Since renumbered as R.C. § 718.01(H).

Municipal fees, taxes and other money exactions, except the general property tax, are illegal and superseded by the second provision of R.C. § 4921.25 regardless of whether the R.C. § 4921.18 tax is paid.

Moreover, these fees, taxes and other money exactions are illegal and preempted regardless of how the R.C. § 4921.18 tax is paid. Panther is a motor transportation company with a Certificate of Public Convenience and Necessity issued by the PUCO. (Panther Supp. 6-9.) Panther is the regulated motor transportation company subject to the R.C. § 4921.18 tax, and Panther paid the tax at all relevant times. (Panther Supp. 22-23.) How Panther recovers its costs of doing business has no bearing on whether Seville's net profits tax, as applied to Panther, is illegal and superseded by Ohio's state-wide regulation of motor carriers.

Panther is not claiming exemption from Seville's tax simply because Panther paid the R.C. § 4921.18 tax.[12] Panther is exempt from Seville's tax because Panther, as a motor transportation company regulated by the PUCO, is exempt under the second provision of R.C. § 4921.25 from all local fees, taxes and other money exactions except for the general property tax. There is no dispute, and CCA has never contested, that Panther is a motor transportation company regulated by the PUCO. Therefore, the court of appeals did not err in rejecting CCA's argument.

CONCLUSION

For the foregoing reasons, the court of appeals did not err in affirming the BTA's decision and finding that Seville's net profits tax as applied to Panther is clearly preempted by R.C. § 4921.25. Therefore, this Court should affirm.

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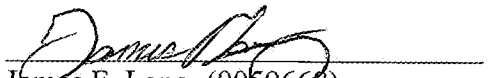
[12] CCA falsely claims that Panther changed its theory of the case by relying upon R.C. § 4921.25 instead of R.C. § 4921.18. (CCA Brief, p. 28). In truth, Panther is relying upon R.C. § 4921.25 because that is the statute that expressly preempts the application of Seville's tax to Panther.

Respectfully submitted,



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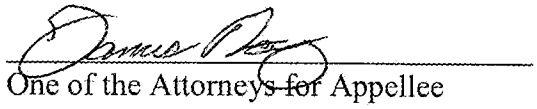

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