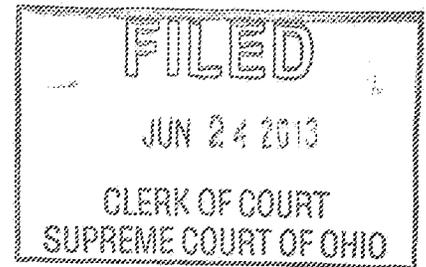


IN THE SUPREME COURT OF OHIO

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

**MEMORANDUM OF
THE DUMP TRUCK CARRIERS CONFERENCE
AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF/APPELLEE
PANTHER II TRANSPORTATION, INC.**

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I. THE DUMP TRUCK CARRIERS CONFERENCE HAS AN INTEREST IN MAINTAINING STATEWIDE UNIFORMITY AND IN PREVENTING MUNICIPALITIES FROM CIRCUMVENTING EXPRESS STATUTORY PROHIBITIONS ON LOCAL TAXES.

The Dump Truck Carriers Conference has an interest in this case because a municipality is attempting to circumvent existing law and public policy by imposing a net profits tax on motor carriers in contravention of a clear, express statutory provision preempting the imposition of such a tax on motor carriers. As amicus curiae on behalf of Appellee Panther II Transportation, Inc. (“Panther”), the Dump Truck Carriers Conference (“DTCC”) submits this memorandum in opposition to Appellant’s appeal of the decision of the Medina County Court of Appeals (9th Dist.) in this case affirming the decision of the Ohio Board of Tax Appeals.

DTCC represents approximately thirty (30) Ohio motor carrier companies whose business is the transportation of vital materials in dump truck equipment. The ability of Ohio’s dump truck carriers to provide this service is critical to many Ohio industries, such as, for example, the building industry, the mining and aggregates industry, the road building industry and many other industries, the welfare of which is critical to Ohio’s commercial welfare. Dump truck operations are typically very low margin businesses. Because they compete with other modes of transportation, the continuing increase of the costs of fuel, vehicle acquisition and maintenance, labor, taxes, fees and regulatory and other costs have left many of DTCC’s members in a serious price-cost squeeze. Ohio’s motor carriers are constantly subject to intermodal competition from rail carriers; this is especially true for the transportation of commodities that move in bulk, such as those transported by DTCC members. DTCC members and their employees already pay Ohio taxes and are corporate citizens of Ohio. Conversely, the Class 1 rail carriers are not citizens of Ohio and pay their taxes and employ their employees in other states. The proposal of the Appellants in this case would, if accepted, place all of Ohio’s

motor carriers at a competitive disadvantage and especially the dump truck carriers represented by DTCC. Exposure to the type of taxation advocated by the Appellants in this case would literally cripple the dump truck industry and thereby, other essential public and private services which are vital to Ohio's well-being. The policy and purpose of the Ohio law regarding the taxation of motor carriers has always been to treat them fairly as tax paying corporate citizens, but to not over-burden the carriers with draconian and punitive schemes like the one advocated by the Appellants in this case. As noted by Counsel for Amicus Curiae Ohio Truckers Association in its Brief in Opposition to Jurisdiction in this case:

“With over 82 percent of Ohio communities depending exclusively on trucks to move their goods, Ohio relies greatly on the large balanced network of the trucking industry. American Transportation Research Institute, *Ohio Fast Facts*, <https://www.atri-online.org/state/data/ohio/OhioFastFacts.pdf> (access Oct. 18, 2012).”

In its consideration of policies and regulations appropriate for Ohio's trucking industry, the General Assembly made a wise and very transparent policy decision to regulate this industry in a centralized manner (*See*, O.R.C. Chapter 4921, O.R.C. Chapter 4923, Ohio Adm. Code Chapters 4901:2-1 through 4901:2-21, inclusive). Since it involves both interstate and intrastate commerce, the trucking industry needs to be centrally regulated so that it can be subjected to uniform regulations promotive of such commerce in a sensical fashion. Clearly, the allowance of individual municipality enforcement of income taxes would create havoc within the motor carrier industry. As an essential part of its central philosophy, the General Assembly enacted O.R.C. Section 4921.25.¹ Section 4921.25 clearly establishes that all taxes assessed by local authorities,

¹ Throughout this memorandum, references O.R.C. 4921.25 pertaining to the statute in effect during the time prior at issue. The operative language of O.R.C. 4921.25 was recodified as O.R.C. 4921.19(J) effective June 11, 2012, pursuant to 129 H.B. 487.

except the general property tax, are illegal and superseded by the Revised Code. *City of Springfield v. Krichbaum*, 88 Ohio App. 329, 330-31, 100 N.E.2d 281 (2nd Dist. 1950).

Appellant argues that the specific language of O.R.C. §4921.25 is somehow “ambiguous,” thereby allowing interpretation in favor of taxation of motor carriers by individual municipalities. This argument is disingenuous. Obviously, had the General Assembly not intended to except Ohio’s motor carriers from individual municipal income taxation, it would not have done so. Other courts reviewing this statute have already found (without exception) that the statute is in fact clearly written (see, for example, Ohio Board of Tax Appeals (Aug. 30, 2011 DTA, connecting orders at p. 8; Aug. 8 2012, Revisions to Journal Entry at p. 5) and have also held that the motor carrier exemption does, in fact, specifically apply to municipal taxation of motor carriers. *City of Cleveland v. Public Utilities Commission*, 130 Ohio St. 503 (1936).

While it is unfortunate that many of Ohio’s municipalities have a need for more money in these difficult times, that does not mean that they should be able to re-write Ohio statutory law by imposing new income taxes on Ohio businesses in an effort to “shift the burden” to Ohio motor carriers.

Moreover, if the existing statutory limitations of local taxation of businesses is eliminated, it would “open the door” to a literal “Pandora’s Box” of municipal attempts to tax all businesses that would have a crippling effect on Ohio’s economy. If Appellant is successful in this case, not only would it likely result in these taxes having to be passed on to consumers, but, moreover, this result would place all other Ohio businesses at a severe competitive disadvantage.

II. ARGUMENT

A. The Clear Language Of Ohio Revised Code §4921.25 Represents A Policy Decision Of The General Assembly To Exempt Motor Carriers From Individual Municipal Taxation.

The clear language of O.R.C. §4921.25 represents a policy decision of the General Assembly to except motor carriers from individual municipal taxation.

It is axiomatic that the General Assembly has it within its power the right to restrict municipal taxing authority when the General Assembly believes such not to be in the best interest of the state. *Cincinnati Bell Telephone Company v. City of Cincinnati*, 81 Ohio St. 3d, 599 (N.E.2d (1998)). Appellants concede this basic principle of course, but rather argue that the motor carriers are not intended to be included in this exemption. Appellant's arguments in this matter should be before the Ohio Legislative and not this Court.

B. Ohio Revised Code §4921.25 Is Part Of A Designed Framework For Uniform, State-Wide Regulation Of Motor Carriers.

Section 4921.25 makes it clear on its face that the General Assembly intended to consolidate all regulations of motor carriers, except for traffic law regulations where necessary. Moreover, Ohio motor carriers also already pay annual income taxes to the Ohio Department of Taxation and transportation taxes to the Public Utilities Commission of Ohio and their individual employees already pay municipal income tax on the income they earn from motor carriers for where they live. To allow a fourth tier of income taxation on motor carrier revenue is not only unwarranted, but will create substantial confusion and administrative chaos within the State's existing tax system.

C. Ohio Revised Code §4921.25 Is Clear And Unambiguous.

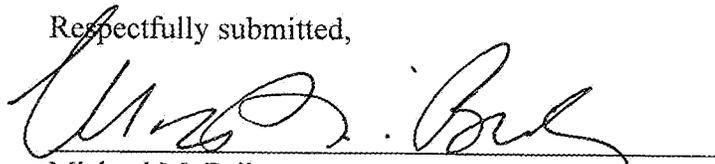
The intent of the General Assembly to exempt motor carriers from local regulation and taxation is absolutely, affirmatively, expressly, and clearly articulated in the statute. For

example, the General Assembly obviously recognized that there may be some police and safety reasons for exceptions to this general policy. That is why the General Assembly provides a special exception in the statute for police regulations not inconsistent with state regulations. It does not say “police regulation and income taxation”, or “except for the right of municipalities to impose income taxes”, it just says police regulations. Obviously, had the General Assembly intended to exclude municipal income taxation from the general policy, it would have done so. Many municipalities correctly and properly regulate motor carriers for “reasonable local police” reasons, including, for example, length and weight restrictions, speed on residential streets, bridge restrictions, noise restrictions, etc. All of these are necessary because municipalities differ in their needs to protect against certain activities which may be harmful to their citizens or their infrastructure. For example, one municipality may have small bridges to protect a small road that needs a weight limit and noise may be an issue with another, etc. These are truly local issues. Taxation, however, is not a local issue and taxation has never been considered to be a “police power” in Ohio. *Coventry Twp. v. Ecker*, 101 Ohio App.3d 38, 43-44 (9th Dist. 1995).

III. CONCLUSION

For all of the reasons stated herein, as well as those advanced by Appellee Panther II Transportation, Inc. and others in this case, DTCC respectfully requests that the appeal of Appellant be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was served via ordinary U.S. mail upon the following this 21st day of June, 2013.

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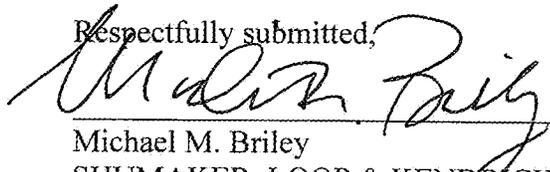
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