ReedSmith
Driving progress
through partnership

Kenneth R. Levine
Direct Phone: +1 215 851 8870
Email: klevine@reedsmith.com

Reed Smith LLP
Three Logan Square
Suite 3100
1717 Arch Street
Philadelphia, PA 19103
+1 215 851 8100
Fax +1 215 851 1420
reedsmith.com

October 3, 2024

By E-mail (tpadavano@tax.state.nv.us)

Nevada Tax Commission
3850 Arrowhead Drive
Carson City, NV 89706

Nevada Transportation Connection Tax
Comment on behalf of Greyhound Lines, Inc.

Chairman Kelesis and Commissioners:

On behalf of Greyhound Lines, Inc. ("Greyhound"), I am submitting a comment regarding the application of the Nevada Transportation Connection Tax ("TCT") following the Commission's September 24, 2024 acquiescence in *Marque Motor Coach v. Nevada Tax Commission*.[1] As the court recognized in *Marque Motor*, a federal statute, codified as 49 U.S.C. § 14505, expressly prohibits a state from imposing a tax like the TCT on interstate transportation by motor carriers.[2]

Greyhound requests that the Commission take two actions to ensure the orderly administration of the TCT in conformity with federal law.

First, Greyhound requests that the Commission direct the Department of Taxation ("Department") to promulgate formal guidance confirming that the TCT does not apply to interstate passenger transportation and to rescind or modify any contrary guidance. This will give proper notice to all businesses that provide interstate passenger transportation that the TCT does not apply to those services, and this should reduce the volume of inquiries and refund claims that the Department will need to address.

Second, Greyhound requests that the Commission direct the Department to grant relief from the TCT imposed on interstate transportation by motor carriers in any pending appeal or timely-filed refund claim. This will reduce the administrative burden on the Department and motor carriers, and this will minimize the potential for confusion or nonuniform treatment that could otherwise result.

***

1 A copy of the decision in *Marque Motor* is attached as Exhibit A.

2 An amicus brief that Greyhound filed with the Nevada Supreme Court on August 30, 2023 in *Adventure Photo Tours, Inc. v. Nevada Department of Taxation*, Case. No. 86170 is attached as Exhibit B. This amicus brief contains additional background regarding Greyhound's interest in Nevada's administration of the TCT in accordance with federal law.

ReedSmith

I appreciate the Commission's attention to this matter.

Sincerely,

Kenneth R. Levine

KRL:rp

EXHIBIT A

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA
****

MARQUE MOTOR COACH, INC., Plaintiff, vs. NEVADA TAX COMMISSION and NEVADA DEPARTMENT OF TAXATION; an agency of the STATE OF NEVADA, Defendant(s).	CASE NO: A-23-867175-J DEPT. No. 20

ORDER RE PETITION FOR JUDICIAL REVIEW

I. Background

Petitioner, Marque Motor Coach, Inc. (hereinafter "Petitioner" or "Marque") challenges NRS 372B.150 and the tax the statute imposes on common motor carriers, typically referred to as the Transportation Connection Tax (hereinafter "TCT"). Petitioner was a common motor carrier and paid the TCT during the applicable period related to this appeal. In September 2016, Petitioner requested a refund of these taxes. In January 2017, the Nevada Department of Taxation (hereinafter "Department") denied the request. A detailed outline of the course of proceedings in this matter is set out in Petitioner's Opening Brief. Petitioner's Opening Brief, at 1-3 (Aug. 28, 2023)(hereinafter "Opening Brief"). These proceedings included hearings before the Administrative Law Judge (hereinafter "ALJ") on February 8, 2021,

February 9, 2021 and May 17, 2021. The ALJ issued her Findings of Fact, Conclusions of Law and Final Decision on October 15, 2021, upholding the Department's denial of Petitioner's claim for refund of the TCT it had paid pursuant to NRS 372B.150. Petitioner appealed and the Nevada Tax Commission upheld the ALJ's denial of Petitioner's request for refund. The Commission issued a written order on March 3, 2023 and Petitioner filed a timely Notice of Petition for Judicial Review on March 13, 2023.

II. Legal Standard

NRS 233B.135 sets out the applicable standard of review for a petition for judicial review. This statute provides in pertinent part:

> 2. The final decision of the agency shall be deemed reasonable and lawful until reversed or set aside in whole or in part by the court. The burden of proof is on the party attacking or resisting the decision to show that the final decision is invalid pursuant to subsection 3.
>
> 3. The court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact. The court may remand or affirm the final decision or set it aside in whole or in part if substantial rights of the petitioner have been prejudiced because the final decision of the agency is:
>
> (a) In violation of constitutional or statutory provisions; . . . .

NRS 233B.135. This Court in making its decision is limited to the record. The Court defers to the agency's findings of fact, but reviews questions of law de novo. *Bombardier Transportation (Holdings) USA, Inc., v. Nevada Labor Commissioner*, 135 Nev. 15, 18, 433 P.3d 248, 252 (2019). The Court must accord "great deference" to an administering department's interpretation of a statute it is tasked with enforcing as long as its "interpretation does not conflict with the plain language of the statute or legislative intent." *Nuleaf CLV Dispensary, LLC v. State Dep't of Health & Hum. Servs., Div. of Pub. & Behav. Health*, 134 Nev. 129, 136, 414 P.3d 305, 311

(2018)(citing *Meridian Gold Co. v. State ex rel. Dep't of Taxation*, 119 Nev. 630, 635, 81 P.3d 516, 519 (2003); *City of Reno v. Reno Police Protective Ass'n,* 118 Nev. 889, 900, 59 P.3d 1212, 1219 (2002); *see also Malecon Tobacco, LLC v. State ex rel. Dep't of Taxation,* 118 Nev. 837, 841–42 n.15, 59 P.3d 474, 477 n.15 (2002) ("Courts ... must respect the judgment of the agency empowered to apply the law to varying fact patterns, even if the issue with nearly equal reason [might] be resolved one way rather than another" (internal quotation marks omitted)).

Statutes the Legislature enacts are presumed to be constitutional and valid until the contrary is clearly established. *Hard v. Depaoli et al.,* 56 Nev. 19, 26, 41 P.2d 1054 (1935). "In case of doubt, every possible presumption will be made in favor of the constitutionality of a statute, and courts will interfere only when the Constitution is clearly violated. " *List v. Whisler*, 99 Nev. 133, 137–38, 660 P.2d 104, 106 (1983)(citing *City of Reno v. County of Washoe,* 94 Nev. 327, 333–334, 580 P.2d 460 (1978); *Mengelkamp v. List,* 88 Nev. 542, 545, 501 P.2d 1032 (1972). The party attacking the constitutionality of a statute has the burden of making a clear showing the statute is unconstitutional. *Id.*; *Ottenheimer v. Real Estate Division,* 97 Nev. 314, 315–316, 629 P.2d 1203 (1981).

Likewise, in the context of a party's contention that a federal statute preempts a state statue, a presumption exists that Congress did not intend to usurp state law. The presumption against federal preemption has particular force where "a matter of primary state responsibility" is at stake, such as in the instant case concerning local taxation. *Cf. Air Line Pilots Ass'n International v. UAL Corp.,* 874 F.2d 439, 447 (7th Cir.1989)(discussing presumption against preemption in local matters concerning regulation of corporations). A federal statute should not preempt a state tax "unless

Congress made its intent to preempt 'unmistakably clear in the language of the statute.'" *Tri-State Coach Lines, Inc. v. Metro. Pier & Exposition Auth.*, 315 Ill. App. 3d 179, 194, 732 N.E.2d 1137, 1148–49 (2000)(quoting *Gregory v. Ashcroft,* 501 U.S. 452, 460–61 (1991)).

III. Petitioner's Claims

Petitioner challenges the constitutionality of NRS 372B.150 under the Supremacy Clause of the United States Constitution, which provides that the laws of the United States "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." USCA CONST Art. VI cl. 2. NRS 372B.150 provides in pertinent part:

> Except as otherwise provided in subsection 2 and in addition to any other fee or assessment imposed pursuant to this chapter, an excise tax is hereby imposed on the connection, whether by dispatch or other means, made by a common motor carrier of a passenger to a person or operator willing to transport the passenger at the rate of 3 percent of the total fare charged for the transportation, which must include, without limitation, all fees, surcharges, technology fees, convenience charges for the use of a credit or debit card and any other amount that is part of the fare. The Department shall charge and collect from each common motor carrier of passengers the excise tax imposed by this subsection.

NRS 372B.150. Petitioner contends in the context of charter bus services that 49 USC § 14505 preempts the TCT that NRS 372B.150 imposes on common motor carriers. 49 U.S.C. § 14505 provides:

> A State or political subdivision thereof may not collect or levy a tax, fee, head charge, or other charge on—
>
> (1) a passenger traveling in interstate commerce by motor carrier;
> (2) the transportation of a passenger traveling in interstate commerce by motor carrier;
> (3) the sale of passenger transportation in interstate commerce by motor carrier; or
> (4) the gross receipts derived from such transportation.

49 U.S.C. § 14505. As noted above, the ALJ concurred in the Department's position that the TCT did not conflict with 49 USC § 14505. Specifically, the ALJ found:

> [T]he Department's application of the TCT to Marque did not violate or conflict with 49 U.S.C. §14505 because: (1) it imposed the tax on the operator, not the passengers; (2) it imposed the tax on the connections in Nevada between the passengers and the operator, not on the interstate transportation; (3) it imposed the tax on the connection between the passengers and the operator when those connections took place in Nevada, not on the sales of the interstate transportation; and (4) the tax was measured by the fares associated with the connections between the passengers and the operator that occurred in Nevada, it was not imposed on the gross receipts of the operator.

ROA Vol. 2, TAX836.

IV. 49 U.S.C. § 14505 and its History

Congress passed Section 14505 in response to the Supreme Court's decision in *Oklahoma Tax Commission v. Jefferson Lines, Inc*., 514 U.S. 175 (1995). In *Jefferson Lines* the Court ruled Oklahoma's sales tax on the full price of a ticket for bus travel from Oklahoma to another state did not violate the commerce clause. The Court's decision essentially overruled its prior decision in *Central Greyhound Lines, Inc. v. Mealey,* 334 U.S. 653 (1948), where the Court struck down New York's unapportioned tax on a bus company's gross receipts for tickets sold in New York for interstate bus travel. The Court in *Central Greyhound* found the state tax violated the commerce clause because it did not apportion a bus company's taxable receipts by the miles traveled in New York, causing "interstate transportation [to] bear more than 'a fair share of the cost of the local government whose protection it enjoys.'" *Central Greyhound,* 334 U.S. at 663 (quoting *Freeman v. Hewit,* 329 U.S. 249, 253 (1946)). The Court in *Jefferson Lines* considered essentially the same tax it had considered in *Central Greyhound*. Oklahoma imposed a tax for the total value of trips, which

included those trips crossing other states, without any apportioning of the tax to just that portion of the travel in Oklahoma. The Court found Oklahoma's tax did not impose an undue burden on interstate commerce or create a danger of multiple taxation. *Jefferson Lines,* 514 U.S. at 191.

Legislative history for Section 14505 shows Congress' clear intent to override the Supreme Court's decision in *Jefferson Lines*. The House Conference report explains Section 14505's purpose is to "prohibit[] a State or political subdivision of a State from levying a tax on bus tickets for interstate travel." The Report explains the Section is intended to "reverse[] a recent Supreme Court decision [*Jefferson Lines*] permitting States to do so." Significantly, the Section was also intended to "conform[] taxation of bus tickets to that of airline tickets." H.R. CONF. REP. 104-422, 220, 1995 U.S.C.C.A.N. 850, 905. Congress' intent was also confirmed in the Senate Report on Section 14505 which explained the Section was "a new provision that would prohibit State and local governments from imposing a tax on the sale of intercity bus tickets" and "preempt a state's ability to collect taxes or fees on interstate bus travel." S. REP. 104-176, 16, 48. "This provision is intended to override a recent court decision permitting such a tax." S. REP. 104-176, 48. *See also* H.R. REP. 104-311, 120, 1995 U.S.C.C.A.N. 793, 832 ("This section prohibits a State or political subdivision of a State from levying a tax on bus tickets for interstate travel. This conforms the treatment of taxation of bus tickets to that of airline tickets.").

While Congress passed Section 14505 "in response to the decision in *Jefferson Lines*, the bus travel tax umbrella covers more than just the stipulated facts of that decision." Thomas H. Mcconnell, *Congress Gives Intercity Busing A Free Pass: A Comment on Jefferson Lines v. Oklahoma Tax Commission*, 23 Transp. L.J.

503, 517 (1996). As expressed in the legislative history above, Section 14505 was model after the airline tax exemption, 49 U.S.C. § 40116. Similar to Section 14505, Section 40116(b) provides in pertinent part:

> Except as provided in subsection (c) of this section and section 40117 of this title, a State, a political subdivision of a State, and any person that has purchased or leased an airport under section 47134 of this title may not levy or collect a tax, fee, head charge, or other charge on—
>
> (1) an individual traveling in air commerce;
> (2) the transportation of an individual traveling in air commerce;
> (3) the sale of air transportation; or
> (4) the gross receipts from that air commerce or transportation.

49 U.S.C. § 40116(b). In discussing the reach of the airline tax exemption, the Supreme Court in *Aloha Airlines, Inc. v. Dir. of Tax'n of Hawaii*, 464 U.S. 7, 11–15 (1983), noted:

> Although Congress passed § 1513(a) [now Section 40116(b)] to deal primarily with local head taxes on airline passengers, the legislative history abounds with references to the fact that § 1513(a) also preempts state taxes on the gross receipts of airlines. For example, Senator Cannon, one of the ADAA's sponsors, clearly stated in floor debate: "The bill prohibits the levying of State or local head taxes, fees, gross receipts taxes or other such charges either on passengers or on the carriage of such passengers in interstate commerce.

Id. at 294–95 (footnote omitted)(quoting 119 Cong. Rec. 3349 (1973)). Consequently, Congress in passing the bus transportation tax exemption clearly understood it was going beyond overriding *Jefferson Lines* and intended to prohibit states from imposing taxes or other charges on the bus carriage of passengers in interstate commerce.

V. The Department's Claims

The Department argues that the TCT is not preempted by the terms of Section 14505. First the Department notes the TCT is not a tax on the passenger but a tax on the common motor carrier. While the Department acknowledges a carrier could

recover the cost of the tax by passing it on to its passengers, the carrier has the ultimate responsibility for the tax. The Department also contends that the TCT is not a tax on the transportation of a passenger, but rather on the "connection . . . made by a common motor carrier of a passenger to a person or operator willing to transport the passenger." NRS 372B.150 "The taxable event is not the sale of the ticket or the transportation itself, but the economic activity resulting from a business connecting a person with a driver willing to provide a service. This is an indirect tax on the privilege of conducting business within the State." Respondents' Reply in Opposition to Petition, at 12 (Oct. 30, 2023)(hereinafter "Opposition"). In essence, the Department asserts the TCT is a tax on a common motor carrier's privilege to do business in Nevada valued by a percentage of each passenger fare the carrier receives. Because NRS 372B.150 says the taxable event is the connection between the carrier and passenger, and doesn't identify transportation of the passenger as a taxable event, then the tax is imposed on the "connection" not the transportation or sale of transportation to the passenger. Opposition, at 13. Finally, the Department states that the TCT is not a tax on gross receipts as NRS 372B.150 imposes a tax on each instance of a "connection" at a rate of 3 percent of the total fare charged for transportation, rather than on gross receipts derived from transportation.

VI. "Connection" and "Gross Receipts"

NRS 372B.150 begs the question of what is a "connection"? The Department contends its witnesses, Mr. Carrello, an audit supervisor for the Department, and Mr. Childer, Mr. Carrello's supervisor, consistently testified at the hearings in this matter that the "connection," the taxable event, is "when the passenger is connected with an operator" or "is connected with the actual transportation." Opposition, at 15

(referencing Transcript, p. 322-323 and p. 420). From the Court's perspective, a passenger's "connection" with an operator is when the passenger buys a ticket to ride the bus somewhere or enters some other contractual arrangement to be transported by bus. According to Marque, buying a ticket is essentially what Mr. Carrello said at the hearings when asked what the taxable event was. Petitioner's Reply to Opposition, at 8 (Jan. 30, 2024)(hereinafter Reply)("Respondent Auditor Carrello: when a passenger purchases a 'ticket.' *See*, Hearing Transcript Pg. 323, ll: 6-7").

At first blush then, if Congress' purpose in passing Section 14505 is to "prohibit[] a State or political subdivision of a State from levying a tax on bus tickets for interstate travel," H.R. REP. 104-311, 120, 1995 U.S.C.C.A.N. 793, 832, then the Department's imposition of a 3 percent tax on the price of that ticket or contractual arrangement would seem to be precluded under Section 14505. The Department's position that NRS 372B.150's use of the term "connection" instead of "purchase of a ticket" or "contracting travel" somehow takes it out of the scope of 14505 because it does not use the magic words "charge . . . on . . . the transportation of a passenger" or "charge . . . on . . . the sale of passenger transportation" is a hyper-technical analysis of Section 14505 and NRS 372B.150 without substance. NRS 372B.150 levies on the bus operator a 3 percent tax on the fare the passenger pays for bus travel, the sale of passenger transportation. The Department's styling of the tax as a tax on "connection" does not render it any less of tax on transportation of a passenger or on the sale of passenger transportation. However one may try to style it, that is the purpose and effect of NRS 372B.150.

Indeed, prior to January 2024, whenever the Department discussed the TCT in contexts outside of challenges to its legality, the Department stated that it is a tax on

transportation. The Department's 2022 Annual Report explains "[t]he Transportation Connection Tax law imposes an excise tax on the transportation of a passenger by a transportation network company, common motor carrier of passengers or taxicab at the rate of 3 percent of the total fare charged for the transportation." Nevada Department of Taxation Annual Report, Fiscal Year 2022, at 63 (Jan. 2023)(https://tax.nv.gov/wp-content/uploads/2024/03/FY22-Annual-Report.pdf); *see also* Nev. Admin. Code 372B.100 ("As used in this chapter, unless the context otherwise requires, 'excise tax on passenger transportation' means the taxes imposed by NRS 372B.140, 372B.150 and 372B.160."). Possibly in view of litigation concerns on NRS 372B.150's legality, the Department appears to have picked up on this inconsistency in its position in its 2023 Annual Report where it states "[t]he Transportation Connection Tax law imposes an excise tax on the connection of a passenger by a transportation network company, common motor carrier of passengers or taxicab at the rate of 3 percent of the total fare charged for the transportation." Nevada Department of Taxation Annual Report, Fiscal Year 2023, at 64 (Jan. 2024)(https://tax.nv.gov/wp-content/uploads/2024/03/FY23-Annual-Report.pdf).

In purpose and effect, NRS 372B.150 is also a tax on the gross receipts derived from passenger transportation in interstate commerce. The Department attempts to get around Section 14505's prohibiting of such taxes by another hyper-technical analysis of NRS 373B.150 and Section 14505. The Department argues that NRS 372.150 taxes each "total fare charged for the transportation." Consequently, the tax is not on a bus operator's "gross receipts" which Section 14505 prohibits. However, each and every "total fare" is taxed. In the context of a common motor carrier of passengers that is the carrier's "gross receipts". *Cf.* NRS 372.025 ("'Gross

receipts' means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise . . . .").

The Department goes on to argue that by taxing the connection between bus carrier and passenger based on fares received, the tax is not a direct tax upon the transportation provided but rather an indirect tax "directly and specifically applied for the privilege of conducting business within the state." Opposition, at 12. Under the Department's logic, because the TCT is a tax on the privilege to do business in Nevada and not a direct tax on the bus transportation a carrier provides, NRS 372B.150 does not run afoul of Section 14505. The Department suggests NRS 372B.150 is no differ from Arizona's transaction privilege tax (TPT), Ariz. Rev. Stat. Ann. § 42-5008(A) (2013), or Hawaii's General Excise Tax ("GET"), Hawaii Revised Statutes § 237–13(6)(A) (2001 & Supp. 2008). However, the Department does not reference the Court to either state's application of their privilege taxes on bus carriers that fall within the scope of Section 14505. The Arizona Court of Appeals in dealing with the State's transaction privilege tax in the context of Section 40116(b)'s prohibition on states taxing of air transportation found the tax could not be applied to air transportation. The Arizona Court of Appeal "conclude[d], on the basis of the plain terms of the statute, that when Congress prohibited a tax upon the carriage of persons in air commerce, it preempted the Arizona transaction privilege tax insofar as it relates to the transportation of persons." *State ex rel. Arizona Dep't of Revenue v. Cochise Airlines*, 128 Ariz. 432, 437, 626 P.2d 596, 601 (Ct. App. 1980).

The language of Section 40116(b), as noted above, largely parallels the language of Section 14505. 49 USC § 1513 was the original air tax exemption statute at the time of the *Cochise Airlines* decision up until 1995. 49 USC § 1513 provided that "[n]o State ... shall levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom. . . . 49 USC § 1513 was superseded in 1995 by 49 U.S.C. § 40116(b). Section 40116(b) retained essentially the same language as 49 USC § 1513, but, according to the House Report, "[t]he words 'directly or indirectly' are omitted as surplus." H.R. REP. 103-180, 272. Consequently, Congress' omission of "directly or indirectly" from Section 40116(b) did not impact on the scope and effect of the recodified statute from the meaning of the original statute, 49 USC § 1513. Likewise, Congress in adopting the language of Section 40116(b) for the language of Section 14505 would have intended that language to have the same scope and effect to preclude direct or indirect taxing of common motor carriers' transportation of passengers. As noted above, the legislative history for Section 14505 makes clear the statute was intended to "conform[] the treatment of taxation of bus tickets to that of airline tickets." H.R. REP. 104-311, 120, 1995 U.S.C.C.A.N. 793, 832. The First Circuit explained in *Jalbert Leasing, Inc. v. Massachusetts Port Auth.*, 449 F.3d 1 (1st Cir. 2006), the language of the original version of Section 40116 "prohibited charges that 'directly or indirectly' fell within the enumerated categories, and the language was later deleted as superfluous. We would therefore be free to read the bus statute as broadly as the original [Section 40116]." *Id.* at 4 (citation omitted).

Similar to Arizona, a New York Appellate Court in looking at its State's statute which levied a "franchise tax" on air carriers for "the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in this state in a corporate or organized capacity, or maintaining an office in this state," concluded the tax ran afoul of Section 40116(b). *Air Transp. Ass'n of Am. v. New York State Dep't of Tax'n & Fin.*, 91 A.D.2d 169, 170, 458 N.Y.S.2d 709, *aff'd,* 59 N.Y.2d 917, 453 N.E.2d 548 (1983). The New York statute in *Air Transp. Ass'n of Am.* valued the "franchise tax" on an air carrier at a percentage of the air carrier's "gross earnings". Unlike Section 14505, Section 40116 allows states to impose franchise taxes on air carriers. 49 USC § 40116(e)(1). New York taxing authorities argued that the New York statute's "franchise tax" was a constitutional tax since the federal statute allowed states to impose franchise taxes and the State's taxing of an air carrier's "gross earnings" encompassed more than a carrier's "gross receipts" from carriage of passengers. *Id.* at 170. The New York court rejected this argument, finding:

> the plain terms of [Section 40116(b)] strike directly at the subject tax, and do not allow for a construction which permits a tax either directly or indirectly on gross receipts derived from air transportation. . . . The language of [the New York statute] also refers to "privilege", and defendants' argument that the measurement of the challenged tax by gross earnings is distinguishable from a direct tax on gross receipts is without substance. In this regard, the fact that [the New York statute] imposes a tax on other categories of income does not alter the fact that it imposes a tax upon the gross receipts derived from air carriage.

Id. at 170-72. Finally, the court concluded the New York taxing authorities' contention that Section 40116 allowed "the levy of franchise taxes by States is specious, since the measurement for the franchise tax could be structured in a different way." *Id*. at 172.

In short, the Department's styling of the tax levied by NRS 372B.150 as a direct or indirect tax on individual "connections" between passenger and bus carrier as opposed to "gross receipts" from carriage doesn't allow this Court to ignore the reality that NRS 372B.150 is a direct or at least an indirect tax on gross receipts. In *Aloha Airlines*, the Supreme Court, again in the context of Section 40116(b)'s air carrier tax exemption, considered a Hawaii statute that

> 'levied and assessed upon each airline a tax of four per cent of its gross income each year from the airline business. . . . The tax imposed by this section is a means of taxing the personal property of the airline or other carrier, tangible and intangible, including going concern value, and is in lieu of the [general excise] tax imposed by chapter 237 but is not in lieu of any other tax.'

464 U.S. at 10-11 (quoting HRS § 239–6 (1976)). Similar to the facts in *Air Transp. Ass'n of Am.*, Section 40116 also allows states to impose property taxes on air carriers. 49 USC 40116(e)(1). Hawaii taxing authorities contended that since the State's tax was a tax on property specifically allowed under Section 40116, the tax didn't violate the prohibitions of Section 40116. The Supreme Court rejected this argument, stating:

> we are unpersuaded by Appellee's contention that, because the Hawaii legislature styled § 239–6 as a property tax measured by gross receipts rather than a straight-forward gross receipts tax, the provision should escape preemption under § 1513(b)'s [now Section 40116(e)(1)] exemption for property taxes. The manner in which the state legislature has described and categorized § 239–6 cannot mask the fact that the purpose and effect of the provision is to impose a levy upon the gross receipts of airlines. § 1513(a) expressly prohibits States from taxing "directly or indirectly" gross receipts derived from air transportation. Beyond question, a property tax that is measured by gross receipts constitutes at least an "indirect" tax on the gross receipts of airlines. A state statute that imposes such a tax is therefore preempted.
>
> In conclusion, . . . § 1513(a) proscribes the imposition of state and local taxes on gross receipts derived from air transportation or the carriage of persons in air commerce.

464 U.S. at 13-15 (footnotes omitted).

VII. The TCT is a tax on transportation and a tax on gross receipts.

As in *Aloha Airlines*, the Department's contention that the TCT falls outside Section 14505 because it is a privilege tax on a bus carrier's connection with its passenger, and not the transportation of the passenger, which indirectly uses as the basis for the tax the value of each fare received rather than gross receipts is a specious argument. The contention relies on semantic differences rather than differences of fact and hyper-technical analysis of NRS 372B.150 and Section 14505 without real substance. A tax on a bus carrier for each and every ticket sold or other fare received (i.e. "gross receipts") for the transporting of passengers is a tax on the transportation of a passenger, the sale of passenger transportation and the gross receipts derived from such transportation. In looking at the facts of this case, the Court is reminded of the saying "if it looks like a duck, walks like a duck, swims like a duck and quacks like a duck, then it is probably a duck," even if we would rather have swan or flamingo. Admittedly, the "Duck Test" can miss in some contexts but the Court finds it clearly applicable in the instant case.

The Department has not identified to this Court any other state or locality imposing a tax on motor carriers in the same or similar manner as NRS 372B.150, or case law from other jurisdictions concerning Section 14505 which is supportive of the Department's position that NRS 372B.150 is not a tax on motor carriers' transportation of passengers. This Court's own research uncovered *Jalbert Leasing* and *Tri-State Coach Lines*, where courts found a flat dollar tax or fee on motor carriers' departures from airports is not preempted under Section 14505.[1] The fee or

[1] *Renzenberger, Inc. v. State Tax'n & Revenue Dep't*, 2018-NMCA-010, ¶¶ 2-3, 409 P.3d 922, 924 (2018), is not applicable in analyzing the application of NRS 372B.150 in this case. In

tax charged in these cases were essentially per-trip fees on motor coaches and other surface transportation for stops at the airports and were not based on the number of passenger or gross receipts. The First Circuit in *Jalbert Leasing* likened the fees to no different in effect from toll fees all buses and ground transportation paid. *Jalbert Leasing, Inc.*, 449 F.3d at 5. The Illinois Appellate Court in *Tri-State Coach Lines* found Section 14505 "inapplicable to the airport departure tax, which is imposed not on the *transportation* of passengers in interstate commerce but upon the *departures* of commercial vehicles from" airports. *Tri-State Coach Lines*, 315 Ill. App. 3d at 195, 732 N.E.2d at 1150 (emphasis in original). The courts concluded Congress' intent in passing Section 14505 was to deal with states failing to apportion taxes charged on interstate bus tickets and flat fee charges on airport departures did not present that concern. *Jalbert Leasing, Inc.*, 449 F.3d at 5; *Tri-State Coach Lines*, 315 Ill. App. 3d at 194-195, 732 N.E.2d at 1149.

In contrast, NRS 372B.150's tax is imposed specifically on passenger transportation and is determined by a motor carrier's gross receipts. The Seventh Circuit in *Jalbert Leasing* noted that while arguably the flat fee airport departure tax might fall within the prohibitions of Section 14505, such fees were very different from the gross receipt tax at issue in *Aloha Airlines*. "That case [*Aloha Airlines*] was an easy 'plain language' case because the state expressly 'levied and assessed upon each airline a tax of four per cent of its gross income each year from the airline business.' It was thus in substance a tax on gross income, even if the state purported

---

Renzenberger, the motor carrier contracted with railroad companies to transport railroad employees to and from railroad trains both within New Mexico and from New Mexico to another state. New Mexico's Revenue Department assessed taxes on the carrier's gross receipts only from revenue derived from transportation between locations in New Mexico, not for transportation from a location in New Mexico to a location in another state. The Appellate Court found the carrier's transportation under its contracts with the railroads of "railroad crew members from point to point in New Mexico was not 'transportation of a passenger traveling in interstate commerce by motor carrier' under 49 U.S.C. § 14505."

to employ that tax as a substitute for levying a tax on property. A tax on bus visits to [the airport] is not formally a tax on passengers, passenger transportation, or the sale of tickets, even though it may affect the price at which tickets are sold." *Jalbert Leasing, Inc.*, 449 F.3d at 5-6.

The Court finds NRS 372B.150 levies a tax on a motor carrier's transportation of a passenger, sale of passenger transportation, and, at least, the gross receipts derived from such transportation. To the extent this transportation is in interstate commerce Section 14505 preempts NRS 372B.150 and NRS 372B.150 is unconstitutional under the Supremacy Clause to the United States Constitution, USCA CONST Art. VI cl. 2. The Department may not collect or levy the TCT on a motor carrier's total fares or gross receipts for transportation of passengers in interstate commerce. Motor carrier is defined in 49 USC § 13102(14). Section 14505, by its specific terms, does not prohibit a state from collecting or levying a tax on a motor carrier's *intra*state passenger transportation. Section 14505 does not preempt NRS 372B.150 from collecting the TCT on a common motor carrier's intrastate fares.[2]

---

[2] The Court has considered Petitioner's other contentions concerning 49 USC § 14501 preempting NRS 372B.150 and NRS 372B.150 being void for vagueness. The Court affirms the ALJ findings on these issues.

Petitioner asserts 49 USC 14501 preempts NRS 372B.150. This statute provides in part:

> (a) (1) Limitation on State Law.--No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to—
>
> > (A) scheduling of interstate or intrastate transportation (including discontinuance or reduction in the level of service) provided by a motor carrier of passengers subject to jurisdiction under subchapter I of chapter 135 of this title on an interstate route;
> > (B) the implementation of any change in the rates for such transportation or for any charter transportation except to the extent that notice, not in excess of 30 days, of changes in schedules may be required; or
> > (C) the authority to provide intrastate or interstate charter bus transportation.

The ALJ found Marque is a Nevada corporation operating in Las Vegas, Nevada with certificates from the Nevada Transportation Authority and U.S. Department of Transportation allowing Marque to transport passengers in interstate and intrastate commerce. Marque owned charter buses and operated its buses on trips within Nevada and to destinations outside Nevada. The Court finds Marque is a motor carrier within Sections 13102(14) and 14505. Marque asserts testimony at the administrative hearing demonstrated 80 percent of Marque's work during the applicable time period was interstate commerce. Opening Brief, at 12 (referencing page 24 of transcript). The ALJ found Marque did transport passengers in interstate

---

Essentially then, for Petitioner to establish Section 14501 preempts NRS 372B.150 it must demonstrate that the TCT affected the Petitioner's ability to schedule interstate or intrastate transportation or to implement rate changes for transportation, or impacted its authority to provide charter services. The ALJ found "[t]here is no evidence or argument that the TCT relates to Marque's scheduling of charter bus services, affects Marque's ability to implement rate changes, or infringes on its authority to provide charter bus services." Record on Appeal, Vol. 2, at TAX827-828 (May 1, 2023)(hereinafter "ROA"). This Court concurs. While the TCT might impact a carrier's rates, it does not require or implement any rate change. While a carrier may pass some or all of the TCT on to passengers in higher ticket prices or absorb the cost that is the carrier's choice and is true of many taxes and fees, such as state gasoline taxes and parking tickets, which costs may be passed to the customer. *See Jalbert Leasing, Inc.*, 449 F.3d at 4; *cf. Boyz Sanitation Serv., Inc. v. City of Rawlins, Wyoming*, 889 F.3d 1189 (10th Cir. 2018)(While city's flow-control ordinance likely would increase haulers' rates because of transfer station fee, imposing flow control would have only a tenuous effect on prices, routes, and services of garbage haulers.).

Petitioner asserts that NRS 372B.070 and 372B.150 are impermissibly vague and ambiguous. These statutes are not void-for-vagueness. "A law may be struck down as impermissibly vague for either of two independent reasons: '(1) if it 'fails to provide a person of ordinary intelligence fair notice of what is prohibited'; or (2) if 'it is so standardless that it authorizes or encourages seriously discriminatory enforcement.'" *Silverwing Development v. Nevada State Contractors Board*, 136 Nev. 642, 645 476 P.3d 461, 464 (2020). Where a statute "is not concerned with either the first amendment or the definition of criminal conduct . . . [the court] must be lenient in evaluating its constitutionality. For [a statute] to constitute a deprivation of due process, it must be 'so vague and indefinite as really to be no rule or standard at all.'" *Exxon Corp. v. Busbee*, 644 F.2d 1030, 1033 (5th Cir. 1981) (citing *A. B. Small Co. v. American Sugar Refining Co*., 267 U.S. 233, 239 (1925)).

Petitioner has failed to demonstrate that NRS 372B.150 fails to provide a person of ordinary intelligence fair notice of what in this case is required. Petitioner recognized it was a "Taxpayer" as defined by NRS Chapter 372B.070(1). While the Court concurs with Petitioner that the language used in NRS 372B.150 concerning taxing the connection between the carrier and the passenger is convoluted and poorly drafted, the statute does ultimately explain it is a tax on the gross receipts from a carrier's providing of passenger transportation. As the Department notes, Petition was able to calculate the tax it owed. Petitioner has failed to demonstrate that NRS 372B.150 is so standardless that it authorizes or encourages seriously discriminatory enforcement.

commerce but made no finding as to the percentage of its work in interstate commerce. ROA TAX827-828. NRS 372B.150 imposes a tax effectively calculated on the total fares of the trips of the common motor carrier without any apportionment between intrastate trips and interstate trips or between the intrastate and interstate portions of interstate trips. Consequently, Marque appears to be entitled a refund of at least a portion of the taxes the Department collected from it pursuant to NRS 372B.150.

The Court sets aside the ALJ's final decision as set out above as the substantial rights of the Petitioner have been prejudiced because the final decision of the agency is in violation of constitutional provisions. The Court remands this matter back to the Department for further proceedings consistent with this decision.

Dated this 14th day of August, 2024

ERIC JOHNSON
DISTRICT COURT JUDGE

D17 145 7BBE 154D
Eric Johnson
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Marque Motor Coach, Inc., Petitioner(s) vs. Department of Taxation, Respondent(s)	CASE NO: A-23-867175-J DEPT. NO. Department 20

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 8/14/2024

Andrea Nichols	anichols@ag.nv.gov
Christiane Smith	chsmith@cooperlevenson.com
Kimberly Rushton	krushton@cooperlevenson.com
Gabriela Mercado	gmercado@cooperlevenson.com

EXHIBIT B

No. 86170

IN THE

Supreme Court of the State of Nevada

ADVENTURE PHOTO TOURS, INC.,

Appellant,

v.

NEVADA DEPARTMENT OF TAXATION; AND NEVADA TAX COMMISSION,

Respondents.

ON APPEAL FROM THE EIGHTH JUDICIAL DISTRICT OF THE STATE OF NEVADA
HONORABLE ERIKA BALLOU, DISTRICT COURT JUDGE
CIVIL CASE NO. A-22-858350-J

AMICUS CURIAE BRIEF OF GREYHOUND LINES, INC. IN SUPPORT OF APPELLANT AND REVERSAL ON THE MERITS

Kenneth R. Levine, Esq. (*admission pending)*
Michael I. Lurie, Esq. (*admission pending)*
REED SMITH LLP
Three Logan Square
1717 Arch Street, Suite 3100
Philadelphia, PA 19130
Tel. (215) 851-8100
klevine@reedsmith.com
mlurie@reedsmith.com

Bryan Murray, Esq.
Nevada Bar No. 7109
KEN R. ASHWORTH & ASSOCIATES
1057 Whitney Ranch Drive, Suite 350
Henderson, NV 89014
Tel. (702) 893-9500
bmurray@ashworthlaw.com

Attorneys for Amicus Curiae Greyhound Lines, Inc.

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal. Flix North America, Inc. is the parent corporation of Greyhound Lines, Inc. No publicly held company holds more than 10% of Greyhounds Lines, Inc.'s stock. The following law firm has lawyers who appeared, or are expected to appear, on behalf of Greyhound Lines, Inc. in this Court: Reed Smith LLP and Ken R. Ashworth & Associates.

/s/ Bryan Murray, Esq.
Kenneth R. Levine, Esq. (*admission pending)*
Michael I. Lurie, Esq. (*admission pending)*
REED SMITH LLP
Three Logan Square
1717 Arch Street, Suite 3100
Philadelphia, PA 19130
Tel. (215) 851-8100
klevine@reedsmith.com
mlurie@reedsmith.com

Bryan Murray, Esq.
Nevada Bar No. 7109
KEN R. ASHWORTH & ASSOCIATES
1057 Whitney Ranch Drive, Suite 350
Henderson, NV 89014
Tel. (702) 893-9500
bmurray@ashworthlaw.com

Attorneys for Amicus Curiae
Greyhound Lines, Inc.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Regulations

Other Authorities

IDENTITY OF AMICUS CURIAE, INTEREST IN THE CASE, AND SOURCE OF AUTHORITY TO FILE

Greyhound Lines, Inc. ("Greyhound") is the largest provider of intercity bus transportation in the United States and serves over 2,000 destinations across North America. This case involves Nevada's Transportation Connection Tax ("TCT") and the Nevada Department of Taxation's ("Department") attempt to impose this tax on interstate passenger transportation. As the largest provider of intercity bus transportation in the United States, Greyhound has a significant interest in protecting against state taxes that impose an unfair burden on interstate passenger transportation.

Greyhound has been involved in multiple cases before the United States Supreme Court involving state taxes on interstate bus transportation, including the landmark decision in *Central Greyhound Lines, Inc., v. Mealey*, which held that a state cannot impose an unapportioned gross receipts tax on bus transportation.[1] Greyhound also filed an amicus brief with the United States Supreme Court in *Oklahoma Tax Commission v. Jefferson Lines*, a Supreme Court decision which held that a state can impose an unapportioned sales tax on interstate bus fares sold in the state.[2]

---

[1] 334 U.S. 653 (1948); *see also Capitol Greyhound Lines v. Brice*, 339 U.S. 542 (1950).

[2] 514 U.S. 175 (1995).

Less than a year after *Jefferson Lines*, Congress responded and protected Greyhound and other motor carriers from state taxes on interstate passenger transportation. Specifically, Congress enacted 49 U.S.C. § 14505, which prohibits states from imposing taxes on interstate passenger transportation by a motor carrier.

Greyhound's interest in this case is particularly acute. Greyhound operates several bus lines that originate at locations in Nevada, and the Department has asserted that Greyhound owes TCT on bus fares for interstate trips that originate in Nevada. Greyhound has appealed the Department's imposition of TCT on those interstate fares, and Greyhound's appeal is currently pending before the Department and an administrative law judge. Greyhound's appeal could be impacted by the result of this case, as it presents some of the same legal issues.

Greyhound is also keenly aware that if Nevada's imposition of TCT on interstate passenger transportation is permitted despite 49 U.S.C. § 14505, other states may soon follow suit and enact new TCT-like taxes on interstate passenger transportation.

Pursuant to NRAP 29(a), all parties have consented to the filing of this amicus curiae brief.[3]

[3] Written consent of Appellant and Respondents is attached as Exhibit 1.

ARGUMENT

I. Nevada's Transportation Connection Tax is a 3% tax on fares charged by motor carriers for passenger transportation. The Department of Taxation has interpreted the Transportation Connection Tax as applying to interstate passenger transportation.

The Nevada Legislature enacted the TCT in 2015 in response to the rapid growth of Transportation Network Companies ("TNCs"), such as Uber and Lyft. TNCs function as technology companies that connect passengers with third-party drivers. Unlike traditional motor carriers, such as Greyhound, TNCs do not own or operate vehicles. TNCs were an emerging industry during this time period and entered the Nevada market in September 2015.[4] The legislature sought to implement a tax on the rapidly growing industry of TNCs, so it quickly enacted the TCT.[5] After it began as a legislative effort to regulate and tax TNCs, the Legislature ultimately included other ground transportation within the reach of this tax.[6]

The TCT statute imposes a 3% tax on the total fare charged by transportation network companies, autonomous vehicle network companies, taxicabs, and common

---

[4] *See* Jason Hidalgo, *Nevada OKs Uber, Lyft to Offer Ridesharing,* Reno Gazette Journal, (Sept. 15, 2015), available at https://www.rgj.com/story/money/business/2015/09/14/nevada-improves-permit-ridesharing-company-lyft-operate-state/72266726/.

[5] *See* Department's Pre-Hearing Statement at 2, In re Grand Canyon Tours, Inc., Nevada Department of Taxation Docket No. 1000407047 (Nov. 6, 2019) (the TCT was "seemingly created in haste by the Nevada State Legislature in the 2015 Session.") (excerpt available at Exhibit 2).

[6] *Id*. at 3 ("[T]he Legislature decided all ground transportation in the state should be subject to the 3% excise tax imposed on the TNCs . . . .").

motor carriers.[7] The TCT imposition statute for common motor carriers—the imposition provision relevant to this case—states:

> Except as otherwise provided in subsection 2 and in addition to any other fee or assessment imposed pursuant to this chapter, an excise tax is hereby imposed on the connection, whether by dispatch or other means, made by a common motor carrier of a passenger to a person or operator willing to transport the passenger at the rate of 3 percent of the total fare charged for the transportation, which must include, without limitation, all fees, surcharges, technology fees, convenience charges for the use of a credit or debit card and any other amount that is part of the fare. The Department shall charge and collect from each common motor carrier of passengers the excise tax imposed by this subsection.

NRS 372B.150(1.) (emphasis added).[8]

The plain language provides that the TCT is a tax imposed on a connection made by a motor carrier and is measured by the "total fare charged for the transportation."[9]

The Department has issued little guidance construing the TCT, but the available guidance seems to recognize that federal law poses a barrier to Nevada imposing tax on interstate passenger transportation. However, to avoid the federal prohibition against state taxes on interstate passenger transportation by a motor carrier (which is discussed in detail in the next section), the Department attempts a

---

[7] NRS 372B.140, .145, .150, and .160.

[8] Greyhound is not aware of any other taxes like the TCT imposed on interstate passenger transportation by any other state.

[9] NRS 372B.150(1.). Notably, the TCT statute contains no geographic limitation whatsoever. It does not explain which particular event or events must occur *within Nevada* for the tax to apply.

hyper-technical reading of the TCT. In particular, the Department has taken the position that the TCT "is not, and is not intended to be, a tax on transportation" and is instead a tax on a "connection" which is "meant to tax the business that occurs when a passenger and a vehicle willing to transport that passenger are placed together at the same place at the same time."[10] The Department attempts to distinguish the TCT from taxes prohibited by federal law, in part, by stating that the TCT "is not based on gross receipts."[11]

The Department's attempt to explain its way around the federal prohibition is difficult to follow. For example, in the *Adventure Photo Tours* case, the Department has argued that the "TCT is not imposed on the gross receipts derived from transportation. Instead, the TCT is a percentage (3%) of . . . fares collected."[12] The

---

[10] Nevada Department of Taxation, Draft Tax Bulletin TCT 16-0004 (June 27, 2016), available at https://tax.nv.gov/uploadedFiles/taxnvgov/Content/Boards/Nevada_Tax_Commission_Forms/Technical_Bulletin_TCT_16-0004_Transportation_Connection_Tax_Technical_Bulletin.pdf. The Department presented this Tax Bulletin to the Nevada Tax Commission at the Commission's June 27, 2016 meeting, and the Commission continued consideration of the Bulletin to a future meeting. Nevada Tax Commission Meeting Agenda, Item V.D.(3), available at https://tax.nv.gov/uploadedFiles/taxnvgov/Content/Boards/Nevada_Tax_Commission_Forms/NTC_June_27_16_Agenda.pdf; and Nevada Tax Commission Meeting Minutes, Item V.D.(3), available at https://tax.nv.gov/uploadedFiles/taxnvgov/Content/Boards/Nevada_Tax_Commission_Forms/NTC_June_27_2016_Minutes.pdf.
The Department continues to take positions at audit and on appeal that are consistent with the Tax Bulletin.

[11] *Id.*

[12] 1 Appellant's Appendix ("AA") 0060 (Department's Pre-Hearing Statement at 8, In the Matter of Adventure Photo Tours, Inc., Nevada Department of Taxation Docket No. 508767 (June 30, 2021)).

Department's effort to save the TCT thus relies on a "semantic difference" between a "gross receipt" and a "fare collected," but this does not provide a basis to avoid the broad federal prohibition at issue in this case.[13]

The Department also only seems to resort to its hyper-technical reading of the TCT—that is, insisting it is a tax on a "connection" but not a tax on "transportation"—when it is attempting to avoid the federal prohibition on state taxation of interstate passenger transportation. In other contexts, it freely refers to the TCT as a tax on transportation. For example:

- The Department's own Annual Report explains that "[t]he Transportation Connection Tax law imposes an excise tax on the transportation of a passenger . . . ."[14]

- The Department's own regulations refer to the TCT as "the excise tax on passenger transportation."[15]

---

[13] *See Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 285 (1977) (rejecting reliance on "a semantic difference" in determining constitutionality of a state tax); *see also, e.g.*, *Blue Buffalo Co. v. Comptroller*, 221 A.3d 1130, 1139 n.6 (Md. Ct. Sp. App. 2019) (rejecting reliance on "semantical distinction" in construing scope of federal statute prohibiting certain state taxes).

[14] *See* Nevada Department of Taxation, Annual Report for Fiscal Year 2022 at 63 (emphasis added), available at https://tax.nv.gov/uploadedFiles/taxnvgov/Content/TaxLibrary/FINAL%20WEB%20VERSION%20Annual%20Report%20FY%2022.pdf?n=6209.

[15] Nev. Admin. Code 372B.100 *et seq.* (emphasis added).

The Department's hyper-technical reading of the TCT also contradicts economic reality: the TCT is a tax on passenger transportation. The Department's argument that the taxable event is the connection, rather than the passenger transportation, is a non sequitur. The taxable measure is the critical fact in analyzing a tax, and there is no question that the TCT's taxable measure is the fare charged for passenger transportation. Just as a "tax on sleeping measured by the number of shoes you have in your closet is a tax on shoes",[16] a tax on connections measured by the receipts from passenger transportation is a tax on passenger transportation.

II. A federal statute, 49 U.S.C. § 14505, expressly prohibits states from imposing taxes like the Transportation Connection Tax on interstate passenger transportation by motor carriers.

As noted in the prior section, a federal statute, 49 U.S.C. § 14505 ("Section 14505"), expressly prohibits state taxes on passenger transportation by motor carriers in interstate commerce. Section 14505 prohibits a "State or political subdivision" from collecting or levying "a tax, fee, head charge, or other charge on

(1) a passenger traveling in interstate commerce by motor carrier;

(2) the transportation of a passenger traveling in interstate commerce by motor carrier;

(3) the sale of passenger transportation in interstate commerce by motor carrier; or

(4) the gross receipts derived from such transportation."

[16] *See Hunt-Wesson, Inc. v. Franchise Tax Bd.*, 528 U.S. 458, 464 (2000) (quoting *Trinova Corp. v. Mich. Dep't of Treasury*, 498 U.S. 358, 374 (1991)).

The plain language of Section 14505 is quite broad: it prohibits any state tax on passenger transportation in interstate commerce by a motor carrier—or on the gross receipts derived from such transportation—without regard to how the tax is characterized by the state.

Congress enacted Section 14505 in response to the U.S. Supreme Court's decision in *Jefferson Lines*, which held that Oklahoma could impose an unapportioned sales tax on the full sales price of interstate bus tickets so long as the transportation originated in Oklahoma.[17] *Jefferson Lines* had "departed from established precedent" regarding state taxes on interstate passenger transportation; prior precedent prohibited unapportioned state taxes on interstate passenger transportation.[18] By enacting Section 14505, Congress "intended to override" *Jefferson Lines* and to prevent states from imposing "tax on the sale of intercity bus tickets."[19]

III. The history and purpose behind 49 U.S.C. § 14505 confirm that Nevada is prohibited from imposing the Transportation Connection Tax on interstate passenger transportation.

Section 14505 was enacted against a backdrop of major U.S. Supreme Court decisions on state taxation of interstate passenger transportation. Therefore, this

---

[17] S. Rep. No. 104—176, at 48 (1995); *see also Jefferson Lines*, 514 U.S. at 199–200.

[18] *Tri-State Coach Lines, Inc. v. Metro. Pier. Exposition Authority*, 732 N.E.2d 1137, 1147 (Ill. Ct. App. 2000).

[19] S. Rep. No. 104—176, at 48.

section begins with an overview of historical doctrine governing state taxation of interstate passenger transportation with a focus on the U.S. Supreme Court's 1948 decision in *Central Greyhound*,[20] which held that a gross receipts tax on interstate passenger transportation must be apportioned. In this section, we then discuss the Court's departure from this historical doctrine in 1995 in *Jefferson Lines* when it allowed a state to impose an unapportioned sales tax on interstate passenger transportation. Next, we summarize the legal and practical problems posed by *Jefferson Lines* which led to the enactment of Section 14505. And then we conclude by examining Section 14505 itself as well as authorities construing Section 14505.

A. Historically, the Commerce Clause was interpreted as prohibiting states from imposing unapportioned taxes on interstate passenger transportation.

The historical doctrine governing state taxation of interstate passenger transportation sheds light on the purpose and scope of Section 14505.[21] Therefore, it is useful to begin with an overview of the historical treatment of state taxes on interstate passenger transportation before turning to Congress's enactment of Section 14505.

---

[20] 334 U.S. 653.

[21] *See Tri-State Coach Lines*, at 1147–48; *see also United States v. Champlin Refining Co.*, 341 U.S. 290, 297 (1951) (statute should be construed based on "the circumstances existing at the time it was passed" and in light of "the evil which Congress sought to correct and prevent.").

The seminal case on the taxation of interstate passenger transportation is *Central Greyhound*, a 1948 decision from the U.S. Supreme Court holding that the Commerce Clause prohibits a state from imposing an unapportioned tax on interstate transportation of passengers by motor carriers.[22] In *Central Greyhound*, New York had attempted to impose a tax on the full amount of a bus company's gross receipts from trips that originated and terminated in New York but that travelled through other states for a substantial portion of the journey.[23] The Court found that the Commerce Clause prohibited New York from taxing the full amount of the bus company's gross receipts from these trips because otherwise that would "make interstate transportation bear more than a fair share of the cost of the local government whose protection it enjoys."[24] In reaching this conclusion, the Court rejected New York's argument that its tax was imposed only on local activity.[25]

B. The U.S. Supreme Court departed from this historical approach in its 1995 decision in *Jefferson Lines*, when it permitted an unapportioned sales tax on the sale of interstate bus tickets.

Central Greyhound's prohibition on unapportioned state taxes on interstate passenger transportation stood as black-letter law for nearly a half-century, until the U.S. Supreme Court revisited the question in 1995 in *Jefferson Lines*. In *Jefferson*

[22] 334 U.S. at 662–64.
[23] *Id.* at 654.
[24] *Id.* at 663 (cleaned up).
[25] *Id.* at 660.

Lines, Oklahoma sought to require a passenger to pay sales tax on the full price of bus tickets for trips originating in Oklahoma, without providing for apportionment for interstate trips.[26] The bankruptcy court, the district court, and the court of appeals found that, consistent with *Central Greyhound*, Oklahoma's tax was prohibited by the Commerce Clause.[27] Oklahoma filed a petition for certiorari, and argued that *Central Greyhound* was distinguishable because it involved a gross receipts tax on interstate passenger transportation while *Jefferson Lines* involved a sales tax on a bus ticket. The U.S. Supreme Court granted certiorari.

Jefferson Lines presented the Court with a three-pronged dilemma.[28] First, the Court's state tax precedent allowed for an unapportioned sales tax on the sale of tangible personal property even if it reflects out-of-state value, so that provided at least some basis for the Court to allow an unapportioned sales tax on the sale of bus tickets for interstate travel. Second, *Central Greyhound* stood as an obstacle to allowing an unapportioned tax on interstate bus transportation. Although it is possible to distinguish the tax at issue in *Central Greyhound* (i.e., a gross receipts tax on a bus company's gross receipts from interstate passenger transportation) from the tax at issue in *Jefferson Lines* (i.e., a sales tax on a passenger's purchase of

---

[26] 514 U.S. at 177–79.
[27] *Oklahoma ex rel. Oklahoma Tax Comm'n v. Jefferson Lines*, 15 F.3d 90 (8th Cir. 1994).
[28] *See* Walter Hellerstein et al., State Taxation ¶ 18.06[3][b] (3d ed.) ("*Jefferson Lines* presented the U.S. Supreme Court with an uncomfortable dilemma.").

interstate bus tickets), the taxes are nearly identical in terms of practical effect and economic reality. Third, the Court's recent precedent on Commerce Clause challenges to state taxes emphasized the "practical effect" and "economic realities" of taxes rather than "magic words and labels" or formalistic approaches.[29]

The *Jefferson Lines* Court ultimately resolved this dilemma by following a formalistic approach, holding that a state can impose an unapportioned sales tax on bus tickets for interstate trips originating in that state, even though a state could not impose an unapportioned gross receipts tax on the same trip.[30] The Court concluded that the sales tax at issue was imposed on a discrete local sales transaction, which it found to be analogous to a discrete local sale of tangible personal property. The Court acknowledged that this decision stood in tension with *Central Greyhound* but purported to distinguish *Central Greyhound* on the grounds that the cases "diverge crucially in the identity of the taxpayers and the consequent opportunities that are understood to exist for multiple taxation of the same taxpayer."[31]

C. The Court's decision in *Jefferson Lines* faced substantial criticism.

The Court's decision in *Jefferson Lines* was controversial from the start, as shown by Justice Breyer's dissent.[32] According to Justice Breyer, the "tax at issue"

---

[29] *Complete Auto Transit*, 430 U.S. at 284.
[30] *Jefferson Lines*, 514 U.S. at 199–200.
[31] *Id.* at 190.
[32] *Jefferson Lines*, 514 U.S. at 201 (Breyer, J., dissenting).

in *Jefferson Lines* "and the tax that this Court held unconstitutional in *Central Greyhound* . . . are, for all relevant purposes, identical."[33] Justice Breyer noted the "uncanny resemblance" between the two taxes,[34] and observed that, by allowing unapportioned sales taxes on interstate passenger transportation but not unapportioned gross receipts taxes, the Court's decision elevated the form of a tax above the substance.[35] Justice Breyer also pointed out that the Court's decision resulted in the same risk of multiple taxation on interstate passenger transportation as a gross receipts tax since other states could impose tax on a "taxable event" other than the sale of a bus ticket.[36]

Justice Breyer was not alone in criticizing the quality of the Court's legal reasoning in *Jefferson Lines*. The editors of the Harvard Law Review concluded that the Court's decision relied "on an untenable distinction between sales taxes and gross receipts taxes" and "failed to distinguish precedent" adequately."[37] Leading state tax commentators characterized the Court's "treatment of the external

---

[33] *Id.*
[34] *Id.* at 203–04.
[35] *Id.* at 204.
[36] *Id.* at 204–205.
[37] *Leading Cases*, 109 Harv. L. Rev. 111, 122 (1995); *see also* Jason P. Livingston, Note, *Form v. Substance: The Supreme Court Retreats Into Its Formalistic Shell In* Oklahoma Tax Commission v. Jefferson Lines, 29 U. Rich. L. Rev 1591 (1995) ("The dissent and the lower courts seem to have correctly applied the Court's decision in *Central Greyhound*, and majority is remiss in avoiding *Central Greyhound*'s precedential value through a formalistic distinction.").

consistency issue," meaning whether Oklahoma's sales tax needed to be apportioned, as "less than rigorous."[38] They also noted that the Court's distinction between sales tax and gross receipts tax was "unable to carry the constitutional weight that it was ultimately forced to bear."[39]

The Court's decision in *Jefferson Lines* was not only problematic from a legal perspective, but it also posed a practical problem by increasing the financial burden on interstate bus transportation. Although Oklahoma was the only state that imposed sales tax on interstate bus fares when *Jefferson Lines* was decided, there was no doubt that other states would enact similar taxes or interpret their existing taxes as applying to interstate bus fares. The states were "hungry for revenue," and had been "watching legal developments" in *Jefferson Lines* closely.[40] In fact, a mere four months after *Jefferson Lines* the Utah Tax Commission interpreted its existing sales tax as applying to interstate bus fares.[41]

Allowing *Jefferson Lines* to stand could have posed financial catastrophe to the interstate bus industry and stranded the passengers who most depended on interstate buses. The U.S. General Accounting Office studied the interstate bus

---

[38] Walter Hellerstein et al., *Commerce Clause Restraints on State Taxation after* Jefferson Lines, 51 Tax L. Rev.47, 58 (1995).
[39] *Id.* at 61.
[40] Linda Greenhouse, *Justices Back State Tax on Interstate Fares*, New York Times, D1 (Apr. 4, 1995), available at https://www.nytimes.com/1995/04/04/business/justice-back-state-tax-on-interstate-fares.html.
[41] Utah Tax Commission, Bulletin No. 8-95 (Aug. 1, 1995).

industry in the early 1990s and observed that the industry was already under severe financial distress due to higher operating costs, increased automobile ownership, and growing competition from low-fare airlines.[42] At that time, Greyhound was the "only remaining provider of scheduled, regular-route intercity bus service, and it filed for bankruptcy protection in June 1990."[43] Intercity bus services provided passengers with important transportation options, and according to the General Accounting Office's study bus passengers included "those least able to afford and least likely to have access to alternative modes of transportation."[44] Thus, neither the interstate bus industry nor its passengers were able to bear increased costs, such as those that would result from *Jefferson Lines*.

D. Congress acted swiftly in response to *Jefferson Lines* and enacted 49 U.S.C. § 14505 to protect interstate passenger transportation. 49 U.S.C. § 14505 prohibits states from imposing a tax on interstate passenger transportation.

It was against this backdrop that Congress enacted Section 14505 just eight months after *Jefferson Lines* and in direct response to the Court's decision.[45]

Although Section 14505 was enacted in response to *Jefferson Lines*, it went

---

[42] United States General Accounting Office, Report to the Chairman, Surface Transportation Subcommittee, Committee on Commerce, Science, Transportation, U.S. Senate at 3, 10 (June 22, 1992), available at https://www.gao.gov/assets/rced-92-126.pdf.
[43] *Id.* at 2.
[44] *Id.*
[45] *See* S. Rep. No. 104—176, at 48.

further than just abrogating the Court's decision. Prior to *Jefferson Lines*, a state was permitted to impose a tax on interstate passenger transportation so long as the tax was apportioned.[46] *Jefferson Lines* then departed from that rule by allowing a state to impose an unapportioned sales tax on interstate passenger transportation. Yet rather than simply restoring the pre-*Jefferson Lines* status quo, Congress instead chose to prohibit all state taxes on interstate passenger transportation by motor carriers—regardless of whether the tax is apportioned.[47]

Rather than starting from scratch with new legislative language, Congress modeled Section 14505 on the federal Anti-Head Tax Act, a statute that protected air passenger transportation from state taxation.[48] This is discussed more in the next section.

E. The Department of Taxation's creative interpretation of the Transportation Connection Tax statute—i.e., that the Transportation Connection Tax is imposed on "connections" rather than the "fares" from passenger transportation—cannot allow it to circumvent 49 U.S.C. § 14505 and impose this tax on interstate passenger transportation.

The Department asserts that the TCT is not prohibited by Section 14505 because the TCT is imposed on the "connection" rather than the "transportation,"

---

[46] *Central Greyhound*, 334 U.S. at 663–64.
[47] 49 U.S.C. § 14505.
[48] *Compare* 49 U.S.C. § 14505 *with* 49 U.S.C. § 40116(b); *see also* Thomas H. McConnell, Comment, *Congress Gives Intercity Busing a Free Pass: A Comment on* Jefferson Lines v. Oklahoma Tax Commission, 23 Transportation L. J. 503, 515 (1996).

but these semantic distinctions are not enough to avoid Section 14505.[49] The plain language of Section 14505 prohibits a state not just from levying a tax on interstate passenger transportation, but also from levying a tax on "the gross receipts derived from such transportation."[50] As the TCT is computed on the "total fare charged for the transportation," it is indeed a tax on a motor carrier's gross receipts derived from transportation.[51]

This conclusion is consistent with the U.S. Supreme Court's decision in *Aloha Airlines*.[52] The *Aloha Airlines* case involved the Anti-Head Tax Act (the air transportation analog to Section 14505), which at the time was codified at 49 U.S.C. § 1513(a)[53] and which expressly prohibited states from taxing "persons traveling in air commerce," "the carriage of persons traveling in air commerce," "the sale of air transportation," or "the gross receipts derived therefrom." The Anti-Head Tax Act also explicitly provided that it does not prohibit property taxes. In *Aloha Airlines*, the Court held that a Hawaii tax that was technically "imposed" on an airline's

---

[49] The TCT is a tax on passenger transportation because it is measured by the fares collected for passenger transportation. *See Hunt-Wesson, Inc. v. Franchise Tax Bd.*, 528 U.S. 458, 464 (2000).

[50] 49 U.S.C. § 14505(4). Section 14505 does not prohibit Nevada from imposing TCT on wholly intrastate passenger transportation.

[51] *See Tri-State Coach Lines*, 732 N.E.2d at 1147 (Section 14505 was "designed to prevent states from collecting or levying taxes on *bus fares* for interstate travel") (emphasis added).

[52] 464 U.S. 7 (1983).

[53] Currently codified as 49 U.S.C. § 40116.

property was nonetheless still prohibited by the Anti-Head Tax Act because the tax was "measured by" the airline's gross receipts.[54] As Section 14505 was modeled after the Anti-Head Tax Act, *Aloha Airlines* is instructive as to the construction of Section 14505.[55]

In *Aloha Airlines*, Hawaii argued that its tax was not prohibited by the Anti-Head Tax Act—despite being measured by an airline's gross receipts—because it was called a property tax.[56] The Court rejected Hawaii's argument and explained that "[t]he manner in which the state legislature has described and characterized" a tax could not "mask the fact that the purpose and effect of the provision are to impose a levy upon the gross receipts of airlines."[57] The same must be true for the TCT: regardless of how the Nevada legislature or the Department describes and characterizes the TCT, that cannot be permitted to mask the fact that it is a tax on the gross receipts (i.e., the fares) from interstate passenger transportation.

---

[54] *Aloha Airlines v. Director of Taxation*, 464 U.S. 7 (1983).

[55] *See Jalbert Leasing, Inc. v. Mass. Port Auth.*, 449 F.3d 1, 5–6 (1st Cir. 2006). At the time that *Aloha Airlines* was decided, the Anti-Head Tax Act included the terms "directly or indirectly." The statute has subsequently been recodified, and these terms were excluded from the recodified statute as surplusage "in light of the Supreme Court cases extending the reach of the preemption" under the Anti-Head Tax Act "to indirect taxes against passengers." *Jalbert Leasing, Inc. v. Mass. Port Auth.*, Civ. Act. No. 04-10486-MBB, 2005 U.S. Dist. LEXIS 10421 at *24 n.14 (D. Mass. May 18, 2005). The omission of these terms from Section 14505 is in line with this recodification to remove surplusage and does not impact the meaning of the statute. *See id.*

[56] 464 U.S. at 13.

[57] *Id.* at 13–14.

Finally, Nevada's TCT is not like the levies on interstate passenger transportation that other courts have found to be permissible under Section 14505. In particular, the only circumstance in which courts have found that a levy on interstate passenger transportation by a motor carrier does not violate Section 14505 is when a taxing jurisdiction imposed a flat-dollar tax on departures from an airport even when the journey crosses state lines, which was the fact pattern presented in *Jalbert Leasing* (a case involving a Massachusetts tax) and *Tri-State Coach Lines* (a case involving an Illinois tax).[58]

In both *Jalbert Leasing* and *Tri-State Coach Lines*, the courts found that flat-dollar taxes on departures from airports do not fall within the plain language of Section 14505 because they were taxes on airport departures rather than on passenger transportation generally, and the taxes were a flat-dollar amount per departure rather than a percentage of the total receipts from the transportation.[59] Furthermore, the courts found that these departure taxes were not within the intended scope of Section 14505 since they involved only airport departures and not the intercity bus transportation that was at issue in *Jefferson Lines*.[60]

Nevada's TCT shares none of the saving graces of these airport departure taxes: the TCT is imposed on passenger transportation generally, it is measured by

[58] *Jalbert Leasing*, 449 F.3d at 5–6; *Tri-State Coach Lines*, 732 N.E.2d at 1147.
[59] *Jalbert Leasing*, 449 F.3d at 5–6; *Tri-State Coach Lines*, 732 N.E.2d at 1147.
[60] *Jalbert Leasing*, 449 F.3d at 5–6; *Tri-State Coach Lines*, 732 N.E.2d at 1147.

gross receipts rather than being a flat-dollar amount per trip, and it applies to the same type of intercity bus transportation that was at issue in *Jefferson Lines*. Therefore, these decisions do not provide a basis to find that the TCT can be applied to interstate passenger transportation.[61]

CONCLUSION

Congress enacted Section 14505 in response to the U.S. Supreme Court's decision in *Jefferson Lines*, which had departed from longstanding precedent governing whether and how states were permitted to tax interstate passenger transportation. *Jefferson Lines* had allowed a state to impose an unapportioned sales tax on the entire charge for a bus ticket for interstate transportation. Congress stepped in a mere eight months later and enacted Section 14505 to put an end to state taxation of interstate passenger transportation.

Nevada's TCT is a tax on 3% of the fares charged for transportation. This court should not permit the Department to circumvent Section 14505 and impose the

[61] As explained above, Section 14505 prohibits Nevada from imposing TCT on interstate passenger transportation. However, if the court were to find that Section 14505 does not prohibit Nevada from imposing TCT on interstate passenger transportation, the Commerce Clause would compel Nevada to apportion the the TCT on interstate passenger transportation based on "mileage within the State." *Central Greyhound*, 334 U.S. at 663–64. *Jefferson Lines* did not overrule *Central Greyhound* and left intact *Central Greyhound's* holding prohibiting unapportioned gross receipts taxes on interstate passenger transportation by motor carriers. 514 U.S. at 190. Unlike the unapportioned sales tax that was permitted in *Jefferson Lines* and that was imposed on the passenger, the TCT is a gross receipts tax that is imposed on the motor carrier like the tax at issue in *Central Greyhound*.

TCT on interstate passenger transportation.

Section 14505 does not, of course, prohibit Nevada or any other state from imposing a tax on *intra*state passenger transportation, so this will not impact Nevada's imposition of the TCT on those fares.

Respectfully submitted this 31st day of August, 2023.

/s/ Bryan Murray, Esq.
Kenneth R. Levine, Esq. (*admission pending)*
Michael I. Lurie, Esq. (*admission pending)*
REED SMITH LLP
Three Logan Square
1717 Arch Street, Suite 3100
Philadelphia, PA 19130
Tel. (215) 851-8100
klevine@reedsmith.com
mlurie@reedsmith.com

Bryan Murray, Esq.
NV Bar No. 7109
KEN R. ASHWORTH & ASSOCIATES
1057 Whitney Ranch Drive, Suite 350
Henderson, NV 89014
Tel. (702) 893-9500
bmurray@ashworthlaw.com

Attorneys for Amicus Curiae
Greyhound Lines, Inc.

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[**X**] This brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman, size 14-point font; or

[ ] This brief has been prepared in a monospaced typeface using [state name and version of word processing program] with [state number of characters per inch and name of type style].

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

[**X**] Proportionately spaced, has a typeface of 14 points or more and contains 5028 words; or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains ___ words or ___ lines of text; or

[ ] Does not exceed ___ pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable

Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Respectfully submitted this 30th day of August, 2023.

/s/ Bryan Murray, Esq.
Kenneth R. Levine, Esq. (*admission pending)*
Michael I. Lurie, Esq. (*admission pending)*
REED SMITH LLP
Three Logan Square
1717 Arch Street, Suite 3100
Philadelphia, PA 19130
Tel. (215) 851-8100
klevine@reedsmith.com
mlurie@reedsmith.com

Bryan Murray, Esq.
NV Bar No. 7109
KEN R. ASHWORTH & ASSOCIATES
1057 Whitney Ranch Drive, Suite 350
Henderson, NV 89014
Tel. (702) 893-9500
bmurray@ashworthlaw.com

Attorneys for Amicus Curiae
Greyhound Lines, Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on August 30, 2023, I electronically filed, or caused to be electronically filed, the foregoing with the Clerk of the Nevada Supreme Court by using the appellate electronic filing system, eFlex. Counsel for the parties in the case will be served by the eFlex system, and include the following:

Joseph C. Reynolds
Nevada Bar No. 8630
Russell J. Carr
Nevada Bar No. 15191
Hutchison & Steffen, PLLC
5371 Kietzke Lane
Reno, Nevada 89511
(775) 853-8746
jreynolds@hutchlegal.com
rcarr@hutchlegal.com
Attorneys for Appellant

Kiel B. Ireland
Nevada Bar No. 15368
Deputy Solicitor General
100 N. Carson Street
Carson City, NV 89701
(775) 684-1234
KIreland@ag.nv.gov
Attorney for Respondents

/s/ Bryan Murray, Esq.
Kenneth R. Levine, Esq. (*admission pending)*
Michael I. Lurie, Esq. (*admission pending)*
REED SMITH LLP
Three Logan Square
1717 Arch Street, Suite 3100
Philadelphia, PA 19130
Tel. (215) 851-8100
klevine@reedsmith.com
mlurie@reedsmith.com

Bryan Murray, Esq.
Nevada Bar No. 7109
KEN R. ASHWORTH & ASSOCIATES
1057 Whitney Ranch Drive, Suite 350
Henderson, NV 89014
Tel. (702) 893-9500
bmurray@ashworthlaw.com

Attorneys for Amicus Curiae
Greyhound Lines, Inc.

EXHIBIT 1

Moore, Rich W.

From: Russell J. Carr <rcarr@hutchlegal.com>
Sent: Thursday, August 17, 2023 4:28 PM
To: Levine, Kenneth R.; Joseph C. Reynolds
Cc: Lurie, Michael I.; kra@ashworthlaw.com; bmurray@ashworthlaw.com; Ahlrich, Danielle V.; Moore, Rich W.
Subject: Re: Adventure Photo Tours - NV Supreme Court case (No. 86170)

EXTERNAL E-MAIL - From rcarr@hutchlegal.com

Hello Kenny,

I spoke to Joe about this earlier this week. We consent.

Thank you very much. Please let me know if you would like to further discuss.

Russ

From: Levine, Kenneth R. <KLevine@ReedSmith.com>
Date: Thursday, August 17, 2023 at 1:58 PM
To: Joseph C. Reynolds <jreynolds@hutchlegal.com>, Russell J. Carr <rcarr@hutchlegal.com>
Cc: Lurie, Michael I. <MLurie@ReedSmith.com>, kra@ashworthlaw.com <kra@ashworthlaw.com>, bmurray@ashworthlaw.com <bmurray@ashworthlaw.com>, Ahlrich, Danielle V. <DAhlrich@reedsmith.com>, Moore, Rich W. <Richard.Moore@reedsmith.com>
Subject: RE: Adventure Photo Tours - NV Supreme Court case (No. 86170)

Joe and Russ,

Counsel for Respondents have consented to our filing an amicus brief in this matter. Do you consent as well?

Thank you,

Kenny

Kenneth R. Levine
D: 215.851.8870 / M: 267.432.3599
klevine@reedsmith.com

From: Russell J. Carr <rcarr@hutchlegal.com>
Sent: Friday, August 11, 2023 6:36 PM
To: Levine, Kenneth R. <KLevine@ReedSmith.com>; Joseph C. Reynolds <jreynolds@hutchlegal.com>
Cc: Lurie, Michael I. <MLurie@ReedSmith.com>; kra@ashworthlaw.com; bmurray@ashworthlaw.com; Ahlrich, Danielle

Moore, Rich W.

From: Kiel B. Ireland <KIreland@ag.nv.gov>
Sent: Saturday, August 12, 2023 6:20 PM
To: Levine, Kenneth R.
Cc: Lurie, Michael I.; kra@ashworthlaw.com; bmurray@ashworthlaw.com; Ahlrich, Danielle V.; Moore, Rich W.; Susan L. Messina
Subject: RE: Adventure Photo Tours, Inc. v. Nevada (Case No. 86170)

EXTERNAL E-MAIL - From KIreland@ag.nv.gov

Kenny,

Thanks for your email. Respondents consent to your clients' filing an amicus brief.

Best,

Kiel B. Ireland

Deputy Solicitor General

Office of the Attorney General

100 N. Carson St.

Carson City, NV 89701

775-684-1234

From: Levine, Kenneth R. <KLevine@ReedSmith.com>
Sent: Friday, August 11, 2023 3:18 PM
To: AGINFO <aginfo@ag.nv.gov>; Kiel B. Ireland <KIreland@ag.nv.gov>
Cc: Lurie, Michael I. <MLurie@ReedSmith.com>; kra@ashworthlaw.com; bmurray@ashworthlaw.com; Ahlrich, Danielle

V. <DAhlrich@reedsmith.com>; Moore, Rich W. <Richard.Moore@reedsmith.com>
Subject: Adventure Photo Tours, Inc. v. Nevada (Case No. 86170)

Dear Attorney General Ford and Deputy Solicitor General Ireland,

We are counsel for Greyhound Lines, Inc. and we are writing about the above-referenced case. Our client has a unique interest in this case given its business as a leading provider of intercity bus transportation, and our client has also been assessed Nevada Transportation Connection Tax on its interstate bus transportation activities and is appealing that assessment. On behalf of our client, we are asking for your consent to file an amicus brief in this matter under NRAP 29. Please let us know if you consent.

Thank you,

Kenneth R. Levine

D: 215.851.8870 / M: 267.432.3599

klevine@reedsmith.com

Reed Smith

Three Logan Square

Suite 3100

1717 Arch Street

Philadelphia, PA 19103

T: +1 215 851 8100

F: +1 215 851 1420

reedsmith.com

www.reedsmith.com/statetax

EXHIBIT 2

BEFORE THE

NEVADA DEPARTMENT OF TAXATION

In re: GRAND CANYON TOURS, INC. dba Grand Canyon Tour and Travel "Taxpayer"	Docket No.: 1000407047 TID No.: 502402 Hearing Date: November 20, 2019 Hearing Time: 10:00 a.m.

STATE OF NEVADA, EX REL. ITS DEPARTMENT OF TAXATION'S PRE-HEARING DISCLOSURE OF WITNESSES AND DOCUMENTS

The State of Nevada, ex. rel. Its Department of Taxation ("Department") by and through its attorneys of record, Attorney General AARON D. FORD and Deputy Attorney General Robert E. Werbicky, makes its pre-hearing disclosure of witnesses and documents as set forth in the Prehearing Order.

I. WITNESSES FOR THE DEPARTMENT

1. Leslie Garcia, Former Auditor II, Nevada Department of Taxation
2. Chris Carrello, Audit Supervisor, Department of Taxation
3. Guy Childers, Audit Manager, Department of Taxation
4. Karen A. Rancilo, President, Grand Canyon Tours, Inc.

The Department reserves the right to present additional witnesses for rebuttal and/or impeachment purposes.

II. DEPARTMENT'S LIST OF EXHIBITS

The parties are submitting a Joint Exhibit List. The Joint Trial Exhibits will be bates stamped and provided by counsel by Grand Canyon Tours.[1]

[1] The Department may need to provide an addendum to ensure the Exhibit and bates numbers align properly.

III. INTRODUCTION

This case principally involves the application and interpretation of NRS 372B.150 and related statutes.

The statutes at issue are relatively new and were seemingly created in haste by the Nevada State Legislature in the 2015 Session after a series of lawsuits dealing with the so-called Transportation Network Companies ("TNCs") – such as Uber and Lyft. Some lawsuits resulted in the operations of the TNC being enjoined by the courts. The statutes which resulted from the 2015 Session imposed a 3% excise tax on the total amount charged to passengers for the transportation provided. This tax, called the Transportation Connection Tax ("TCT"), also applies to taxicabs and transportation related to "common motor carriers of passengers."

The tax related to "common motor carriers of passengers" is set forth in NRS 372B.150. The implementation of this tax has been difficult for the Department and companies principally providing scenic tours or matters involving "charter buses."[2] Numerous requests for advisory opinions were submitted by industry, and the Department issued a series of responses attempting to provide guidance on how the tax operates.

Entities providing scenic tours are often not designated as "common motor carriers of passengers" by the Nevada Transportation Authority ("NTA"). Instead, such entities are structured with two related companies providing the services. The first company interacts with the passengers, books the tours, and arranges the particulars (the "Booking Company"). The second company, often with the same ownership as the first, actually owns the buses the passengers board ("Bus Company") for the tours. The Bus Company typically only contracts with the Booking Company. Given this corporate structure, the Bus Company is typically licensed as a "contract motor carrier" by the NTA. The first company typically is not licensed by the NTA. Despite this, the services provided by these companies of include the type of transportation the Legislature intended to tax through the TCT. Grand Canyon Tours, Inc. and its sister company, Rarkar, LLC have this corporate structure. Several entities have developed similar, if not identical, corporate structures.[3]

---

[2] A specific designation of the Nevada Transportation authority.
[3] It is unclear why the designation as a "contract motor carrier" is preferred by these companies.

Given the facts, law, and argument, the Department requests the Court find Grand Canyon Tours is subject to the TCT as a common motor carrier of passengers as defined by NRS Chapter 372B, and uphold the Order regarding Redetermination issued by the Department in its entirety - with appropriate adjustments for interest.

DATED: November 6, 2019

Attorney General AARON D. FORD

By: /s/ Robert E. Werbicky
ROBERT E. WERBICKY
Deputy Attorney General
Attorneys for State of Nevada, ex rel.
Its Department of Taxation

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of November 2019, I served a copy of the foregoing document via electronic mail to:

Dena C. Smith
Chief Administrative Law Judge
2550 Paseo Verde Parkway, Suite 180
Henderson, NV 89074
dcsmith@tax.state.nv.us

and that on the 6th day of November 2019, I served a copy of the foregoing document via electronic mail and by depositing a true copy thereof in the U.S. mail, postage paid, addressed as follows:

Daniel H. Stewart, Esq.
10080 W. Alta Dr.
Suite 200
Las Vegas, NV 89145
dstewart@hutchlegal.com

/s/ Marilyn Millam
an employee of the Office of the Attorney General