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No. ———, Original

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1983

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COMMONWEALTH OF PENNSYLVANIA,  
v. *Plaintiff*

STATE OF OKLAHOMA,  
*Defendant*

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**MOTION FOR LEAVE TO FILE COMPLAINT, WITH  
COMPLAINT AND BRIEF IN SUPPORT OF MOTION**

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## QUESTIONS PRESENTED

The questions presented are:

I. Whether the exercise of original jurisdiction is appropriate in this case which raises the substantial federal question of whether an Oklahoma tax which is imposed only upon motor carriers registered in Pennsylvania, solely because Pennsylvania imposed a certain tax on all motor carriers travelling in Pennsylvania, discriminates against Pennsylvania and those motor carriers registered in Pennsylvania in violation of the Commerce Clause?

II. Whether the Commonwealth of Pennsylvania has standing in its sovereign capacity to challenge Oklahoma retaliatory taxes? \*

III. Whether Pennsylvania has standing to challenge Oklahoma's retaliatory tax as *parens patriae* of its citizens?

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\* In its Brief in Opposition to Arkansas' Motion for Leave to File Complaint in *Arkansas v. Oklahoma*, No. 95, Original, 1983, Oklahoma challenges Arkansas' standing to bring the action. Because Pennsylvania's claims here are identical to those raised by Arkansas, we have addressed the standing issue.



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STATE OF OKLAHOMA,  
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**MOTION FOR LEAVE TO FILE COMPLAINT**

---

Pursuant to Rule 9 of the Rules of this Court, the Commonwealth of Pennsylvania, by its Attorney General, its General Counsel and its Chief Counsel for the Pennsylvania Department of Transportation, Spencer A. Manthorpe, asks leave of this Court to file its Complaint against the State of Oklahoma submitted herewith.

In support of this Motion, Plaintiff respectfully states as follows:

1. In order to aid in the enforcement of its fuel taxes, the General Assembly of the Commonwealth of Pennsylvania passed Act 68 of 1980, 75 Pa. Cons. Stat. Ann. § 2101 et seq. (Purdon's Supp. 1983), requiring motor carrier vehicles to display an identification marker. Pursuant to Act 234 of 1982, of the General Assembly of

Pennsylvania, 75 Pa. Cons. Stat. Ann. § 2102(b) (Purdon's Supp. 1983), the fee for the identification marker is \$5.00.

2. In order to raise funds for the rehabilitation, replacement or removal of bridges in the Commonwealth of Pennsylvania, the General Assembly of Pennsylvania passed Act 234 of 1982, 75 Pa. Cons. Stat. Ann. § 9901 et seq. (Purdon's Supp. 1983). Act 234 provides for the imposition of an axle tax in the amount of \$36.00 per axle on every truck, truck tractor or combination having a gross weight or registered gross weight in excess of 26,000 pounds operated on the highways of the Commonwealth of Pennsylvania.

3. In response to Pennsylvania's passage of the axle tax and identification marker fee, the Oklahoma Tax Commission adopted regulations pursuant to 47 Okl. St. Ann. § 22.5j(K) (Supp. 1983) which imposed a fuel marker fee of \$5.00 and an axle tax of \$36.00 per axle on Pennsylvania based trucks operated on the highways of Oklahoma.

4. In July of 1983, Oklahoma began assessing Pennsylvania based heavy motor vehicles a \$5.00 fuel marker fee and an axle tax of \$36.00 per axle in retaliation against the identification marker fee and axle tax imposed by Pennsylvania on all heavy motor vehicles using the highways of Pennsylvania.

5. The unlawful retaliatory legislation passed by Oklahoma violates the sovereign right of the Commonwealth of Pennsylvania to tax motor vehicles using the highways of the Commonwealth of Pennsylvania.

6. The Commonwealth of Pennsylvania, in its proprietary capacity as a consumer and the general population of the Commonwealth of Pennsylvania will suffer economic damages due to the imposition of Oklahoma's retaliatory taxes.

7. The Oklahoma retaliatory taxes violates the rights and protections guaranteed to the Commonwealth of



Pennsylvania by Article I, Section 8, Clause 3 of the Constitution of the United States.

WHEREFORE, Plaintiff respectfully requests that this Court grant its Motion for Leave to File Complaint.

Respectfully submitted,

SPENCER A. MANTHORPE \*

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**COMPLAINT**

The Commonwealth of Pennsylvania, by its Attorney General, its General Counsel and its Chief Counsel of the Pennsylvania Department of Transportation, Spencer A. Manthorpe, institutes this original jurisdiction action against the State of Oklahoma seeking declaratory and injunctive relief.

**COUNT I—IDENTIFICATION MARKER FEE**

**I**

The original and exclusive jurisdiction of the Supreme Court of the United States is invoked pursuant to Article III, Section 2 of the Constitution of the United States and 28 U.S.C. § 1251(a) (1) since this is a controversy between two states.

**II**

Plaintiff, the Commonwealth of Pennsylvania, is a state of the United States and brings this action, (a) on behalf

## X

of itself and (b) as *parens patriae* on behalf of its citizens and residents.

## III

Defendant, State of Oklahoma, is a state of the United States.

## IV

The Oklahoma legislature adopted 47 Okl. St. Ann. § 22.5j(K) (Supp. 1983) which went into effect on July 1, 1982. This statute gave the Oklahoma Tax Commission the authority to adopt rules and regulations for the imposition of the same or substantially the same fee or tax on out-of-state residents operating heavy motor vehicles in Oklahoma as is imposed on residents of Oklahoma for the same or substantially similar use of a vehicle in such other state in the amount of any fee or tax required by the laws of such other state.

## V

In order to aid in the enforcement of its fuel taxes, the General Assembly of the Commonwealth of Pennsylvania passed Act 68 to 1980, 75 Pa. Cons. Stat. Ann. § 2101 et seq. (Purdon's Supp. 1983), requiring motor carrier vehicles to display an identification marker. Pursuant to Act 234 of 1982, of the General Assembly of Pennsylvania, 75 Pa. Cons. Stat. Ann. § 2102(b) (Purdon's Supp. 1983), the fee for the identification marker is \$5.00.

## VI

The Oklahoma Tax Commission adopted regulations pursuant to 47 Okl. St. Ann. § 22.5j(K) (Supp. 1983) which imposed a fuel marker fee of \$5.00 on each Pennsylvania based motor vehicle using the highways of Oklahoma.

## VII

The additional identification marker fee imposed by the Oklahoma Tax Commission pursuant to 47 Okl. St. Ann. § 22.5j(K) (Supp. 1983) was passed for the purpose of

retaliating against Pennsylvania for its identification marker fee, Act 68 of 1980, as amended, 75 Pa. Cons. Stat. Ann. § 2102(b) (Purdon's Supp. 1983). The purpose of Oklahoma's retaliatory marker fee is to place pressure on the Pennsylvania General Assembly to repeal the identification marker fee.

### VIII

The Oklahoma tax is not fairly related to the services provided by the State of Oklahoma. It does not have a substantial nexus with the State of Oklahoma. It further discriminates against interstate commerce by placing a heavier tax burden on interstate commerce and therefore gives an economic advantage to Oklahoma residents. Pennsylvania resident operators are required to pay more than Oklahoma resident operators while the Pennsylvania operators receive no greater benefit from the use of Oklahoma highways than Oklahoma resident operators.

### IX

Oklahoma's retaliatory tax constitutes an unconstitutional burden on the sovereign power of the Commonwealth of Pennsylvania to levy taxes.

### X

The Commonwealth of Pennsylvania in its proprietary capacity as a consumer and the general public of Pennsylvania will suffer economic damages by the increase in the costs of goods as a result of Oklahoma's retaliatory tax.

### XI

The Oklahoma tax imposed pursuant to 47 Okl. St. Ann. § 22.5j(K) (Supp. 1983) constitutes an unreasonable, unlawful, and prohibited burden on interstate commerce in violation of Article I, Section 8, Clause 3 of the Constitution of the United States.

**COUNT II—AXLE TAX****XII**

In order to raise funds for the rehabilitation, replacement or removal of bridges in the Commonwealth of Pennsylvania, the General Assembly of Pennsylvania passed Act 234 of 1982, 75 Pa. Stat. Ann. § 9901 et seq. (Purdon's Supp. 1983). Act 234 of 1982 provides for the imposition of an axle tax in the amount of \$36.00 per axle on every truck, truck tractor or combination having a gross weight or registered gross weight in excess of 26,000 pounds operated on the highways of the Commonwealth of Pennsylvania.

**XIII**

The Oklahoma Tax Commission adopted regulations pursuant to 47 Okl. St. Ann. § 22.5j(K) (Supp. 1983) which imposed an axle tax of \$36.00 per axle on each Pennsylvania based motor vehicle using the highways of Oklahoma.

**XIV**

The additional axle tax imposed by the Oklahoma Tax Commission pursuant to 47 Okl. St. Ann. § 22.5j(K) (Supp. 1983) was passed for the purpose of retaliating against Pennsylvania for its axle tax, Act 234 of 1982, 75 Pa. Cons. Stat. Ann. § 9901 et seq. (Purdon's Supp. 1983). The purpose of Oklahoma's retaliatory axle tax is to place pressure on the Pennsylvania General Assembly to repeal the axle tax.

**XV**

The Oklahoma tax is not fairly related to the services provided by the State of Oklahoma. It does not have a substantial nexus with the State of Oklahoma. It further discriminates against interstate commerce by placing a

heavier tax burden on interstate commerce and therefore gives an economic advantage to Oklahoma residents. Pennsylvania resident operators are required to pay more than Oklahoma resident operators while the Pennsylvania operators receive no greater benefit from the use of Oklahoma highways than Oklahoma resident operators.

## XVI

Oklahoma's retaliatory tax constitutes an unconstitutional burden on the sovereign power of the Commonwealth of Pennsylvania to levy taxes.

## XVII

The Commonwealth of Pennsylvania in its proprietary capacity as a consumer and the general public of Pennsylvania will suffer economic damages by the increase in the costs of goods as a result of Oklahoma's retaliatory tax.

## XVIII

The Oklahoma tax imposed pursuant to 47 Okl. St. Ann. § 22.5j(K) (Supp. 1983) constitutes an unreasonable, unlawful, and prohibited burden on interstate commerce in violation of Article I, Section 8, Clause 3 of the Constitution of the United States.

WHEREFORE, the Plaintiff, Commonwealth of Pennsylvania, respectfully requests that this Court:

- (a) Assume jurisdiction of this case;
- (b) Declare Oklahoma's retaliatory truck taxes unconstitutional;
- (c) Enjoin Oklahoma from enforcing their retaliatory truck taxes; and

(d) Grant such further and other relief as justice may require.

Respectfully submitted,

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**BRIEF IN SUPPORT OF MOTION  
FOR LEAVE TO FILE COMPLAINT**

---

**JURISDICTION**

Plaintiff, the Commonwealth of Pennsylvania, is a state of the United States, and brings this action in its sovereign capacity and as parens patriae on behalf of its citizens and residents, against the State of Oklahoma, in its sovereign capacity, to have declared unconstitutional and enjoin the enforcement of the Oklahoma retaliatory tax law, 47 Okl. St. Ann. § 22.5j(K) (Supp. 1983). As such, this is an action over which this Court has original and exclusive jurisdiction under Art. III, § 2 of the Constitution of the United States and 28 U.S.C. § 1251(a) (Supp. 1983).

**STATUTE AND  
CONSTITUTIONAL PROVISIONS INVOLVED**

**United States Constitution:**

Article I, Section 8, Clause 3 of the Constitution of the United States provides as follows:

The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several states, and with the Indian Tribes.

Article III, Section 2, Clause 1 of the Constitution of the United States provides as follows:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . . to Controversies between two or more States. . .

Article III, Section 2, Clause 2 of the Constitution of the United States provides as follows:

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction.

**United States Statutes:**

28 U.S.C. § 1251(a) (Supp. 1983) provides as follows:

The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States.

**Oklahoma Statutes:**

47 Okl. Stat. Ann. § 22.5j(K) (Supp. 1983) provides as follows:

In addition to those taxes or fees imposed by Sections 22.1 through 22.34 of this title, the same or substantially the same type or category of tax or fee may be imposed upon an out-of-state resident as is imposed upon residents of Oklahoma for the same or substantially similar use of a vehicle in such other state in the amount, or approximate total amount, of any fee or tax, including property, motor fuel, excise, sales, use or mileage tax required by the laws of such other state to be paid by a resident of this state making the same or similar use of a like vehicle in such state.

The Commission shall have the authority to adopt rules and regulations which provide procedures for

implementation of comparable regulatory fees and taxes for vehicles used in this state by residents of other states.

Any revenue derived from this subsection shall be apportioned in the same manner as provided in Section 22.2A of this title.

It is the intention of the Legislature that the motor vehicle registration and licensing fees assessed against residents of other states operating similar vehicles in Oklahoma be comparably the same as the motor vehicle registration and licensing fees assessed against residents of Oklahoma operating a similar vehicle for a similar purpose in such other state; and that the Commission diligently monitor the motor vehicle registration and licensing fees assessed against residents of Oklahoma by other states and to provide for uniform treatment of Oklahoma residents operating vehicles in other states and for residents of other states operating vehicles in Oklahoma.

#### **Pennsylvania Statutes:**

75 Pa. Cons. Stat. Ann. § 2102 (Purdon's Supp. 1983) provides as follows:

##### **§ 2102. Identification markers required.**

(a) General rule.—The Secretary of Revenue shall provide an identification marker for every motor carrier vehicle.

(1) All motor vehicles required to display the identification marker shall permanently affix such identification marker on the top-half of the outside door panel on the driver's left-hand side and shall follow the directions as indicated on the reverse side of the identification marker.

(2) The identification marker shall remain the property of the Commonwealth and may be recalled for any violation of the provisions of this chapter, the "Motor Carriers Road Tax Act" or the regulations promulgated thereunder.

(b) Fee.—The fee for issuance of an identification marker prior to and including March 31, 1983 shall be \$25 and thereafter the fee shall be \$5. For vehicles registered in this Commonwealth, the vehicle identification marker fee shall be deemed a part of and included in the vehicle registration fee. Payment of the fee notwithstanding, no marker, permit or registration card shall be issued unless the tax imposed by section 9902 (relating to imposition of axle tax) has been paid.

(c) Issuance of markers.—Identification markers shall be issued on a 12-month basis, effective April 1 of each year, and shall be valid through the next succeeding March 31; however, enforcement of this section shall not become effective until April 15 of each year as to motor carrier vehicles displaying the previous year's identification marker.

(d) Operation without identification marker unlawful.—It shall be unlawful to operate or to cause to be operated in this Commonwealth any motor carrier vehicle unless the vehicle bears the identification marker required by this section.

(1) The Secretary of Revenue may by regulation exempt from the requirement to display the identification marker motor carrier vehicles which in his opinion are clearly identifiable such that effective enforcement of this chapter will not suffer thereby.

(2) For period not exceeding five days as to any one motor carrier, the Secretary of Revenue by letter or telegram may authorize the operation of a motor carrier vehicle or vehicles without the identification marker required or the payment of the axle tax when the enforcement of this section or section 9902 for that period would cause undue delay and hardship in the operation of such motor carrier vehicle or vehicles:

(i) The fee for such permits shall be \$25 for each motor carrier vehicle which shall be deposited in the



Highway Bridge Improvement Restricted Account within the Motor License Fund.

(ii) Conditions for the issuance of such permits shall be set forth in regulations promulgated by the Department of Revenue.

75 Pa. Cons. Stat. Ann. § 9901-9905 (Purdon's Supp. 1983) provides as follows:

§ 9901. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Department." The Department of Revenue.

"Motor Carrier." Every person who operates or causes to be operated any motor vehicle on any highway in this Commonwealth.

§ 9902. Imposition of axle tax.

In addition to any other tax imposed by law, all motor carriers shall pay an annual tax in the amount of \$36 per axle on every truck, truck tractor or combination having a gross weight or registered gross weight in excess of 26,000 pounds operated on the highways of this Commonwealth.

§ 9903. Report and payment of tax.

The tax shall be paid to the department at the time a motor carrier applies for vehicle registration or for the issuance of an identification marker or permit pursuant to section 2102 (relating to identification markers required). No registration card or identification marker or permit shall be issued unless the tax imposed by section 9902 (relating to imposition of axle tax) has been paid.

§ 9904. Axle tax markers required.

(a) General rule.—The Secretary of Revenue shall provide axle tax markers for each truck, truck trac-

tor or combination upon which axle tax has been paid pursuant to section 9902 (relating to imposition of axle tax). The marker must be affixed to the vehicle and displayed as prescribed by regulation prior to the operation of the vehicle in this Commonwealth.

(b) Issuance of markers.—The axle tax marker shall be issued for a 12-month period which coincides with the period of validity of either the identification marker or registration referred to in section 9903 (relating to report and payment of tax).

(c) Penalty.—Any person who operates or causes to be operated in this Commonwealth any vehicle not displaying the axle tax marker as required by this section commits a summary offense and shall, upon conviction, be sentenced, for a first offense, to pay a fine of not less than \$200 nor more than \$500 and, for each subsequent or additional offense, to pay a fine of not less than \$300 nor more than \$500 or to imprisonment for not more than 90 days, or both.

(d) Exception.—This section shall not apply to a person operating a vehicle under a valid permit issued pursuant to section 2102(d)(2) (relating to identification markers required).

§ 9905. Rebate in case of incidental travel.

The full axle tax applies to vehicles which travel at least 2,000 miles annually in this Commonwealth. Vehicles travelling less than 2,000 miles annually may file with the department for an axle tax rebate which shall be supported by such data as may be required by the department by regulation. The rebate will be calculated in accordance with the following formula:

$$\frac{2,000 - \text{actual miles travelled}}{2,000} \times \text{axle tax paid} = \text{rebate}$$

## STATEMENT OF FACTS

This is an original jurisdiction case between the Plaintiff, Commonwealth of Pennsylvania, and the Defendant, State of Oklahoma. The issue presented concerns the constitutionality of a tax imposed by the Oklahoma Tax Commission under 47 Okl. St. Ann. § 22.5j(K) (Supp. 1983) on Pennsylvania registered trucks. Under Oklahoma's retaliatory tax statute, the Oklahoma Tax Commission is authorized to impose on out-of-state residents the same or substantially the same fees as are imposed on residents of Oklahoma for the same or similar use of a vehicle in another state. Pursuant to the statutory grant of authority, the Oklahoma Tax Commission passed regulations on July 1, 1983 imposing an axle tax in the amount of \$36.00 per axle and a \$5.00 fuel tax identification marker fee on Pennsylvania registered trucks (Appendix A-3). These regulations were passed in response to Pennsylvania's axle tax and fuel identification marker fee imposed on all trucks travelling the highways of Pennsylvania, regardless of place of registration.

Pennsylvania's axle tax was imposed by Act 234 of 1982, 75 Pa. Cons. Stat. Ann. § 9901 et seq. (Purdon's Supp. 1983), and provides for the imposition of an axle tax in the amount of \$36.00 per axle on every truck, truck tractor or a combination having a gross weight or registered gross weight in excess of 26,000 pounds operated on the highways of Pennsylvania. Pennsylvania's fuel tax identification marker fee was imposed by Act 68 of 1980, 75 Pa. Cons. Stat. Ann. § 2101 et seq. (Purdon's Supp. 1983) and requires motor carrier vehicles to display an identification marker, the fee for which is \$5.00.

It is Pennsylvania's contention that Oklahoma's retaliatory taxes which were imposed in response to the passage of Pennsylvania's axle tax and fuel identification marker fee, violate Art. I, § 8, cl 3 of the United States Constitution. The Plaintiff contends that Oklahoma's retaliation unconstitutionally impinges upon Pennsylvania's right to

impose an otherwise valid tax, and that Pennsylvania, in its capacity as a sovereign, and the general public of Pennsylvania will unconstitutionally suffer economic damages and damage to the state's sovereign rights, as a result of the tax levy in Oklahoma that applies *only* to Pennsylvania registered vehicles.

Pennsylvania seeks an order declaring Oklahoma's retaliatory tax law unconstitutional and an injunction enjoining Oklahoma from enforcing the tax.

### SUMMARY OF ARGUMENT

In this action, Plaintiff, Commonwealth of Pennsylvania, challenges the constitutionality of the Oklahoma retaliatory tax law, 47 Okla. St. Ann. 22.5j(K) (Supp. 1983), which authorizes the Oklahoma Tax Commission, in its discretion, to collect from non-Oklahoma registered motor carriers any tax that is "not the same or substantially the same as taxes" collected in Oklahoma. Pennsylvania levies an axle tax pursuant to 75 Pa. Cons. Stat. Ann. § 9901 et seq. (Purdon's Supp. 1983) on all motor carriers using the highways of Pennsylvania. Pennsylvania also requires that all motor carriers on Pennsylvania highways bear a fuel tax identification marker to aid in the enforcement of fuel taxes, the fee for which is \$5.00, 75 Pa. Cons. Stat. Ann. § 2201 et seq. (Purdon's Supp. 1983). The Oklahoma Tax Commission has begun to collect an amount equal to the Pennsylvania tax and fee from Pennsylvania motor carriers only. This tax is imposed solely because of and in retaliation for Pennsylvania's taxes which apply to all motor carriers including those registered in Oklahoma. The Commonwealth of Pennsylvania seeks a declaratory order declaring the Oklahoma retaliatory tax law unconstitutional. It also seeks an injunction restraining Oklahoma from enforcing its retaliatory tax law.

Because the Oklahoma retaliatory tax law is imposed in differing amounts on different motor carriers, depend-

ing upon the tax structure of the jurisdictions in which they are registered, its imposition does not have a sufficient nexus to the State of Oklahoma. The Oklahoma retaliatory tax law is discriminatory as it is totally unrelated to services provided by the State of Oklahoma to Pennsylvania registered trucks travelling through Oklahoma.

The Commonwealth of Pennsylvania files this action in its own right and as *parens patriae* for its citizens. Oklahoma's retaliatory taxes adversely affect Pennsylvania's ability to impose certain non-discriminatory taxes directly related to services which it provides motor carriers travelling on its roads. It, therefore, directly infringes Pennsylvania's sovereign rights to finance its operations in whatever manner it wishes, subject only to constitutional limitations. In addition, Oklahoma's retaliatory taxes adversely affect the ability of Pennsylvania's citizens to participate in interstate commerce and does so in a manner which discriminates against those citizens. Thus, Pennsylvania properly brings this action *parens patriae* on behalf of its citizens.

This Court has exclusive jurisdiction in cases of this nature involving two states, and should exercise its jurisdiction here. The issues raised in this case are of such a serious nature that the granting of original jurisdiction is appropriate. Pennsylvania's claim against Oklahoma presents important concerns of federalism in complete accord with the purpose and reach of the original jurisdiction of this Court.

## ARGUMENT

**I. THE EXERCISE OF ORIGINAL JURISDICTION IS APPROPRIATE IN THIS CASE WHICH RAISES THE SUBSTANTIAL FEDERAL QUESTION OF WHETHER AN OKLAHOMA TAX WHICH IS IMPOSED ONLY UPON MOTOR CARRIERS REGISTERED IN PENNSYLVANIA, SOLELY BECAUSE PENNSYLVANIA IMPOSED A CERTAIN TAX ON ALL MOTOR CARRIERS TRAVELLING IN PENNSYLVANIA, DISCRIMINATES AGAINST PENNSYLVANIA AND THOSE MOTOR CARRIERS REGISTERED IN PENNSYLVANIA IN VIOLATION OF THE COMMERCE CLAUSE.**

This Court has construed the Congressional grant of exclusive jurisdiction (28 U.S.C. § 1251(a) (Supp. 1983)) as requiring the exercise of original jurisdiction only in "appropriate cases". *Maryland v. Louisiana*, 451 U.S. 725, 731 (1981); *Illinois v. City of Milwaukee*, 406 U.S. 91, 93 (1972).

... [W]hat is "appropriate" involves not only "the seriousness and dignity of the claim," but also "the availability of another forum where there is jurisdiction over the named parties, where the issues tendered may be litigated, and where appropriate relief may be had."

*Maryland v. Louisiana*, at 451 U.S. 739.

Pennsylvania submits that the federal questions involved in this case are substantial and serious. Pennsylvania is presenting important concerns of federalism in complete accord with the purposes and reach of the original jurisdiction of this Court.

Pennsylvania is challenging Oklahoma's retaliatory tax law, 47 Okl. St. Ann. § 22.5j(K) (Supp. 1983), which creates the Oklahoma Tax Commission and gives it powers to create and enforce taxes in retaliation for taxes levied by sister states. On July 1, 1983, the Oklahoma Tax Commission commenced enforcement of taxes solely

for the purpose of retaliation against certain Pennsylvania taxes and fees. Whereas, the Pennsylvania taxes and fees are assessed upon all motor carriers travelling in Pennsylvania, Oklahoma's retaliatory taxes are imposed only upon motor carriers registered in Pennsylvania.

This Court has never before decided a challenge to a retaliatory tax based upon the Commerce Clause. In *Western and Southern Life Insurance Co. v. State Board of Equalization*, 451 U.S. 648 (1981), the Court upheld a California retaliatory tax upon insurance companies. However, in reviewing the California retaliatory tax on foreign insurers, this Court acknowledged that the McCarran-Ferguson Act had removed the regulation and taxation of insurance companies from any Commerce Clause restriction.

In *Western and Southern Life Insurance Co.*, the Court also held that the California retaliatory tax did not violate the Equal Protection Clause of the Fourteenth Amendment to the Constitution. However, the test for constitutionality under the Equal Protection Clause is substantially different from the test under the Commerce Clause.

Under the Equal Protection Clause, a states authority to exclude foreign corporations from doing business within its boundaries is constitutional so long as it bears "a rational relation to a legitimate state purpose". *Western and Southern Life Insurance Co. v. State Board of Equalization*, supra, at 451 U.S. 668. The test for determining whether a challenged classification is rationally related to achievement of a legitimate state purpose is:

- (1) Does the challenged legislation have a legitimate purpose?, and
- (2) Was it reasonable for the lawmakers to believe that use of the challenged classification would promote that purpose?

The test for determining a violation of the Commerce Clause was established by this Court in *Complete Auto*

*Transit Inc. v. Brady*, 430 U.S. 274 (1977). That four pronged test was followed this Court and restated in *Maryland v. Louisiana*, supra, at 451 U.S. 754, as follows:

The State's right to tax interstate commerce is limited, however, and no state tax may be sustained unless the tax: (1) has a substantial nexus with the State; (2) is fairly apportioned; (3) does not discriminate against interstate commerce; and (4) is fairly related to the services provided by the State.

While this Court upheld the California retaliatory tax as constitutional under the Equal Protection Clause, it noted the possibility of such taxes being unconstitutional under the Commerce Clause.

Any time a State adopts a fiscal or administrative policy that affects the programs of a sister State, pressure to modify those programs may result. Unless that pressure transgresses the bounds of the Commerce Clause or the Privileges and Immunities Clause of Art. 4, § 2c, e.g., *Austin v. New Hampshire*, 420 U.S. 653, (1975), it is not clear how our federal structure is implicated.

*Western and Southern Life Insurance Company v. State Board of Equalization*, supra, at 451 U.S. 671. Also see, *G. D. Searle & Co. v. Cohn*, 455 U.S. 404 (1982), where this Court found a New Jersey statute of limitations constitutional under the Equal Protection Clause, but remanded the case for consideration of a Commerce Clause challenge.

It is apparent that under the test for constitutionality under the Commerce Clause, Oklahoma's retaliatory taxes do not pass muster. Under the first prong of the *Complete Auto* test, Oklahoma's retaliatory tax does not have a substantial nexus to that state. Oklahoma's tax is triggered, solely by the public decision of a sister state to enact taxes to meet its needs. There is no connection be-



tween the financial needs of a sister state and Oklahoma's taxation.

In applying the third prong of the *Complete Auto* test, it is clear that Oklahoma's retaliatory tax discriminates against interstate commerce.

One of the fundamental principles of Commerce Clause jurisprudence is that no State, consistent with the Commerce Clause, may "impose a tax which discriminates against interstate commerce . . . by providing a direct commercial advantage to local business." *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450, 458 (1959). See *Boston Stock Exchange v. State Tax Comm'n.*, 429 U.S. 318, 329 (1977). This antidiscrimination principle "follows inexorably from the basic purpose of the Clause" to prohibit the multiplication of preferential trade areas destructive of the free commerce anticipated by the Constitution. *Boston Stock Exchange*, *supra*. See *Dean Milk Co. v. Madison*, 340 U.S. 349, 356 (1951).

*Maryland v. Louisiana*, *supra*, at 451 U.S. 754.

Pursuant to 47 Okl. St. Ann. § 22.5j(K) (Supp 1983), the Oklahoma Tax Commission has levied a tax upon Pennsylvania trucks of \$36.00 per axle in addition to \$5.00 per truck in retaliation for Pennsylvania's axle tax and fuel tax identification marker fee. Oklahoma does not levy these taxes upon trucks registered in Oklahoma. Indeed, these taxes are levied upon no other commerce except that originating in Pennsylvania. Oklahoma's retaliatory taxes impose a burden of double taxation on Pennsylvania trucks. Pennsylvania trucks must now pay not only the Pennsylvania axle tax and fuel tax identification marker fee, but must also pay the same taxes to Oklahoma.

Oklahoma has placed a burden on out-of-state trucks which is not imposed on Oklahoma trucks. This taxation favors Oklahoma trucks at the expense of out-of-state

trucks. Additionally, Oklahoma's retaliatory tax is an attempt to impose Oklahoma's standards for truck taxation upon sister states. That is to say, by double taxes on trucks from states with taxes different from its own, Oklahoma is attempting to coerce other states from adopting such taxes. Oklahoma is attempting to establish a national level of truck taxation. The power to set national policy for truck taxation is reserved to the Congress.

Also, to permit Oklahoma's retaliatory taxation to stand, may invite taxation from sister states in retaliation for Oklahoma's retaliation. Permitting this taxation to build upon itself would impose an intolerable burden on interstate commerce.

The fourth prong of the *Complete Auto* test requires that the tax upon interstate commerce be "fairly related to the services provided by the State". But, Oklahoma's retaliatory tax is not even arguably related to the costs of providing services to Pennsylvania trucks. Pennsylvania registered trucks are the only trucks in the United States upon which Oklahoma assesses a \$36.00 per axle tax and a \$5.00 fuel tax identification fee. Pennsylvania trucks do not require any additional services, such as police protection, than do Oklahoma trucks, or Arkansas trucks, or any other trucks. The sole purpose of Oklahoma's tax is retaliation. Whether or not any money is collected is immaterial to Oklahoma's financial needs.

The historical purpose of the constitutional provision for original jurisdiction of this Court is to offer a method of settling disputes between sovereign powers, which disputes traditionally could be settled only by diplomacy or war. *Nebraska v. Wyoming*, 325 U.S. 589 (1945); *Georgia v. Pennsylvania R. Company*, 324 U.S. 439 (1945); *North Dakota v. Minnesota*, 263 U.S. 365 (1923). The issues raised in this case are of such a serious nature that the assumption of original jurisdic-

tion is appropriate. Oklahoma is attempting to create an economic war against Pennsylvania and other sister states whose needs require that they impose truck taxes higher than the taxes imposed by Oklahoma upon its own trucks. The concept of sovereignty which underlies this case requires that this Court exercise its jurisdiction and resolve the dispute by application of federal common law. *See Kansas v. Colorado*, 206 U.S. 46 (1907).

[P]roceedings under this Court's original jurisdiction are basically equitable in nature . . . (Ohio v. Kentucky, 410 U.S. 641, 648 (1973)) and, in actions between states, neither the statutes nor the decisions of either state can be conclusive. "For the decision of suits between States, federal, state and international law is considered and applied by this court as the exigencies of the particular case may require."

*Connecticut v. Massachusetts*, 282 U.S. 660, 670 (1931). Accord, *Hinderlider v. La Plata River & Cherry Creek Ditch Company*, 304 U.S. 92, 110 (1938).

The Supreme Court has the authority to enforce a decision which adjudicates a conflict between two or more states. This enforcement authority is inherent in the constitutional provision for original and exclusive jurisdiction over such controversies. *Virginia v. West Virginia*, 246 U.S. 565, 591 (1918). Pennsylvania's claim against Oklahoma presents a justiciable controversy which is susceptible of enforcement under constitutional law, common law and equitable principles. At issue is Pennsylvania's sovereign right to levy and collect taxes to suit its needs, without interference from sister states.

Where a controversy between states is justiciable, and the necessity for action by this Court is absolute, as in the case at bar, original jurisdiction is available. *Illinois v. City of Milwaukee*, 406 U.S. 91, 95 (1972); *Alabama v. Arizona*, 291 U.S. 286, 291 (1934); *Louisiana v. Texas*, 176 U.S. 1, 15 (1900).

## II. THE COMMONWEALTH OF PENNSYLVANIA HAS STANDING IN ITS SOVEREIGN CAPACITY TO CHALLENGE OKLAHOMA RETALIATORY TAXES.

Art. III, § 2, cl. 2, of the Constitution provides for the Supreme Court's original jurisdiction over cases in which a "State shall be a Party". Congress has declared that such original jurisdiction shall lie exclusively in the Supreme Court for cases between two or more states. 28 U.S.C. § 1251(a) (Supp. 1983).

In order to constitute a proper "controversy" under our original jurisdiction, "it must appear that the complaining State has suffered a wrong through the action of the other State, furnishing ground for judicial redress, or is asserting a right against the other State which is susceptible of judicial enforcement according to the accepted principles of the common law or equity systems of jurisprudence."

*Maryland v. Louisiana*, supra, at 451 U.S. 735.

The Commonwealth of Pennsylvania is asserting an injury to its right as a sovereign to collect taxes to meet its particular needs. Pennsylvania seeks to protect its proprietary interests and the Supreme Court's exclusive and original jurisdiction should be exercised to protect those interests. *Texas v. Florida*, 306 U.S. 398 (1939); *North Dakota v. Minnesota*, 263 U.S. 365 (1923).

The power of a State to tax, basic to its sovereignty, is limited only if in substance and effect it is the exertion of a different and a forbidding power. . .

*Bode v. Barrett*, 344 U.S. 583, 585 (1953); rh. den. 345 U.S. 931.

Pennsylvania has established certain fees and taxes which it, in its capacity as a sovereign, has deemed necessary to meet its financial needs. In order to finance a program for the rehabilitation, replacement or removal of bridges in Pennsylvania, the Pennsylvania General Assembly established an axle tax. 75 Pa. Cons. Stat. Ann.

§ 9902 (Purdon's Supp. 1983). The axle tax is in the amount of \$36.00 per axle on every truck, truck tractor or combination having a gross weight in excess of 26,000 pounds. This tax applies to all trucks operating in Pennsylvania, regardless of place of registration.

Also, to aid in the enforcement of Pennsylvania fuel taxes, the General Assembly of Pennsylvania has required that all trucks must bear an identification marker, regardless of place of registration. The fee for the identification marker is \$5.00. 75 Pa. Cons. Stat. Ann. § 2102(b) (Purdon's Supp. 1983).

The Oklahoma legislature has enacted a retaliatory tax law, 47 Okl. St. Ann. § 22.5j(K) (Supp. 1983), creating the Oklahoma Tax Commission and giving it powers to create and enforce taxes in retaliation for taxes levied by sister states. On July 1, 1983, the Oklahoma Tax Commission commenced enforcement of taxes in retaliation for Pennsylvania's axle tax and identification marker fee.

The retaliation of Oklahoma is a direct attack upon the sovereign power and proprietary interests of Pennsylvania. In *Kansas v. Colorado*, 206 U.S. 46, 95 (1907), this Court found that "Neither state can legislate for, or impose its own policy upon the other". Oklahoma's retaliatory tax is an attempt to legislate what taxes Pennsylvania may assess.

It is well established that in the absence of Congressional pre-emption, each state retains the power to develop its own mix of taxes and fees to insure that interstate commerce pays its own way. *Maryland v. Louisiana*, 451 U.S. 725, 754 (1981); *Complete Auto Transit Inc. v. Brady*, 430 U.S. 274 (1977); *Capital Greyhound Lines v. Bruce*, 339 U.S. 542 (1950). Oklahoma's retaliatory taxes bear no relationship to the costs of providing services to Pennsylvania trucks. It is not an attempt to make Pennsylvania trucks "pay their own way".

Oklahoma does not levy an axle tax of \$36.00 per axle, or a \$5.00 fuel identification fee, upon Oklahoma trucks. Indeed, the only trucks in the United States upon which Oklahoma levies the axle tax and identification marker fee are trucks registered in Pennsylvania. Pennsylvania trucks are no different from trucks registered in other states, except that they are registered in Pennsylvania. The retaliatory tax assessed by Oklahoma upon Pennsylvania trucks bears no relationship to their activities in Oklahoma. The only reason Pennsylvania trucks are assessed a retaliatory tax is because Pennsylvania, acting in its sovereign capacity, levied taxes and fees upon *all* trucks travelling through Pennsylvania so that Pennsylvania could finance bridge rehabilitation projects and enforce fuel taxes. The sole purpose of Oklahoma's taxes is retaliation. Oklahoma has no interest in whether these taxes actually raise revenue to meet Oklahoma's financial needs.

Oklahoma seeks to compel Pennsylvania (and other states) to adhere to Oklahoma's tax structure, even though Pennsylvania's needs for revenue may be different. If Pennsylvania does not tax at the same rate as Oklahoma, then Pennsylvania trucks must bear the burden of double taxation when travelling through Oklahoma. This burden of double taxation must be borne not because of a trucker's private decision to travel through Oklahoma, but because of the public decision of Pennsylvania to finance its particular needs.

As a result of Oklahoma's retaliatory taxes, trucks which had been registered in Pennsylvania may now seek registration in other states. Although those trucks may continue to pass through Pennsylvania, necessitating the payment of the Pennsylvania axle tax and identification marker fee, Pennsylvania will now lose revenue from fewer registration fees. The result Oklahoma seeks may be achieved. Pennsylvania may seek revenue from another source, other than truck taxes and fees, to finance

its bridge rehabilitation projects and enforce its fuel taxes. However, Pennsylvania will have lost its sovereign power to tax to the extent, and in the manner, it sees fit, a power which is indispensable to its continued existence.

Oklahoma is using the threat of economic isolation as a weapon to force sister states to adopt taxes which Oklahoma finds desirable. Such a practice was condemned by this Court in *Great Atlantic and Pacific Tea Company v. Cottrell*, 424 U.S. 366, 379 (1976), where health standards were used as such a weapon by the State of Mississippi. Pennsylvania must vindicate its sovereign interests in determining what tax mix is suitable to Pennsylvania's needs.

### III. PENNSYLVANIA HAS STANDING TO CHALLENGE OKLAHOMA'S RETALIATORY TAX AS PARENS PATRIAE OF ITS CITIZENS.

This action is also filed to protect the general welfare of the citizens of the Commonwealth of Pennsylvania.

A State is not permitted to enter a controversy as a nominal party in order to forward the claims of individual citizens. . . . But it may act as the representative of its citizens in original actions where the injury alleged affects the general population of a State in a substantial way.

*Maryland v. Louisiana*, supra, at 451 U.S. 737.

The Oklahoma retaliatory tax results in double taxation of Pennsylvania trucks. This creates higher operating costs for Pennsylvania trucks travelling through Oklahoma. Ultimately, these higher costs must be passed on to Pennsylvania consumers.\*

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\* Oklahoma, in its Brief in Opposition to Motion for Leave to File Complaint in the case of *Arkansas v. Oklahoma*, 95 Original, 1983, at page A-9, estimates Pennsylvania registered trucks will pay \$1,440,000.00 per year to Oklahoma as a result of its retaliatory taxes.

Also, this double taxation directed by Oklahoma toward Pennsylvania trucks is causing trucks which have been registered in Pennsylvania to seek registration elsewhere. This is a significant blow to a major Pennsylvania industry, the trucking industry. The result is a substantial loss to Pennsylvania in the form of lost jobs and commerce. Such a loss has a pervasive effect on the general population of Pennsylvania, leading to unemployment and loss of revenue.

Standing to sue may exist if the injury alleged "fairly can be traced to the challenged action of the defendant, and not injury that results from an independent action of some third party not before the court". *Maryland v. Louisiana*, supra, at 451 U.S. 736. In this case, the injury is traced directly to the retaliatory taxes of Oklahoma. Pennsylvania is not advancing the claim of a limited number of its citizens. It is the general population that will be adversely affected by Oklahoma's retaliatory taxes. The sole purpose of the Oklahoma tax is to retaliate against Pennsylvania taxes. It is unrelated to the benefits provided by Oklahoma, and is constitutionality infirm.

Although, at this point in time, it is not clear what will be the full economic damage to Pennsylvania, as a result of Oklahoma's retaliatory taxes, this should not be a factor in determining if legal injury has occurred to Pennsylvania.

It may be true that further hearings would be required to provide a precise determination of the extent of the discrimination in this case, but this is an insufficient reason for not now declaring the tax unconstitutional and eliminating the discrimination. We need not know how unequal the Tax is before concluding that it unconstitutionally discriminates.

*Maryland v. Louisiana*, supra, at 451 U.S. 759-760.



The Commonwealth of Pennsylvania submits that it has standing in this cause as *parens patriae* to challenge Oklahoma's retaliatory taxes.

# CONCLUSION

Plaintiff, Commonwealth of Pennsylvania, submits that the constitutional questions involved in this case are so substantial as to warrant consideration under the original jurisdiction of this Court.

Respectfully submitted,

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## PLAINTIFF'S EXHIBIT NO. 1

OKLAHOMA TAX COMMISSION  
STATE OF OKLAHOMA

2601 Lincoln Blvd.

Oklahoma City, Oklahoma 73194

July 1, 1983

	Annual Fuel Marker Fee	Annual Mileage Use Tax	Annual Axle Tax	Trip Fee
Alabama	\$12.00			
Arizona				8¢/Mi
Arkansas	\$10.00	\$175.00/Reg over 73,280		
Connecticut	\$10.00			
Delaware	\$10.00			
Florida	\$ 8.00			
Georgia	(On Hold)			
Idaho	\$ 1.00			
Kentucky	\$10.00			4½¢/Mi
Maine	\$10.00	60,000# or over—		3¢/Mi
Maryland	\$25.00			
Massachusetts	\$10.00			
Mississippi	\$12.00			
New Hampshire	\$10.00			
New Jersey	\$ 6.00			
New Mexico	\$ 2.00		See Back—Trip Fee	
New York		(Household Movers Exempt)	4¢/Mi	
No. Carolina	\$ 1.00			
Nevada	\$ 1.00			2¼¢/Mi
Ohio		Truck 3 or More Axles		1¢/Mi
		Tractor Semitrailer Combin.		
		3 Axles		1¢/Mi
		Tractor Semitrailer Combin.		
		4 Axles		1½¢/Mi
		Tractor Semitrailer Combin.		
		5 Axles		2¢/Mi
		Truck-Tractor Combin.		
		4 or more Axles		2¼¢/Mi
Oregon				8¢/Mi
Pennsylvania	\$ 5.00		\$36 Per Axle	
Vermont	\$50.00			
West Virginia	\$ 5.00			
Wyoming		Tax Eliminated		

PLAINTIFF'S EXHIBIT NO. 2

THIRTY-NINTH LEGISLATURE  
MOTOR VEHICLES-FEES-TAXES-COLLECTION

H.C.Res. No. 1001

A CONCURRENT RESOLUTION URGING  
THE OKLAHOMA TAX COMMISSION TO  
COLLECT CERTAIN FEES AND TAXES;  
ENCOURAGING THE NEGOTIATION OF  
CERTAIN AGREEMENTS; AND DIRECT-  
ING DISTRIBUTION.

WHEREAS, the 2nd Session of the 38th Oklahoma Legislature enacted House Bill No. 1855, Section 1, Chapter 104, O.S.L. 1982 (68 O.S. Supp. 1982, Section 607.1) and House Bill No. 1853, Section 1, Chapter 155, O.S.L. 1982 (47 O.S. Supp. 1982, Section 22.5j, subsection K), which provide that a use fee or tax may be imposed upon a resident of another state for the operation of vehicles in this state if the other state imposes a similar use fee or tax upon Oklahoma residents for the operation of vehicles in said other state; and

WHEREAS, the collection of said fee or tax is discretionary and the decision to collect the fee or tax is the responsibility of the Oklahoma Tax Commission; and

WHEREAS, Oklahoma residents who must pay a fee or tax in other states are placed at an economic disadvantage because nonresidents do not have to pay a comparable fee or tax in this state; and

WHEREAS, it is the intent of the Legislature that the fee or tax authorized by Section 1, Chapter 104, O.S.L. 1982 (68 O.S. Supp. 1982, Section 607.1) and House Bill No. 1853, Section 1, Chapter 155, O.S.L. 1982 (47 O.S. Supp. 1982, Section 22.5j, subsection K) be collected from nonresident if the state of residence of said nonresident

imposes and collects a similar fee or tax from Oklahoma nonresidents.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE 1ST SESSION OF THE 39TH OKLAHOMA LEGISLATURE, THE SENATE CONCURRING THEREIN:

SECTION 1. The Oklahoma Legislature urges the Oklahoma Tax Commission to collect the fees and taxes authorized by Section 1, Chapter 104, O.S.L. 1982 (68 O.S. Supp. 1982, Section 607.1) and House Bill No. 1853, Section 1, Chapter 155, O.S.L. 1982 (47 O.S. Supp. 1982, Section 22.5j, subsection K) from nonresident operating vehicles in this state if the state of residency of such nonresident imposes a similar fee or tax upon Oklahoma residents.

SECTION 2. The Oklahoma legislature further encourages the Oklahoma Tax Commission to negotiate with other states imposing a use fee or tax similar to the fees and taxes authorized by Section 1, Chapter 104, O.S.L. 1982 (68 O.S. Supp. 1982, Section 607.1) and House Bill No. 1853, Section 1, Chapter 155, O.S.L. 1982 (47 O.S. Supp. 1982, Section 22.5j, subsection K) to provide for reciprocity agreements which would exempt Oklahoma residents operating vehicles in other states from such fees or taxes in exchange for exempting residents of other states from the provisions of Section 1, Chapter 104, O.S.L. 1982 (68 O.S. Supp. 1982, Section 607.0) and House Bill No. 1853, Section 1, Chapter 155, O.S.L. 1982 (47 O.S. Supp. 1982, Section 22.5j, subsection K).

SECTION 3. Copies of this resolution shall be dispatched to members of the Oklahoma Tax Commission.

Adopted by the House of Representatives the 7th day of March, 1983.

Adopted by the Senate the 2nd day of May, 1983.

Filed by the Secretary of State May 3, 1983





