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 Ninth District
	)	Court of Appeals, Medina County, Ohio
VILLAGE OF SEVILLE BOARD OF	)	
INCOME TAX REVIEW, *et al.*,	)	Court of Appeals Case Nos. 11CA0092-M,
	)	11CA0093-M (consolidated)
Defendants/Appellants.	)	
	)	

BRIEF OF *AMICUS CURIAE* THE OHIO TRUCKING ASSOCIATION

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I. INTRODUCTION.

As *amicus curiae* on behalf of Appellee Panther II Transportation, Inc. ("Panther"), the Ohio Trucking Association ("OTA") urges the Court to affirm the decision of the Ninth District Court of Appeals upholding the express statutory provision that preempts municipal taxation of motor carriers.

II. THE OHIO TRUCKING ASSOCIATION'S INTEREST IS IN PREVENTING THE CIRCUMVENTION OF EXPRESS STATUTORY PROHIBITIONS ON MUNICIPAL TAXATION OF MOTOR CARRIERS.

A. Motor carriers are an essential industry in Ohio's economy.

The OTA has over 900 members and is active in governmental affairs as an advocate on behalf of its members and the motor transportation industry. The membership of the OTA ranges from nationally-recognized carriers with thousands of commercial motor vehicles to small businesses that use one or two vehicles. Since 1918, the OTA has served as the voice of the industry.

Ohio is especially fortunate to have a large transportation presence. In 2012, over 12,730 trucking companies were located in Ohio.[1] Ohioans have benefited from the 268,470 jobs that the trucking industry provided in Ohio in 2011. *Id.* Over 4.3 million trucks were registered in Ohio in 2011.[2]

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[1] American Transportation Research Institute, "Ohio Fast Facts," http://www.atri-online.org/state/data/ohio/OhioFastFacts.pdf (accessed Jun. 21, 2013). Due to the length of the citations for online sources, the citations to these sources are included in footnotes.

[2] United States Department of Transportation, Federal Highway Administration, Office of Highway Policy Information, *Highway Statistics 2011*, Truck and Truck-Tractor Registrations 2011, Table MV-9, http://www.fhwa.dot.gov/policyinformation/statistics/2011/mv9.cfm (accessed Jun. 21, 2013).

With over 82 percent of Ohio communities depending exclusively on trucks to move their goods, Ohio relies greatly on the extensive network of the trucking industry.[3] Trucks carry 60 percent by weight (566 million tons) and 74 percent by value ($1.3 trillion) of all the freight shipped and received by Ohio business and industry.[4] Freight movements in Ohio, particularly outbound and intrastate movements, are dependent upon the truck mode of transportation. *Id.* at p. 2-21.

In addition to its large impact in Ohio, motor carriers are heavily regulated. Motor carriers must comply with the many regulations regarding safety, vehicle maintenance, hours of service, hazardous materials, operating authority, and other aspects of operation. *See generally* R.C. Chapter 4921., R.C. Chapter 4923., Ohio Adm.Code Chapters 4901:2-1 through 4901:2-21, inclusive.

The General Assembly's decision to regulate motor carriers on a statewide approach abrogates all regulation at a local government level, save for specifically carved-out exceptions such as general property taxes and local police regulations. As part of the statewide regulation in Revised Code Chapter 4921., the General Assembly enacted Section 4921.25,[5] which is just one law regarding the taxation of the industry.

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[3] American Transportation Research Institute, "Ohio Fast Facts," http://www.atri-online.org/state/data/ohio/OhioFastFacts.pdf.

[4] Ohio Department of Transportation, "Freight Impacts on Ohio's Roadway System – June 2002," http://www.dot.state.oh.us/Divisions/Planning/SPR/StatewidePlanning/Documents/Maritime/Freight_Imacts_Report_June_2002.pdf, p. 2-1 (accessed Jun. 21, 2013).

[5] Throughout this brief, the OTA references R.C. 4921.25 as in effect during the time period at issue. The operative language of R.C. 4921.25 was recodified as R.C. 4921.19(J) effective June 11, 2012, pursuant to 129 H.B. 487.

Motor carriers are taxed at the state level. From 2000 to 2005, motor carriers in Ohio paid over $4.4 billion in state taxes and fees.[6]

Slim profit margins make motor carriers sensitive to significant changes. In a study conducted for the Federal Highway Administration, profit margins for publicly traded truckload motor carriers were found to be close to or under five percent.[7] Significant changes to the business environment could force many motor carriers into bankruptcy and send a ripple throughout the economy. *Id.*

B. Almost 600 municipalities could impose net profits taxes, each defined and assessed in their own way, against motor carriers if the Court reverses the decision below.

As of 2011, the Village of Seville was only one of 592 municipalities in Ohio that imposed an income tax.[8] The number of municipalities that levy an income tax has increased steadily over the past 10 years. In 2002, 548 municipalities levied an income tax.[9] In 2009, the number of municipalities that imposed an income tax jumped to 577.[10]

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[6] American Transportation Research Institute, *Ohio State and Federal Freight Motor Carrier Taxes and Fees Paid 2000 – 2005*, http://www.atri-online.org/state/data/ohio/taxesandfees.htm (accessed Jun. 21, 2013).

[7] United States Department of Transportation, Federal Highway Administration, "Evaluation of U.S. Commercial Motor Carrier Industry Challenges and Opportunities," www.ops.fhwa.dot.gov/freight/publications/eval_mc_industry/index.htm (accessed Jun. 21, 2013).

[8] Ohio Department of Taxation, "2012 Brief Summary of Ohio's Taxes," www.tax.ohio.gov/communications/publications/brief_summaries/2012_brief_summary.aspx (accessed Jun. 21, 2013).

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[10] Ohio Department of Taxation, "2011 Brief Summary of Ohio's Taxes," http://www.tax.ohio.gov/communications/publications/brief_summaries/2011_brief_summary.aspx (accessed Jun. 21, 2013).

In the span of 2009 and 2011, fifteen additional municipalities began imposing income taxes.

Ohio municipal income tax rates range from 0.4 percent to 3 percent.[11] Of the 17 states that rely on local income taxes, Ohio has been found to have among the highest rates, with only one state (Maryland) having a higher effective rate.[12]

In addition to high tax rates, Ohio municipalities have "base autonomy," such that each municipality can define its own calculation of taxable income and its own collection requirements. *Id.*; *see also* Ohio Constitution, Article XVIII, Section 7. Ohio is the only state in the nation that allows each municipality to draft its own rules for withholding and the calculation of penalties.[13]

Seville has imposed the tax on net profits "derived from sales made, work done, services performed or rendered and business or other activities conducted in Seville." Seville Ord. No. 2005-65, 2:05. The tax applies "whether or not such corporations have an office or place of business in Seville." *Id.* It appears that Seville imposes a net profits tax on motor carriers for their business or other activities (i.e. pickups or deliveries) conducted in Seville. If allowed by the Court, other municipalities will undoubtedly follow Seville's lead.

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[11] Ohio Department of Taxation, "2012 Brief Summary of Ohio's Taxes," www.tax.ohio.gov/communications/publications/brief_summaries/2012_brief_summary.aspx.

[12] Tax Foundation, "Ohio's Local Income Taxes: Complex and in Need of Reform" (May 7, 2013), http://taxfoundation.org/article/ohios-local-income-taxes-complex-and-need-reform (accessed Jun. 24, 2013).

[13] The Buckeye Institute, "Buckeye Testifies About the Critical Need for Tax Reform" (May 10, 2013), http://buckeyeinstitute.org/the-liberty-wall/2013/05/10/buckeye-testifies-about-the-critical-need-for-tax-reform/ (accessed Jun. 24, 2013).

In terms of reporting income tax liability, more than 600 local government entities (including local school districts with income taxes) have devised over 300 different tax forms. Ohio Treasurer Josh Mandel, Letter to the Editor, *Columbus Dispatch* (Apr. 27, 2013). Not only would they be required to determine whether their activity fell within the scope of each municipality's definition of income, but motor carriers would also have the cost of compliance in completing varying tax forms, given carriers' extensive operations across the state.

Neither the Appellants nor the Ohio Municipal League have identified which of the other 591 municipalities have attempted to impose a net profits tax on other motor carriers. But if the Court overturns the ruling below, then the statutory bar on municipal taxation of motor carriers will be lifted and all municipalities will have a new-found ability to impose multiple, and possibly overlapping, taxes against motor carriers.

On behalf of its membership and the industry, the OTA respectfully requests that the Court affirm the decision of the Ninth District Court of Appeals.

III. STATEMENT OF FACTS AND CASE.

This case is an appeal from the Ninth District Court of Appeals' decision, which held that R.C. 4921.25 expressly preempts municipalities from assessing a net profits tax against motor carriers. After reconsideration, the Court accepted jurisdiction of this appeal. The OTA submits this *amicus curiae* brief in support of Panther. The OTA incorporates the statement of facts set forth in Panther's merit brief by this reference.

IV. ARGUMENT.

Response to Proposition of Law No. 1: In enacting R.C. 4921.25, the General Assembly expressly preempted municipal taxation of motor carriers in favor of statewide regulation.

A. In R.C. 4921.25 the General Assembly expressly preempted municipal taxation of motor carriers.

1. The plain language of R.C. 4921.25 establishes the General Assembly's intent to preempt municipal taxation of motor carriers.

The General Assembly has the authority under the Ohio Constitution to preempt the taxing power of a municipality. *Cincinnati Bell Tel. Co. v. City of Cincinnati*, 81 Ohio St.3d 599, 601, 693 N.E.2d 212 (1998). "The power to restrict municipal taxing power as granted by Section 13, Article XVIII and Section 6, Article XIII of the Ohio Constitution requires the General Assembly to preempt municipal taxing power by express statutory provision." 81 Ohio St.3d at 608.

The issue in this case is whether the General Assembly, in enacting R.C. 4921.25, preempted municipal taxation of motor carriers by an express statutory provision. If it did, then the General Assembly acted within its constitutional authority.

The intent of the General Assembly to expressly preempt all local taxation, except for general property taxes, is evident in the statutory language. The express preemptory language is included in the first sentence of R.C. 4921.25: "*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 . . . are *illegal* and are

superseded by sections 4503.04, 4905.03, and 4921.02 to 4921.32, inclusive, of the Revised Code." (emphasis added).[14]

The word "all" is the key to the provision. Ohio law mandates that, "Words and phrases shall be read in context and construed according to the rules of grammar and common usage." R.C. 1.42. As used in this context, "all" is defined as "every." *Webster's Third New International Dictionary*, 54 (1971). Taken in its ordinary manner in this context, the word "all" is an inclusive term to encompass every type of tax. The statute thus preempts every municipal tax, except for the general property tax, from being levied against motor carriers.

The use of the word "all" is efficient and flexible. Not only does it save the writer from listing every tax to which municipalities may currently attempt to impose, but the word "all" also contemplates any type of tax that municipalities may attempt to impose in the future. To hold otherwise would render the word "all" meaningless.

The fact that income taxes were not utilized until after the enactment of the statute does not render the result Appellants seek. It is prudent for the legislature to contemplate

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[14] Revised Code Section 4921.25, as in effect at the time relevant to this case, provides 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."

that municipalities may identify new ways to levy taxes. Using the word "all" demonstrates the General Assembly's intent to encompass every tax now in existence or levied in the future. To hold that the General Assembly's use of the word "all" is insufficient to preempt every type of municipal taxation would set a precedent that requires the General Assembly to enumerate every tax not only in existence at the time of enactment, but also every type of tax that may be created in the future.

Since the General Assembly's enactment of this statutory provision in 1923, there has been no known court case or Board of Tax Appeals decision in which a municipality has directly challenged this express preemptory language. The plain language of the statute has served as its own notice of the preemptory effect on municipal taxation.

2. The statutory history of R.C. 4921.25 confirms the General Assembly's intent to preempt municipal taxation of motor carriers.

The recent amendments of Chapter 4921. are also indicative of the General Assembly's intent. In Am.Sub.H.B. No. 487, the General Assembly recodified the provisions of R.C. 4921.25 as R.C. 4921.19(J). 2012 Am.Sub.H.B. No. 487. The General Assembly not only retained the express preemptory language, but it also replaced "fees" with "taxes" in the first sentence of R.C. 4921.19(J). While headings do not constitute any part of the law, R.C. 1.01, the fact that the heading of the applicable Revised Code Section mirrors the change in the statute from "fees" to "taxes" is also indicative of the General Assembly's intent to affirm the preemption of local taxation.

In amending Chapter 4921., the General Assembly had the opportunity to delete this provision if it believed that its provisions were being misinterpreted. *See, e.g., Clark v. Scarpelli*, 91 Ohio St.3d 271, 278, 744 N.E.2d 719 (2001) ("It is presumed that the

General Assembly is fully aware of any prior judicial interpretation of an existing statute when enacting an amendment."). Given the opportunity to correct any misinterpretations, the General Assembly retained the provision.

3. The decisions below relied on the plain language of the statute and did not require implication to find R.C. 4921.25 preemptive of municipal taxation of motor carriers.

This case does not present the return of the doctrine of implied preemption. Both the Board of Tax Appeals and the Ninth District Court of Appeals held that R.C. 4921.25, by its plain language, expressly preempted a municipality from imposing a net profits tax on motor transportation companies. Aug. 30, 2011 BTA Correcting Order at p. 9; Aug. 8, 2012 Decision and Journal Entry at p. 8. These decisions did not hold that R.C. 4921.25 preempted local taxation on the basis of *implied* preemption.

To reach a determination of implied preemption, the reader must consciously disregard the plain language of the statute. Appellants' argue at length regarding how to interpret the tax imposed on motor carriers under Revised Code Chapter 4921. Appellants' argument, however, is an attempt to go beyond the plain language of the statute and imply that the money paid by motor carriers is not a tax, thus leaving room for municipalities to tax the carriers. Such an implied interpretation is unnecessary.

As part of its argument on implied preemption, CCA asserts that either a motor carrier or an owner-operator that is leased to a motor carrier could be responsible for paying the tax assessed under R.C. 4921.18. CCA Merit Brief, p. 6, 27-28. This assertion is not a correct statement of law. The plain language of the statute mandates that the motor carrier is responsible for paying the tax: "Every motor transportation company or common carrier by motor vehicle operating in this state shall . . . pay to the

public utilities commission . . . the following taxes . . . ." R.C. 4921.18(A). Whether an owner-operator agrees to reimburse the carrier is irrelevant to the interpretation of the plain language of the statute.

B. Allowing for municipal taxation of motor carriers would create a compliance burden that R.C. 4921.25 currently prevents.

The reason for exempting motor carriers from municipal taxation is obvious – the prevention of a significant compliance burden on motor carriers. Appellants' characterization of the lower court's decision as creating a savings (or windfall) for motor carriers is inaccurate. If the lower court's decision is overturned, the status quo will be undone. The statutory bar for municipal taxation of motor carriers will be lifted and every municipality will have license to tax motor carriers. Carriers would have substantial administrative tax burdens from which they had previously been protected by statute. Notwithstanding the Ohio Municipal League's *amicus curiae* brief, the lack of input in this appeal from any other municipality – the would-be beneficiaries of a reversal of the lower court's decision – indicates that municipalities do not stand to lose tax revenue on the grand scale alleged by Appellants. Motor carriers, and by extension the Ohio economy, stand to lose the most by a reversal.

Motor carriers by their nature traverse tens of thousands of points in Ohio every day while traveling from points of origin to destination. A motor carrier has the potential to travel (and some likely do every week) into each of the 592 municipalities that impose an income tax. If the Court allows for municipal taxation of motor carriers, each motor carrier could be subject to 592 municipal income tax filing requirements. Because each municipality, under its home rule authority, is able to define income its own way, a motor carrier must determine whether its activity in each municipality (i.e., pickup, delivery, or

transit) subjects the motor carrier to one or every municipality's tax. With the potential of over 12,730 Ohio trucking companies filing income tax returns in up to 592 municipalities each year, the compliance burden is overwhelming.

1. Motor carriers would be required to determine whether their activities in each municipality would subject them to a local tax.

A hypothetical illustrates the consequences of the Court's overruling of the Ninth District's decision. For example, a motor carrier delivers general freight between various points in Ohio and has never been subject to a municipality's net profits tax. If the Court allows municipalities to assess net profits taxes against motor carriers, the motor carrier would be required to begin a process to ensure compliance with the many local tax laws.

First, the motor carrier would have to identify each municipality in which the carrier traveled in the previous tax year. One of the motor carrier's trips, for example, may include travel from Cleveland and Cincinnati. The carrier would need to identify every municipality through which the carrier traveled. The motor carrier would be required to conduct this analysis for every trip in Ohio for the previous tax year and will spend significant resources to do so.

Second, the motor carrier would need to determine which municipalities assess a net profits tax. If the motor carrier identified, for example, 270 municipalities in which it traveled, the carrier will need to review each of the 270 municipalities' respective ordinances to determine whether each municipality imposes a net profits tax.

2. For each municipality that taxes and in which the carrier traveled, the motor carrier would need to determine how the municipality allocates or apportions the tax.

Of those municipalities that impose the tax, the motor carrier would need to review each municipality's ordinance to determine if the motor carrier's activity (e.g. travel through, delivery, pickup, etc.) subjects the carrier to the municipality's tax. Because each municipality can craft its own income tax, the motor carrier would need to review each ordinance to determine how the municipality assesses the tax. Several municipalities may use an allocation formula based upon miles traveled in the jurisdiction. Other municipalities may tax the net profit of each shipment or parcel delivered in the city. For a less-than-truckload carrier or expedited carrier, the analysis on a per-parcel basis for each shipment would be extremely onerous in determining how to allocate the income generated from that shipment, especially where the carrier charges different rates for different parcels. The carrier would also have to account for packages that were either picked up or dropped off along the way, the weight of each parcel, the value of each parcel, and the rate for each parcel that was picked up or delivered. Computations for so many variables would be extremely burdensome.

Once the allocation analysis is complete, the motor carrier must develop a system to record the activity in each municipality. If the carrier travels through a municipality that taxes based upon a per-mileage allocation, the carrier will need to document the miles traveled through each jurisdiction for each trip. If the carrier travels through a municipality that taxes based upon each parcel, the carrier will need to keep records showing the income generated from each parcel included in a shipment. Carriers do not, and cannot feasibly, keep these records.

After the motor carrier has completed the analysis described above, it must prepare tax returns in each of the respective jurisdictions. Even if the tax due in most filings is nominal, the administrative cost to prepare all of these returns will be substantial. For an industry that already operates on slim profit margins, such a new administrative burden could overwhelm many carriers.

Without a uniform system of taxation, a motor carrier is forced to undertake an analysis of each municipality's form of taxation. The General Assembly's decision to tax and regulate motor carriers at the state level and preempt municipal taxation is logical, as it eliminates this type of tax compliance burden for motor carriers.

C. Motor carriers are regulated and taxed in a uniform, centralized manner to eliminate burdensome and conflicting filing requirements.

Because of the nature of their operations, motor carriers have been regulated and taxed in a uniform and centralized manner. This uniform regulation occurs at both the state and federal levels.

1. Ohio regulates motor carriers' intrastate commerce on a uniform, statewide basis.

Chapters 4921. and 4923. of the Ohio Revised Code provide a uniform, statewide regulatory basis for motor carriers. These laws include: requirement of a certificate of public convenience and necessity from the Public Utilities Commission of Ohio ("PUCO") (R.C. 4921.03) and payment of the respective taxes (R.C. 4921.19); requirement of minimum insurance coverage (R.C. 4921.09); and monetary forfeitures to the PUCO for non-compliance with safety and registration rules.

Pursuant to its statutory authority under Revised Code Chapter 4921., the Public Utilities Commission has promulgated regulations that govern motor carrier operations:

driver qualifications, including medical certification (Ohio Adm.Code 4901:2-5-04); safety standards (Ohio Adm.Code 4901-2-5-02); vehicle inspection mandates (Ohio Adm.Code 4901:2-5-11); vehicle marking requirements (Ohio Adm.Code 4901:2-5-11); adoption of the United States Department of Transportation safety standards (Ohio Adm.Code 4901:2-5-02). The federal safety standards adopted by Ohio include: mandatory vehicle safety standards (49 C.F.R. Part 393); maintenance standards (49 C.F.R. Part 396); record keeping (49 C.F.R. 390.9 through 390.37, inclusive); drug and alcohol testing (49 C.F.R. Part 382); and limits on driving time (49 C.F.R. Part 395). In promulgating these regulations, the PUCO has acted consistently with the statutory framework by regulating on a statewide basis.

The patent design of this statutory framework is that Ohio motor carriers are regulated on a uniform level by the State, including registration, taxation, and safety regulation. *See, e.g., City of Cleveland v. Pub. Util. Comm. of Ohio*, 130 Ohio St. 503, 512, 200 N.E. 765 (1936) ("It 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.")

It is only logical that in Chapter 4921. – one of the chapters governing the operations of motor carriers – the General Assembly would include a tax law that is specific to motor transportation companies and that comports with the statewide regulatory approach to the industry. Any other interpretation of the statute contorts the entire uniform regulatory approach.

2. Vehicle registration and fuel tax compacts show the need to regulate and tax motor carriers on a uniform, centralized basis.

Two related examples of the uniform, centralized approach to taxation of motor carriers are the International Fuel Tax Agreement ("IFTA") and the International Registration Plan ("IRP"). IFTA and IRP are interstate compacts that allow a motor carrier to establish a fuel tax account and a vehicle registration account in one base jurisdiction.[15] These programs were approved by Congress in the Intermodal Surface Transportation Efficiency Act of 1991, which was recognized as providing state uniformity in fuel tax reporting and vehicle registration in order to "ease the recordkeeping and reporting burden on businesses and contribute substantially to increased productivity of the truck and bus industry."[16]

IFTA was established to allow a motor carrier to report and pay motor fuel use taxes to one base jurisdiction, rather than filing returns in each jurisdiction in which a motor carrier traveled. IFTA Articles of Agreement, section R130.100.005. States that joined in IFTA were required to enact reciprocal statutes to authorize participation. *Id.* at section R130.200.005. Ohio is a member jurisdiction that participates in IFTA. *See generally* R.C. Chapter 5728. and Ohio Adm.Code Chapter 5703-13.

IRP likewise established a base jurisdiction in which a motor carrier's vehicles were registered. The Intermodal Surface Transportation Efficiency Act of 1991, which

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[15] International Fuel Tax Agreement, Inc., IFTA Articles of Agreement, http://www.iftach.org (accessed Jun. 24, 2013); International Registration Plan, Inc., The International Registration Plan (current version, amended Jan. 1, 2013), http://www.irponline.org/?page=theplan (accessed Jun. 24, 2013).

[16] United States Department of Transportation Secretary Samuel K. Skinner, "Summary of the Intermodal Surface Transportation Efficiency Act of 1991," http://ntl.bts.gov/DOCS/ste.html (accessed Jun. 24, 2013).

approved the IRP program, "eliminate[d] the bingo stamp program associated with 39 States' requirements for interstate motor carriers to register their [interstate] operating authority."[17] In its place is a system in which a motor carrier registers with one state, and that state distributes the collected fees to other participating states in which the carrier's vehicles operate. *Id.*

The efficiency provided by the IRP is highlighted in the Official Commentary to the IRP's Fundamental Principle:

> The critical importance of the Plan for interJurisdictional commerce is underscored by the *cumbersome, inadequate system of registration reciprocity which preceded the adoption of the Plan.* That system, which was *poorly adapted to the movement of commercial vehicles* among Jurisdictions, could not sustain the level of freight and passenger transportation demanded by the economies of the Member Jurisdictions in the 21st century.

The International Registration Plan, Official Commentary, Section 105 (emphasis added). Ohio is a participating jurisdiction in the IRP. *See generally* R.C. 4503.042 and Ohio Adm.Code Chapter 4501:1-8.

The enactment of IFTA and IRP is another acknowledgment of the realities of the oprations of motor carriers. This experience has proven that piecemeal regulation and taxation of motor carriers leads to cumbersome and inefficient systems that decrease productivity and increase the costs to motor carriers. Ohio's membership in these two programs also proves that the General Assembly understands the need to regulate and tax motor carriers on a centralized, uniform basis.

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[17] Skinner, "Summary of the Intermodal Surface Transportation Efficiency Act of 1991," http://ntl.bts.gov/DOCS/ste.html.

3. Federal law preempts states from enacting laws related to motor carriers' prices, routes, or services.

Ohio's statewide regulatory approach also reflects the uniform regulation of motor carriers under federal law. A prime example of federal preemption is the Federal Aviation Administration Authorization Act (FAAAA). 49 U.S.C. § 14501. The FAAAA provides that no state "may enact or enforce a law related to a price, route, or service of any motor carrier . . . ." 49 U.S.C. § 14501(c)(1). The OTA is not asserting that the FAAAA is applicable in this case. The rationale behind the enactment of the FAAAA, however, is instructive in understanding why motor carriers are regulated uniformly.

"At the time of the FAAAA's enactment, forty-one states regulated, in varying degrees, intrastate motor carriers' prices, routes, and services." *Sanchez v. Lasership, Inc.*, E.D. Va. No. 1:12-cv-246, 2013 WL 1395733, *6 (Apr. 4, 2013), citing H.R. Conf. Rep. No. 103-677, at 87 (1994). "The diversity of state regulation in this field yielded a patchwork of state laws, resulting in 'significant inefficiencies, increased costs, reduction of competition, inhibition of innovation and technology, and curtail[ed] the expansion of markets." *Sanchez* at *6, *citing* H.R. Conf. Rep. No. 103-677, at 86-88. As noted in the House Conference Report for the FAAAA about the numerous state regulatory structures, "[t]he sheer diversity of these regulatory schemes is a huge problem for national and regional carriers attempting to conduct a standard way of doing business." H.R. Conf. Rep. 103-677, 87.

In enacting FAAAA, Congress recognized the problems of varying state regulation and the impact that it would have on the motor carrier industry. The General Assembly's enactment of R.C. 4921.25 is a similar recognition of the problems of varying municipal taxation and its impact. Numerous municipalities imposing their own

income taxes would likewise be a substantial burden for motor carriers attempting to conduct a standard way of doing business in Ohio.

4. Federal law protects interstate motor carrier employees from income tax assessments from multiple states and local governments.

Federal law also protects employees of interstate motor carriers that operate in more than one state from being subject to income tax except in their state of residence. 49 U.S.C. § 14503(a).[18] In enacting this law, "Congress intended to relieve employees of railroads and interstate trucking firms from income taxes that could be imposed if the employees earn part of their income while passing through a state." *Butler v. Dept. of Revenue*, 14 Or. Tax 195, 197, Oregon Tax Ct. No. 3873, 1997 WL 370073 (Jun. 27, 1997). Courts have recognized the burdens that would befall these employees if they were subject to the various states in which the employees worked:

> For example, a truck driver or train engineer might pass through several states during a single day, technically earning income in each of the states. This could subject these employees to burdensome filing requirements and conflicting claims for tax credits. The apparent purpose of the federal provisions was *to relieve these employees of unreasonable burdens by limiting their tax obligations*.

Id. (emphasis added); *see also Lawyer v. Dept. of Revenue*, Oregon Tax Ct., Magistrate's Division No. 983074D, 2000 WL 1060437, *3 (Jun. 15, 2000); *Pritchett v. Dept. of Revenue*, Oregon Tax Ct., Magistrate's Division No. 000804C, 2001 WL 238453, *2 (Jan. 17, 2001).

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[18] 49 U.S.C. 14503(a) provides in full: "No part of the compensation paid by a motor carrier providing transportation subject to jurisdiction under subchapter I of chapter 135 or by a motor private carrier to an employee who performs regularly assigned duties in 2 or more States as such an employee with respect to a motor vehicle shall be subject to the income tax laws of any State or subdivision of that State, other than the State or subdivision thereof of the employee's residence."

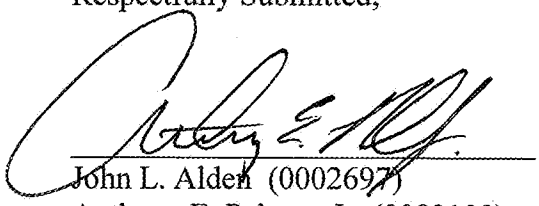
The reasons behind the federal law are akin to the reasons for the General Assembly's preemption of municipal taxation of motor carriers. Like the federal law, R.C. 4921.25 relieves motor carriers of unreasonable burdens by limiting their tax obligations to those imposed by the state and to a municipality's general property tax. Otherwise, carriers, like the employees protected under federal law, would be subject to burdensome filing requirements.

As these examples proved, the uniform regulatory approach to the motor transportation industry is logical and consistent with other state and federal regulations. R.C. 4921.25 is merely one part of Ohio's centralized, statewide regulation of motor carriers.

V. CONCLUSION.

Because the plain language of R.C. 4921.25 expressly preempts municipal taxation of motor carriers, the OTA respectfully requests that the Court affirm the decision of the Ninth District Court of Appeals.

Respectfully Submitted,



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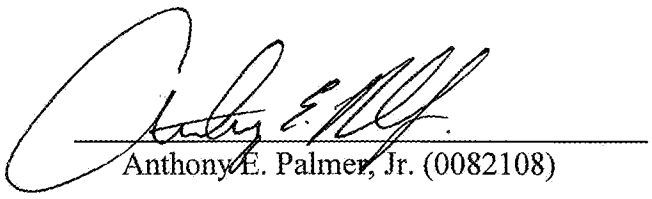

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