

New Hampshire gains allies in tax fight against Massachusetts

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Fourteen states have sided with New Hampshire in its effort to bring Massachusetts before the U.S. Supreme Court over the Bay State's taxation of New Hampshire telecommuters working from home during the pandemic.

Also siding with New Hampshire are 18 organizations, mostly free-market and conservative think tanks, that have signed onto legal briefs filed with the high court in the past week.

All urge the Supreme Court to allow New Hampshire to bring the case, saying the issue is more than just a fight between two states with historically different bents toward tax policy.

"Massachusetts' current position is a far cry from our country's rallying call of 'no taxation without representation,' — which they seem to have forgotten originated in their state," Gov. Chris Sununu said.

On March 10, Massachusetts issued an emergency order requiring people who normally worked in Massachusetts and who were working from home for a pandemic-related reason to continue to be taxed on their income.

Massachusetts has extended the order indefinitely, according to Sununu's office.

Before the pandemic, New Hampshire residents working for Massachusetts-based companies paid income taxes based on the number of days they worked in that state.

The tax affects thousands in New Hampshire. In February, the state Department of Employment Security reported that nearly 100,000 Granite Staters commuted to Massachusetts for work.

On Oct. 19, New Hampshire Attorney General Gordon MacDonald took the first steps to challenge the tax by filing a request before the U.S. Supreme Court to hear the case.

In its response, Massachusetts Attorney General Maura Healey said the commonwealth is not injuring the state of New Hampshire, and any court challenge should be brought by individual New Hampshire residents, not the state. It also said the tax change was only temporary.

"At bottom, New Hampshire is 'merely litigating as a volunteer the personal claims of its citizens' who are employed in Massachusetts," Healey's filing reads. New Hampshire's claimed "threatened invasion" is not serious, she wrote.

New Hampshire maintains the Massachusetts tax would hamper its recruitment of residents and businesses.

“In short, Massachusetts has taken aim at a defining feature of New Hampshire’s sovereign identity through unconstitutional means,” reads New Hampshire’s response, which was filed on Tuesday.

In a brief submitted the same day that New Hampshire filed its response, New Jersey, Connecticut, Hawaii and Iowa urged the Supreme Court to take up the case. The brief said five other states reach beyond their borders to tax non-residents working from their homes — Arkansas, Delaware, Nebraska, New York and Pennsylvania.

Even states that levy income taxes are siding with New Hampshire. That’s because they issue credits to telecommuters who pay taxes in the states where their employer is based.

“If another State levies an impermissible tax on nonresidents, the Home State pays the price,” the brief read.

Other states siding with New Hampshire were Ohio, Arkansas, Indiana, Kentucky, Louisiana, Missouri, Nebraska, Oklahoma, Texas and Utah.

The organizations include the National Taxpayers Union Foundation, the Buckeye Institute, the Cato Institute, the Center for a Free Economy, the Goldwater Institute and Americans for Prosperity-New Hampshire.