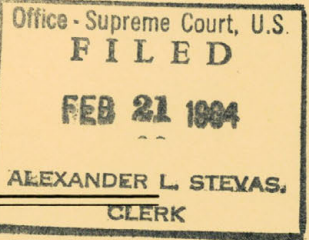


No. 98, ORIGINAL



In The
Supreme Court of the United States

OCTOBER TERM, 1983

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff,

v.

STATE OF OKLAHOMA,
Defendant.

ON MOTION FOR LEAVE TO FILE COMPLAINT

**BRIEF IN OPPOSITION TO MOTION
FOR LEAVE TO FILE COMPLAINT**

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QUESTIONS PRESENTED

1. Whether the Commonwealth of Pennsylvania in its sovereign capacity and in its proprietary capacity and as *parens patriae* of its citizens has standing to invoke the original jurisdiction of this Court; and
2. Whether the Oklahoma “comparable tax” violates the Constitution of the United States, Article I, Section 8, Clause 3.

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OCTOBER TERM, 1983

Supreme Court of the United States

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COMMONWEALTH OF PENNSYLVANIA,)

Plaintiff)

VERSUS)

STATE OF OKLAHOMA,)

Defendant.)

ON MOTION FOR LEAVE TO FILE COMPLAINT

**BRIEF IN OPPOSITION TO MOTION
FOR LEAVE TO FILE COMPLAINT**

Pursuant to Rule 9 of the Rules of the Supreme Court of the United States, the State of Oklahoma, by and through the Attorney General of Oklahoma and the General Counsel of the Oklahoma Tax Commission, respectfully submits its Brief in Opposition to the Motion for Leave to File Complaint of the Commonwealth of Pennsylvania filed herein on December 19, 1983.

STATEMENT OF THE CASE

Plaintiff, Commonwealth of Pennsylvania, has motioned for leave to file an original action in this Court seeking declaratory and injunctive relief from the purported unreasonable, unlawful and prohibited burden placed upon interstate commerce by 47 O.S. Supp. 1983, §22.5j, subsection (K) in violation of the Constitution of the United States, Article I, Section 8, Clause 3, and in violation of the sovereign power of the Commonwealth of Pennsylvania to levy taxes.

The Oklahoma Legislature is alleged to have enacted Section 22.5j, supra, in 1982, to retaliate against the Pennsylvania identification marker fee and axle tax.

The purported violations of the Interstate Commerce Clause and the purported interference with Pennsylvania's sovereign taxing power are based upon allegations that the Oklahoma "comparable tax" is not fairly related to the services provided by Oklahoma; the tax has no substantial Oklahoma nexus; the tax gives Oklahoma residents an economic advantage; the Pennsylvania residents receive no greater benefit for the greater amount of tax enacted by Oklahoma; and, the tax will increase the cost of goods and cause the Pennsylvania resident truckers to locate in another state.

PARTIES

The real parties in interest are the Pennsylvania residents who operate motor vehicles, that are subject to Pennsylvania's identification marker fee and axle tax, upon the roads and highways of the State of Oklahoma.

The "comparable tax" levied in 47 O.S. Supp. 1983, §22.5j is imposed upon the motor vehicle operator for the use of the highway system within Oklahoma.

The Commonwealth of Pennsylvania in its sovereign capacity and in its proprietary capacity and as *parens patriae* of its citizens suffers no direct injury by the challenged Oklahoma tax and is not a real party in interest.

The State of Oklahoma, as the named defendant, is represented by the Attorney General of Oklahoma and the Oklahoma Tax Commission.

QUESTIONS PRESENTED

The issues presented by the Motion for Leave to File Complaint of the Commonwealth of Pennsylvania are:

1. Whether the Commonwealth of Pennsylvania in its sovereign capacity and in its proprietary capacity and as *parens patriae* of its citizens has standing to invoke the original jurisdiction of this Court; and
2. Whether the Oklahoma “comparable tax” violates the Constitution of the United States, Article I, Section 8, Clause 3.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. United States Constitutional Provisions

Article III, Section 2, Clause 1:

Section 2, Clause 1. Jurisdiction of Courts

Section 2. 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 all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United

States shall be a Party; — to Controversies between two or more States; — between a State and Citizens of another State; — between Citizens of different States; —between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Article I, Section 8, Clause 3:

Section 8, Clause 3. Regulation of commerce

Congress shall have the power . . .

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

2. United States Code Provisions:

(Federal-Aid Highways provisions)

23 U.S.C. §126, subsection (a):

“(a) Since it is unfair and unjust to tax motor-vehicle transportation unless the proceeds of such taxation are applied to the construction, improvement, or maintenance of highways, after June 30, 1935, Federal aid for highway construction shall be extended only to those States that use at least the amounts provided by law on June 18, 1934, for such purposes in each State *from State motor vehicle registration fees, licenses, gasoline taxes, and other special taxes on motor-vehicles owners and operators of all kinds for the construction, improvement, and maintenance of highways and administrative expenses in connection therewith*, including the retirement of bonds for the payment of which such revenues have been pledged, and for no other purposes, under such regulations as the Secretary of Transportation shall promulgate from time to time.” (emphasis added)

23 U.S.C. §127, subsection (b):

“(b) No state may enact or enforce any law denying reasonable access to motor vehicles subject to this title (23 USCS §101 et seq.) to and from the Interstate Highway System to terminals and facilities for food, fuel, repairs, and rest.”

(Transportation provisions)

49 U.S.C. §10101:

§10101. Transportation policy

“(a) Except where policy has an impact on rail carriers, in which case the principles of section 10101a of this title shall govern, to ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States, including the United States Postal Service and national defense, it is the policy of the United States Government to provide for the impartial regulation of the modes of transportation subject to this subtitle, and —

(1) in regulating those modes —

(A) to recognize and preserve the inherent advantage of each mode of transportation;

(B) to promote safe, adequate, economical, and efficient transportation;

(C) to encourage sound economic conditions in transportation, including sound economic conditions among carriers;

(D) to encourage the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices;

(E) to cooperate with each State and the officials of each State on transportation matters; and

(F) to encourage fair wages and working conditions in the transportation industry;

(2) in regulating transportation by motor carrier, to promote competitive and efficient transportation services in order to (A) meet the needs of shippers, receivers, passengers, and consumers; (B) allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public; (C) allow the most productive use of equipment and energy resources; (D) enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions; (E) provide and maintain service to small communities and small shippers and intrastate bus services; (F) provide and maintain commuter bus operations; (G) improve and maintain a sound, safe, and competitive privately owned motor carrier system; (H) promote greater participation by minorities in the motor carrier system; and (I) promote intermodal transportation; and

(3) in regulating transportation by motor carrier of passengers (A) to cooperate with the States on transportation matters for the purpose of encouraging the States to exercise intrastate regulatory jurisdiction in accordance with the objections of this subtitle; (B) to provide Federal procedures which ensure that intrastate regulation is exercised in accordance with this subtitle; and (C) to ensure that Federal reform initiatives enacted by the Bus Regulatory Reform Act of 1982 are not nullified by State regulatory actions.

(b) This subtitle shall be administered and enforced to carry out the policy of this section.

49 U.S.C. §10521:

(a) Subject to this chapter and other law, the Interstate Commerce Commission has jurisdiction over transportation by motor carrier and the procurement of that transportation to the extent that passengers, property, or both, are transported by motor carrier —

(1) between a place in —

(A) a State and a place in another State;

(B) a State and another place in the same State through another State;

(C) the United States and a place in a territory or possession of the United States to the extent the transportation is in the United States;

(D) the United States and another place in the United States through a foreign country to the extent the transportation is in the United States; or

(E) the United States and a place in a foreign country to the extent the transportation is in the United States; and

(2) in a reservation under the exclusive jurisdiction of the United States or on a public highway.

(b) This subtitle does not —

(1) except as provided in sections 10922(c) (2), 10935, and 115001(e) of this title, affect the power of a State to regulate intrastate transportation provided by a motor carrier;

(2) except as provided in sections 10922(c) (2) and 11501(e), authorize the Commission to prescribe or

regulate a rate for intrastate transportation provided by a motor carrier;

(3) except as provided in section 10922(c) (2) of this title, allow a motor carrier to provide intrastate transportation on the highways of a State; or

(4) *except as provided in section 11503a and section 11504(b) of this title, affect the taxation power of a State over a motor carrier.* (emphasis added)

49 U.S.C. §11503a., subsections (b) and (c) in part:

“(b) *The following acts unreasonably burden and discriminate against interstate commerce* and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:

(1) assess motor carrier transportation property at a value that has a higher ratio to the true market value of the motor carrier transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property;

(2) levy or collect a tax on an assessment that may not be made under paragraph (1) of this subsection;

(3) levy or collect an ad valorem property tax on motor carrier transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(c) Notwithstanding section 1341 of title 28 and without regard to the amount in controversy or

citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdiction of courts of the United States and the States, to prevent a violation of subsection (b) of this section . . .” (emphasis added)

49 U.S.C. §11504, subsection (b) (2)

“(b) (2) A motor carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title and a motor private carrier shall withhold from the pay of an employee having regularly assigned duties on a motor vehicle in at least 2 States, only income tax required to be withheld by the laws of a State, or subdivision of that State —

(A) in which the employee earns more than 50 percent of the pay received by the employee from the carrier; or

(B) that is the residence of the employee (as shown on the employment records of the carrier), if the employee did not earn in one State or subdivision more than 50 percent of the pay received by the employee from the carrier during the preceding calendar year.”

49 U.S.C. §11506

§11506. Registration of motor carriers by a State

(a) In this section, “standards” and “amendments to standards” mean the specification of forms and procedures required by regulations of the Interstate Commerce Commission to prove the lawfulness of transportation by motor carrier referred to in section 10521 (a) (1) and (2) of this title by —

- (1) filing and maintaining certificates and permits issued to the motor carrier by the Commission;
- (2) registering motor vehicles operating under the certificates and permits;
- (3) filing and maintaining proof of required insurance coverage or qualification as a self-insurer; and
- (4) filing the name of a local agent for service of process.

(b) *The requirement of a State that a motor carrier, providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title and providing transportation in that State, register the certificate or permit issued to the carrier under section 10922 or 10923 of this title is not an unreasonable burden on transportation referred to in section 10521 (a) (1) and (2) of this title when the registration is completed under standards of the Commission under subsection (c) of this section. When a State registration requirement imposes obligations in excess of the standards, the part in excess is an unreasonable burden.*

(c) (1) The Commission shall maintain standards and amendments to standards (A) prepared and certified to it by the national organization of the State Commissions, and (B) prescribed by the Commission. If the national organization determines to withdraw entirely standards prescribed by the Commission, the Commission shall prescribe new standards by the end of the first year after the national organization determines to withdraw the standards.

(2) An amendment to the standards prepared and certified by the national organization and prescribed

by the Commission is effective when the amendment is prescribed or at another time as determined by the national organization.

(d) The national organization shall consult with the Commission and representatives of motor carriers subject to the State registration requirement when preparing amendments to the standards. Different amendments may be prescribed for each class of motor carriers as warranted by the differences in the operations of each class.

(e) This section does not —

(1) authorize standards in conflict with regulations of the Commission; or

(2) affect the authority of the Commission to interpret its regulations and certificates and permits issued under section 10922 or 10923 of this title. (emphasis added)

3. Oklahoma Statutory Provisions

47 O.S.Supp.1983, §22.5j, subsection K:

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. (Emphasis added)

4. Pennsylvania Statutory Provisions

75 Pa.Cons.Stat. §2101, subsection (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.

75 Pa.Cons.Stat. §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.

BACKGROUND

On September 15, 1982, the State of Oklahoma, by and through the Oklahoma Tax Commission, executed the Resolution of Ratification allowing the Commonwealth of Pennsylvania to become a participating member and party to the International Registration Plan (IRP). (Appendices, Pages A1-A2)

The purpose of the IRP is to provide a uniform system of registration of vehicles used or maintained for use in two or more states or taxing jurisdictions. Two important effects of the IRP are that the registration and license taxes and other similar highway user taxes and fees are prorated among the participating jurisdictions based upon mileage traveled in the jurisdiction during the preceding year and only one license plate and cab card for each apportionable vehicle is issued.

At the time Pennsylvania became a participating member of the IRP, Pennsylvania's highway user tax scheme for motor carriers was as follows:

1. Identification marker of \$25.00 annually for motor carriers. 75 Pa. Cons. Stat. §2102.
2. Vehicle Registration fee based upon gross weight in amounts ranging from \$39.00 to \$1,125.00. 75 Pa. Cons. Stat., §1916. (Appendices, Page A3)

The twenty-five dollar (\$25.00) marker fee was not prorated or apportioned, however, the annual registration fee was prorated to Pennsylvania based upon mileage.

This tax scheme was amended by Act. No. 234, approved December 8, 1982, effective April 1, 1983, to-wit:

1. Identification marker fee reduced to \$5.00. 75 Pa. Cons. Stat., §2102.
2. Vehicle Registration fee based upon gross weight reduced to amounts ranging from \$39.00 to \$940.00. 75 Pa. Cons. Stat., §1916. (Appendices, Page A4) and,
3. Axle tax at rate of \$36.00 per axle for vehicle having a gross weight in excess of 26,000 pounds. 75 Pa. Cons. Stat., §9902.

The marker fee and the axle tax are not prorated, but the registration fee is prorated based upon mileage.

At the crux of this case is this newly enacted, additional, unapportioned by mileage and unprorated under the IRP, Pennsylvania axle tax that is reflected in Oklahoma's challenged comparable tax levied in 47 O.S. Supp. 1983, §22.5j upon the Pennsylvania resident vehicle.

Pursuant to Sections 22.5j and 22.5k of Title 47 of the Oklahoma Statutes, the registration and license tax rates upon heavy trucks are based upon weight and prorated or apportioned to Oklahoma upon mileage. For 1983, for weights from 17,000 pounds to 80,000 pounds, Oklahoma's rates range from \$95.00 to \$731.00. (Appendices, Pages A5-A6)

All revenues derived from the registration and license tax are distributed to the various counties and municipalities of Oklahoma, the County Road Fund and the Oklahoma Tax Commission (5%) for the purpose of construction, maintenance, repair and improvement of the highways, roads and streets of Oklahoma and for matching federal and projects funds for county roads. 47 O.S. 1981, §22.2A.

The registration and license taxes are levied for the express purpose of reimbursing the state, counties and cities

for the use of the public highways and are in lieu of all ad valorem taxes upon such vehicles as personal property. 47 O.S. 1981, §22.10.

Oklahoma, in accordance with its participation in the IRP, exacts no fees or taxes, such as Pennsylvania's axle tax or Arkansas' highway use equalization tax, that is not prorated based upon mileage traveled in Oklahoma. However, in 1982, in an attempt to assure uniform tax treatment for Oklahoma based vehicles, the Oklahoma Legislature amended 22.5j, adding subsection (K), imposing a comparable third structure tax upon resident vehicles of the state imposing a third structure tax upon Oklahoma resident vehicles.

Generally, the scheme of taxes, fees and charges imposed upon motor vehicles operating in two or more states is three-tiered:

1. registration fees are the first structure taxes;
2. fuel taxes are the second structure; and,
3. cab card fees, marker fees, non-apportioned weight, distance or weight-distance fees, retaliatory or counterpart or comparable or mirror or reciprocal fees are the third structure taxes. *B & L Motor Freight, Inc. v. Heyman*, 293 A.2d 711, cert.denied 317 A.2d 707 (NJ: 1972).

The IRP agreement, which Pennsylvania and Oklahoma are parties to, states that a proliferation of non-apportionable fees, third structure fees, may result in impeding the free movement of commerce among the member jurisdictions and may contravene the purpose of the IRP: to promote and encourage the fullest possible use of the highway system, thereby contributing to the economic and social growth of the member jurisdictions.

Upon entry into the IRP, Pennsylvania reduced its apportionable registration fees and replaced the loss of revenues with a nonapportionable axle tax. The effect of Pennsylvania's departure from the policy and purpose of the IRP is illustrated by the following hypotheticals.

1. Oklahoma based 5-axle vehicle weighing 80,000 pounds, traveling 50% of its miles in Oklahoma and 50% in Pennsylvania, would pay the following taxes and fees:

1983

Oklahoma: $731.00 \times .5 = \$365.50$

Pennsylvania: $1125.00 \times .5 = 562.50$

+ 25.00 marker fee = \$587.50

1984

Oklahoma: $731.00 \times .5 = \$365.50$

Pennsylvania: $940.00 \times .5 = 470.00$

+ $(36 \times 5 = \$180.00 \text{ axle tax})$

+ 5.00 marker fee = \$655.00

2. Pennsylvania based 5-axle vehicle weighing 80,000 pounds, traveling 50% of its miles in Pennsylvania and 50% in Oklahoma would pay the following taxes and fees:

1983

Oklahoma: $731.00 \times .5 = \$365.50$

+ 25.00 comparable marker fee = \$390.50

Pennsylvania: $1125.00 \times .5 = 562.50$

+ 25.00 marker fee = \$587.50

1984

Oklahoma: $731.00 \times .5 = 365.50$
 + $(36 \times 5 = 180.00 \text{ comparable axle tax})$
 + 5.00 comparable marker fee = \$550.50

Pennsylvania: $940.00 \times .5 = 470.00$
 + $(36 \times 5 = 180.00 \text{ axle tax})$
 + 5.00 marker fee = 655.00

These hypotheticals demonstrate that Pennsylvania's recently enacted axle tax has the effect of reducing its apportionable tax on motor carriers thus increasing the amount of tax due Pennsylvania on each heavy truck in derogation of its membership in the IRP.

Neither the IRP nor the State of Oklahoma dictates to Pennsylvania the amount of revenues that state needs to construct and maintain its highway system. The IRP does intimate that the revenues should be generated forthrightly from the apportioned registration fees and the motor fuel fees.

A review of the apportionable, annual registration fees levied by the various IRP member states for use of the highways by a truck weighing 80,000 pounds, for 1984, clearly demonstrate that the peculiar revenue needs of each state is not restricted by reliance on the apportionable registration fees:

Arizona	\$2,025.00
Arkansas	1,044.00
Colorado	1,084.00
Illinois	2,200.00
Iowa	1,695.00
Louisiana	720.00
Minnesota	1,444.00
Mississippi	1,512.00
Missouri	1,050.50

Nebraska	1,280.00
North Carolina	920.00
North Dakota	969.00
Oklahoma	731.00
Oregon	2,235.00
Pennsylvania	940.00
South Dakota	1,457.00

The Oklahoma Legislature has expressed its intention that the Oklahoma based motor carriers be treated uniformly, and thus required collection of comparable third structure taxes from out-of-state motor carriers using Oklahoma's highways as is collected from Oklahoma's truckers in other states. 47 O.S. Supp. 1983, §22.5j; and House Concurrent Resolution No. 1001 (Appendices, Pages A7-A8)

In other words, Oklahoma welcomes motor carriers based in other states to use the roads and highways of the State of Oklahoma. And, Oklahoma insists that her motor carriers are likewise welcomed to use the roads and highways of other states. And, any restrictions placed upon Oklahoma resident carriers will also be placed upon residents of other states here in Oklahoma. This is Oklahoma's demand for equality and comity and reciprocity as among and between the several states of the United States.

**DEFENDANT'S ARGUMENT FOR DENYING
THE MOTION FOR LEAVE TO FILE COMPLIANT
SUMMARY OF THE ARGUMENT**

Pennsylvania has failed to state a claim upon which relief can be granted. Without injury or harm caused by, or a justiciable right to be protected from, actions of Oklahoma, no controversy exists between the states. Pennsylvania has no standing to seek relief by way of an original action.

Congress has removed state taxation of motor carriers from the restrictions of the Commerce Clause except as to ad valorem taxation and state income taxation, thus the Oklahoma comparable tax may not be challenged under the Commerce Clause, Article 1, Section 8, Clause 3 of the United States Constitution.

The standard of measurement of a state tax upon motor vehicle operators for the use of the public highways is whether the amount of the exaction is unduly disproportionate to the expenses and costs of the highways provided.

PROPOSITION I:

**TO INVOKE THE ORIGINAL JURISDICTION OF
THE UNITED STATES SUPREME COURT, A
STATE MUST SUFFER A WRONG THROUGH
THE ACTIONS OF ANOTHER STATE OR A
STATE MUST ASSERT A JUDICIALLY ENFORCE-
ABLE RIGHT AGAINST ANOTHER STATE.**

The Commonwealth of Pennsylvania in its sovereign capacity and in its proprietary capacity and as *parens patriae* of its citizens, has suffered no injury by the comparable tax of the State of Oklahoma.

The alleged injury which Pennsylvania complains of is the payment of the Oklahoma comparable tax collected

from Pennsylvania resident truckers. Pennsylvania does not represent its general population herein: Pennsylvania represents her motor carriers. Such representation is not sufficient to invoke this Court's original jurisdiction under Article III, Section 2, Clause 1 of the United State Constitution. *Hawaii v. Standard Oil Company of California*, 405 U.S. 251, 92 S.Ct. 885, 31 L.Ed. 2d 184 (1972).

In *Maryland v. Louisiana*, 451 U.S. 725, 101 S.Ct. 2114, 68 L.Ed. 2d 576 (1981), this Court said that the controversy must be *directly* between the states to justify exercise of this Court's original jurisdiction. In *Maryland v. Louisiana*, the Louisiana first use tax was intended to be passed on to the ultimate consumers. The plaintiff states were major purchasers of the natural gas and the cost of the gas to the plaintiff states had substantially increased because of the challenged first-use tax. The plaintiff states were directly affected as purchasers of gas and therefore had standing to invoke this Court's original jurisdiction.

The mere allegations that Pennsylvania, in its proprietary capacity and as *parens patriae* on behalf of all its citizens, is seeking protection from increased cost of goods are not sufficient to invoke this Court's original jurisdiction. *Maryland v. Louisiana*, *supra.*; and, *State of Oklahoma ex rel. Johnson v. Cook*, 304 U.S. 387, 58 S.Ct. 954 (1930).

The mere allegation that Pennsylvania seeks protection of its sovereign taxing power likewise is not sufficient to invoke this Court's original jurisdiction. *State of Arkansas v. State of Texas*, 346 U.S. 368, 74 S.Ct. 109 (1953). A national plan to protect the various interests of states in taxation of interstate motor carriers is committed to Congress by the Commerce Clause, not this Honorable Court. *Moorman Manufacturing Co. v. Bair*, 437 U.S. 280, 57 L.Ed. 2d 197, 98 S.Ct. 2340 (1980), at page 2348:

“While the freedom of the States to formulate independent policy in this area may have to yield to an overriding national interest in uniformity, the content of the uniform rules to which they must subscribe should be determined only after due consideration is given to the interests of all affected States. *It is clear that the legislative power granted to Congress by the Commerce Clause of the Constitution would amply justify the enactment of legislation requiring all States to adhere to uniform rules for the division of income. It is to that body, and not this Court, that the Constitution has committed such policy decisions.*” (Emphasis added)

Thus, the Commonwealth of Pennsylvania seeks relief from a speculated indirect affect of Oklahoma’s tax upon the price of goods to Pennsylvania and her consumers and seeks protection of a right that is not justiciable.

Original jurisdiction should be invoked sparingly, *Illinois v. City of Milwaukee*, 406 U.S. 91, 92 S.Ct. 1385, 31 L.Ed. 2d 712 (1972); and only when necessary for the complaining states protection, *Massachusetts v. Missouri*, 308 U.S. 1, 60 S.Ct. 39, 84 L.Ed. 3 (1939).

WHEREFORE, the State of Oklahoma respectfully submits that the Commonwealth of Pennsylvania lacks standing to invoke the original jurisdiction in this purported action.

PROPOSITION II:

CONGRESS HAS DEFINED THE ACTIONS OF STATES EXERCISING THEIR TAXING POWERS WHICH WILL UNREASONABLY BURDEN AND DISCRIMINATE AGAINST INTERSTATE COMMERCE AND HAS REMOVED ANY OTHER COMMERCE CLAUSE RESTRICTIONS FROM STATE TAXATION OF INTERSTATE MOTOR CARRIERS.

In 23 U.S.C. §126, subsection (a), Congress recognizes state taxation by registration fees, licenses, gasoline taxes and other special taxes upon motor vehicle owners. In Section 126 Congress declares that it is unfair and unjust to tax motor vehicle transportation unless the proceeds of the tax are applied to the construction, improvement or maintenance of highways and requires the various states to use at least the amounts provided by law on June 18, 1934 for highways.

The distribution of the Oklahoma comparable tax is not challenged because it is distributed as other taxes collected from motor carriers for construction and maintenance of Oklahoma's roads and highways.

In 49 U.S.C. §10101 Congress set forth the national transportation policy. This policy includes the promotion of economical transportation, encouragement of sound economic conditions, establishment and maintenance of reasonable rates and cooperation with each state on transportation matters. The same is the policy of the IRP.

In 49 U.S.C. §10521, Congress specifically vested in the states the regulatory control of intrastate motor carrier transportation and the power to tax motor carriers, with the

exceptions as provided in other specific statutes. Subparagraph (b)(4) of §10521 states:

“(b) This subtitle ***does not*** —

“(4) except as provided in section 11503(a) and section 11504(b) of this title, ***affect state taxation power of a state over a motor carrier.***” (*Emphasis added*)

Section 11503a declares three acts to unreasonably burden and discriminate against interstate commerce and prohibits a State from doing any of them. These three acts which unreasonably burden and discriminate against interstate commerce relate to the assessment, levy or collection of tax on the assessment and rate of tax for ad valorem tax purposes.

Section 11504 specifies when state withholding income tax will be applicable to motor carrier employees.

WHEREFORE, the State of Oklahoma respectfully submits that Congress has defined state tax actions relating to motor carriers that unreasonably burden and discriminate against interstate commerce and, thereby, has eliminated any other commerce clause restrictions from taxation of interstate motor carriers.

PROPOSITION III:

STATE TAXES IMPOSED TO COMPENSATE FOR HIGHWAY USE ARE VALID UNLESS THE AMOUNT EXACTED IS SHOWN TO BE IN EXCESS OF THE FAIR COMPENSATION FOR THE PRIVILEGE OF USING THE STATE HIGHWAYS.

The Oklahoma comparable tax classifies interstate motor carriers according to the resident state for the expressed legislative purpose of taxing the motor carriers of any one state for the use of Oklahoma's highways the same as that state taxes Oklahoma's motor carriers. This comparable tax does not mirror the apportioned, annual registration tax or the motor fuel taxes, thus the amounts collected by any other state from Oklahoma residents will not be precisely the same amounts collected by Oklahoma from the other state's residents. The flat fee type of tax, such as Pennsylvania's axle tax and marker tax, the third structure taxes, are mirrored by Oklahoma's comparable tax. Consequently, the comparable tax amounts will vary depending upon the amount of flat fee taxes imposed by the various states for use of their respective highways.

State taxes on interstate motor carriers to compensate for the privilege of using the state highways have been consistently upheld by this Court and other courts. *Kane v. New Jersey*, supra.; *Hendrick v. Maryland*, 235 U.S. 610, 35 S.Ct. 140, 59 L.Ed.385 (1915); and, *Capitol Greyhound Lines v. Brice*, 339 U.S. 542, 70 S.Ct. 806, 94 L.Ed. 1053, 17 A.L.R. 2d 407 (1950).

In *Capitol Greyhound Lines v. Brice*, Maryland levied a tax for the use of her public highways calculated upon the value of the vehicle. The amount of the tax varied from vehicle to vehicle. In upholding the tax, this Court said, at 70 S.Ct. 809,

“Under the rules we have previously prescribed, such carriers may challenge the taxes as applied, and upon proper proof obtain a judicial declaration of their invalidity as applied. *Ingles v. Morf*, 300 U.S. 290, 57 S.Ct. 439, 81 L.Ed.653. *Cf. Clark v. Paul Gray, Inc.*, 306 U.S. 583, 59 S.Ct. 744, 83 L.Ed. 1001.

If a new rule prohibiting taxes measured by vehicle value is to be declared, we think Congress should do it.⁸
(Emphasis added)

The Court, at footnote 8, noted that Congress had declared that the provisions of the Interstate Commerce statutes were not to be construed to affect the powers of taxation of the several states.

In *Bode v. Barrett*, 344 U.S. 583 73 S.Ct.468 (1953), an Illinois license tax based upon gross weight of the motor carrier vehicle was challenged under the Commerce Clause and the Fourteenth Amendment. Like Maryland's tax, the amount of the Illinois tax varied from vehicle to vehicle. The Court summarily upheld the tax, finding that appellants failed to carry the burden of showing that the tax deprives them of rights which the Commerce Clause protects.

At 73 S.Ct. page 471, the Court responded to the equal protection argument:

“(7, 8) We need notice only one argument and that is that the statute requires Illinois residents to pay the tax, whereas nonresidents are exempted provided the states of their residence reciprocate and grant like exemptions to Illinois residents. That objection, so far as the Fourteenth Amendment is concerned, was adequately answered in *Storaasli v. State of Minnesota*, 283 U.S. 57, 62, 51 S.Ct. 354, 355, 75 L.Ed. 839. And contrary to appellant's suggestions, that kind of reciprocal arrangement between states has never been

thought to violate the Compact Clause of Art. I, §10 of the Constitution. See *St. Louis & S.F.R. Co. v. James*, 161 U.S. 545, 562, 16 S.Ct. 621, 627, 40 L.Ed. 802; *Kane v. State of New Jersey*, 242 U.S. 160, 168, 37S.Ct. 30, 32, 61 L.Ed.222.”

Thus, state taxes, upon interstate motor carriers which vary in the amounts of the liability, such as the comparable tax, have been upheld by this Court.

In determining the validity of a legislative classification of vehicles in interstate commerce, it is not within the judicial province to hear evidence and decide again that which the legislature has already decided. The Court’s function is to determine if the classification is reasonable. *Clark v. Paul Gray, Inc.*, 306 U.S. 583, 59 S.Ct. 744, 83 L.Ed. 1001 (1939); *South Carolina State Highway Department v. Barnwell Bros., Inc., et al*, 303 U.S. 177, 58 S.Ct. 510 (1938). Classification by weight and by value has been upheld against commerce clause and equal protection challenges.

The purpose and vision of the Commerce Clause is that every person shall be encouraged to produce if he is guaranteed that he will have free access to every market in our nation. *H. P. Hood & Sons v. DuMond*, 336 U.S. 525, 69 S.Ct. 657 (1949). Thus, this Court, in *Commonwealth Edison Co. v. Montana*, 453 U.S. 609 101 S.Ct. 2946 69 L.Ed. 2d 884 (1981), in considering Commerce Clause challenges to Montana’s coal severance tax said, at page 2955:

“Consequently, in reviewing appellant’s contentions, we put to one side those cases in which the Court reviewed challenges to “user” fees or “taxes” that were designed and defended as a specific charge imposed by the State for the use of state-owned or state-provided

transportation or other facilities and services. See, e.g., *Evansville Vanderburgh Airport Authority Dist. v. Delta Airlines, Inc.*, 405 U.S. 707, 92 S.Ct. 1349, 31 L.Ed. 2d 620 (1972);”

and, at page 2956, at footnote 12:

“12. As the Court has stated, “such imposition, although termed a tax, cannot be tested by standards which generally determine the validity of taxes.” *Interstate Transit, Inc. v. Lindsey*, 283 U.S. 183, 190, 51 S.Ct. 380, 382, 75 L.Ed. 953 (1931). Because such charges are purportedly assessed to reimburse the State for costs incurred in providing specific quantifiable services, we have required a showing, based on factual evidence in the record, that “the fees charged do not appear to be manifestly disproportionate to the services rendered” *Clark v. Paul Gray, Inc.*, 306 U.S., at 599, 59 S.Ct., at 753. See *id.*, at 598-600, 59 S.Ct., at 752-753; *Ingels v. Morf*, 3900 U.S. at 296-297, 57 S.Ct., at 442-443. One commentator has suggested that these “user” charges “are not true revenue measures and . . . the considerations applicable to ordinary tax measures do not apply.” P. Hartman, *State Taxation of Interstate Commerce* 20, n. 72 (1953). Instead, “user” fees “partak(e) . . . of the nature of a rent charged by the State, based upon its proprietary interest in its public property, (rather) than of a tax, as that term is thought of in a technical sense.” *Id.*, at 122. See generally *id.*, at 122-130.

Without regard to the nature of the highway user taxes, Plaintiff argues that Oklahoma’s comparable tax must fall under the four-prong test in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed. 2d 326 (1977).

However, application of the Complete Auto Transit Commerce Clause test for state taxation upholds the Oklahoma comparable tax:

1. Sufficient nexus to the state to justify the tax — use of Oklahoma's highways;
2. Tax does not discriminate against interstate commerce — tax does not discriminate among motor carriers of the same classification;
3. Tax is fairly apportioned — 100% of the taxing incident occurs within Oklahoma thus 100% of the tax remains in Oklahoma; and,
4. Tax is fairly related to the benefits provided to the taxpayer — cost of construction and maintenance of Oklahoma highway system.

WHEREFORE, the State of Oklahoma respectfully submits that its comparable tax, when measured by its results, does not violate the Commerce Clause, Article I, Section 8, Clause 3 of the United States Constitution.

RESPONSE TO PLAINTIFF'S ARGUMENTS

In this action, Plaintiff, Commonwealth of Pennsylvania, seeks declaratory and injunctive relief from the purported injury caused by Oklahoma's comparable tax levied upon and collected from Pennsylvania resident motor carriers using the roads and highways of the State of Oklahoma.

Plaintiff asserts that Oklahoma's comparable tax is repugnant to the Commerce clause of the United States because:

1. The tax, imposed in differing amounts on different motor carriers, depending upon the tax structure of the resident state, does not have a sufficient nexus to the State of Oklahoma;
2. The tax is totally unrelated to services provided by the State of Oklahoma to Pennsylvania registered trucks traveling through Oklahoma; and
3. The tax adversely affects the ability of Pennsylvania citizens to participate in interstate commerce in such a way as to discriminate against Pennsylvania citizens.

The amount of the tax collected by Oklahoma neither creates nor diminishes the taxing nexus. The tax incidence is the use of the roads and highways of Oklahoma, which is a proper subject of State taxation. *Kane v. New Jersey*, 242 U.S. 160, 37 S.Ct.30, 61 L.Ed. 222 (1916).

The differing amounts of the tax depending upon the tax structure of the resident state does not relate to the nexus issue. Rather, it relates to an equal protection issue. Retaliatory taxes similar to Oklahoma's comparable tax, classifying taxpayers by the state of residence, have been upheld by this Court against an equal protection challenge. *Western and Southern Life Insurance Company v. State Board of Equalization of California*, 451 U.S. 646, 101 S.Ct. 270, L.Ed. 2 (1981).

Plaintiff's assertion that the amount of the tax has no relationship to the benefits provided to Pennsylvania's residents, has been resolved by this Court in *Capitol Greyhound Lines v. Brice*, 339 U.S. 5412, 70 S.Ct. 806, 94 L.Ed. 1053 (1950), wherein this Court required the contested Maryland tax to be judged by its result, not its formula and to be upheld unless *proven* to be unreasonable for the privilege granted.

And, Plaintiff's assertion that the Oklahoma tax discriminates against Pennsylvania's citizens participating in interstate commerce reveals the true reason for this lawsuit. Pennsylvania is seeking redress of grievances of her resident truckers, of which there are approximately ten thousand who use the roads and highways of Oklahoma. This assertion focuses on the real interests to be protected and the lack of standing of the Commonwealth of Pennsylvania to invoke this honorable Court's original jurisdiction to litigate the interests of a small sector of Pennsylvania's residents. *Maryland v. Louisiana*, 451 U.S. 725, 101 S.Ct. 2114, 68 L.Ed. 2d 576 (1981).

In addition to the commerce clause assertions, Plaintiff argues that the Oklahoma tax directly infringes upon Pennsylvania's rights to finance its operations in whatever manner it wishes, subject only to constitutional limitations. This argument brings to mind the case of the young man who murdered his mother and father and then begged for mercy of the court because he was an orphan. Pennsylvania sought and received participation in the I.R.P. and, then within two months, enacted a third structure tax notwithstanding the fact that third structure taxes seriously restrict, threaten and diminish reciprocity, the purpose of the I.R.P.

By complaining of infringement upon its sovereign finance powers, does Pennsylvania claim Oklahoma has

violated some privilege and immunity guaranteed the states by the Constitution of the United States? Or, has Oklahoma restricted Pennsylvania's right to travel? Generally, such rights are protected for residents and citizens of the United States and not for the states per se. *Toomer v. Witsell et al.*, 334 U.S. 385, 68 S.Ct. 1156 (1948).

It is the position of the State of Oklahoma, that Congress has removed state taxation of motor carriers from the general limitations of the commerce clause of the United States Constitution by enactment of 49 U.S.C. §§10521, 11503a and 11504; and, that federalism and comity among the states is served and achieved through the International Registration Plan which Pennsylvania has chosen to ignore.

CONCLUSION

Plaintiff, the Commonwealth of Pennsylvania, does not assert an interest or injury sufficient to seek relief in an original jurisdiction action before this Court. Plaintiff has not clearly established its interest or injury to be vindicated by relief herein. *Alabama v. Arizona*, 291 U.S. 286, 54 S.Ct. 399, 78 L.Ed. 798 (1934). Accordingly, since this Court has held it should exercise its original jurisdiction sparingly, *Illinois v. City of Milwaukee*, supra, the Motion for Leave to File Complaint herein should be denied and Defendant should be allowed reimbursement for all its costs herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rules 9 and 28, on the 17th day of February, 1984, three copies of the above and foregoing Brief in Opposition to Motion for Leave to File Complaint were deposited in the United States Mail, sufficient first class postage prepaid, addressed as follows:

1. The Honorable Richard Thornburgh
Governor
Commonwealth of Pennsylvania
Room 225, Main Capitol
Harrisburg, Pennsylvania 17120
2. The Honorable LeRoy S. Zimmerman
Attorney General
Commonwealth of Pennsylvania
Strawberry Square
Harrisburg, Pennsylvania 17120
3. Spencer A. Manthorpe
Chief Counsel
Pennsylvania Department of
Transportation
Room 521, Transportation & Safety Bldg.
Harrisburg, Pennsylvania 17120

Donna E. Cox, Attorney

**RESOLUTION ADOPTING THE
INTERNATIONAL REGISTRATION PLAN**

WHEREAS, the International Registration Plan was formed to provide a uniform system for the registration of vehicles used interjurisdictionally, and

WHEREAS, it is the purpose of the Plan to implement the concept of one registration plate and one registration (cab) card for one vehicle;

NOW THEREFORE, in consideration of the mutual and reciprocal benefits to flow therefrom in accordance with the laws of this jurisdiction, the Secretary of Transportation of the Commonwealth of Pennsylvania, acting in pursuant to Subchapter C of Chapter 61 of the "Vehicle Code," the act of June 17, 1976 (P.L. 162, No. 81) (75 Pa. C.S. Subchapter C, Chapter 61) and on behalf of the State/Province of Pennsylvania, does hereby ratify the INTERNATIONAL REGISTRATION PLAN with no exceptions.

IN WITNESS WHEREOF, the State/Province of Pennsylvania, acting through its duly authorized officials, has caused this resolution to be adopted to make the State/Province of Pennsylvania a member of and a party to the agreement herein mentioned, for the registration year of 1982, subject to the endorsement by all jurisdictions now party to the agreement.

Adopted this 20th day of January, 1981.
FOR the State/Province of Pennsylvania.

BY: _____	Secretary of Transportation
Signature	Title

ENDORSEMENT: By the State of Oklahoma

As required by Section A of Article XVI of the International Registration Plan, this Resolution of Ratification is hereby endorsed on this 15th day of September, 1982.

By: _____	_____
Signature	Chairman Title

_____	_____
Signature	Secretary-Member Title

STATE OF PENNSYLVANIA
FEE SCHEDULE — TRUCKS AND TRUCK-TRACTORS
PRIOR TO APRIL 1, 1983

Based on Combined Gross Weight

Weight/Lbs.	12th Month
5,000 or less	\$ 39.00
5,001-7,000	54.00
7,001-9,000	102.00
9,001-11,000	132.00
11,001-14,000	162.00
14,001-17,000	192.00
17,001-21,000	237.00
21,001-26,000	270.00
26,001-30,000	315.00
30,001-33,000	378.00
33,001-36,000	414.00
36,001-40,000	438.00
40,001-44,000	465.00
44,001-48,000	501.00
48,001-52,000	552.00
52,001-56,000	588.00
56,001-60,000	666.00
60,001-64,000	741.00
64,001-68,000	777.00
68,001-73,280	834.00
73,281-76,000	1065.00
76,001-78,000	1089.00
78,001-78,500	1101.00
78,501-79,000	1113.00
79,001-80,000	1125.00

STATE OF PENNSYLVANIA
FEE SCHEDULE — TRUCKS AND TRUCK-TRACTORS
MONTHLY PRORATED FEE CHART
EFFECTIVE APRIL 1, 1983

Gross Weight	12 Months
5,000 or less	\$ 39.00
5,001-7,000	54.00
7,001-9,000	102.00
9,001-11,000	132.00
11,001-14,000	162.00
14,001-17,000	192.00
17,001-21,000	232.00
21,001-26,000	265.00
26,001-30,000	238.00
30,001-33,000	301.00
33,001-36,000	337.00
36,001-40,000	361.00
40,001-44,000	352.00
44,001-48,000	388.00
48,001-52,000	439.00
52,001-56,000	475.00
56,001-60,000	553.00
60,001-64,000	592.00
64,001-68,000	628.00
68,001-73,280	685.00
73,281-76,000	880.00
76,001-78,000	904.00
78,001-78,500	916.00
78,501-79,000	928.00
79,001-80,000	940.00

STATE OF OKLAHOMA
FEE SCHEDULE
TRACTOR, TRUCK-TRACTOR, TRUCKS
BASED UPON COMBINED GROSS WEIGHT

Weight/Lbs.	1-3rd Month	4-6 Month	7-9 Month	10-12 Month
15,000	\$ 95.00	\$ 71.25	\$ 47.50	\$ 23.75
18,000	120.00	90.00	60.00	30.00
21,000	155.00	116.25	77.50	38.75
24,000	190.00	142.50	95.00	47.50
27,000	225.00	168.75	112.50	56.25
30,000	260.00	195.00	130.00	65.00
33,000	295.00	221.25	147.50	73.75
36,000	325.00	243.75	162.50	81.25
39,000	350.00	262.50	175.00	87.50
42,000	375.00	281.25	187.50	93.75
45,000	400.00	300.00	200.00	100.00
48,000	425.00	318.75	212.50	106.25
51,000	450.00	337.50	225.00	112.50
54,000	475.00	356.25	237.50	118.75
57,000	500.00	375.00	250.00	125.00
60,000	525.00	393.75	262.50	131.25
63,000	550.00	412.50	275.00	137.50
66,000	575.00	431.25	287.50	143.75
69,000	600.00	450.00	300.00	150.00
72,000	630.00	472.50	315.00	157.50
73,280	661.00	495.75	330.50	165.25
74,000	671.00	503.25	335.50	167.75
75,000	681.00	510.75	340.50	170.25
76,000	691.00	518.25	345.50	172.75
77,000	701.00	525.75	350.50	175.25
78,000	711.00	533.25	355.50	177.75
79,000	721.00	540.75	360.50	180.25
80,000	731.00	548.25	365.50	182.75
81,000	741.00	555.75	370.50	185.25
82,000	751.00	563.25	375.50	187.75
83,000	761.00	570.75	380.50	190.25

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84,000	771.00	578.25	385.50	192.75
85,000	781.00	585.75	390.50	195.25
86,000	791.00	593.25	395.50	197.75
87,000	801.00	600.75	400.50	200.25
88,000	811.00	608.25	405.50	202.75
89,000	821.00	615.75	410.50	205.25
90,000	831.00	623.25	415.50	207.75

FEE SCHEDULE — BUSES

BASED UPON SEATING CAPACITY AND YEAR OR REGISTRATION

	1-11 Seats	12-23 Seats	24 Seats or Over
First Year of Registration	\$7.50/seat	\$9.00/seat	\$10.00/seat
Second Year of Registration	6.00/seat	7.20/seat	8.00/seat
Third Year of Registration	4.80/seat	5.76/seat	6.40/seat
Fourth Year of Registration	3.84/seat	4.61/seat	5.12/seat
Fifth Year of Registration	3.07/seat	3.69/seat	4.10/seat
Sixth Year of Registration	2.46/seat	2.95/seat	3.28/seat
Seventh Year of Registration	1.97/seat	2.36/seat	2.62/seat
Eighth Year of Registration	1.57/seat	1.89/seat	2.10/seat

Fees Reduced 25% Quarterly

Trailers	20.00	15.00	10.00	5.00
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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
DIRECTING 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 non residents 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 CON-
CURRING 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 non resident 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 607.1) 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.

Filed with the Secretary of State May 3, 1983.

