

## High court seeks help in settling NH-Mass tax fight

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Gov. Chris Sununu announced last fall a U.S. Supreme Court lawsuit against Massachusetts imposing its income tax on employees working from home in New Hampshire due to COVID-19. On Monday, the high court asked the nation's solicitor general to weigh in before it would decide whether to take the case up.

CONCORD – The nation's highest court is asking the U.S. Department of Justice for guidance on whether it should take up New Hampshire's challenge to Massachusetts imposing its income tax on telecommuters working from home during the pandemic.

In a one-sentence **order** Monday, the U.S. Supreme asked Acting U.S. Solicitor General Elizabeth Prelogar to weigh in on whether it was constitutional for Massachusetts to reach across its borders and tax residents of another state.

While the case involves remote workers and the income tax, legal scholars have said the decision could be applied to many cross-border disputes.

Fourteen states have filed briefs coming down on the side of New Hampshire Attorney General Gordon MacDonald and a state-hired private law firm that's asking the court to block the Massachusetts tax rule it first adopted last March.

New Hampshire's lawsuit maintains the rule violates the U.S. Constitution's due process and commerce clauses.

In a reply brief filed last month, Elizabeth Napier Dewar of the Massachusetts Attorney General's office argued that the rule was fair, did not discriminate and was related to services provided by that state.

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.

Last October, Massachusetts extended the order indefinitely.

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

The state Department of Employment Security has reported that nearly 100,000 Granite State residents commuted to Massachusetts for work.

The Sunday News first reported on this new tax treatment of these workers for Massachusetts companies living in New Hampshire, which has no income tax.

Gov. Chris Sununu immediately condemned the rule, urged Massachusetts Gov. Charles Baker to abandon it, and then a few weeks later he announced plans to go to court to try and block it.

In the brief requested of her, Prelogar is expected to offer an opinion on whether this is a case of "original jurisdiction" that qualifies for the Supreme Court to take New Hampshire's lawsuit without the case first having to go through a trial court process.

Standing, jurisdiction key thresholds

Another threshold legal issue in this court fight is whether the state of New Hampshire has "standing" to bring the case. Massachusetts maintains the neighboring state does not because the tax only burdens individual New Hampshire residents and not the state itself.

In response, New Hampshire lawyers argue that the state has standing because this taxation of its residents invades New Hampshire's exclusive right to tax activity within its borders.

Four states -- New Jersey, Connecticut, Hawaii and Iowa -- filed a brief supporting New Hampshire on the merits of the case

Another 10 states led by Ohio argued the Supreme Court could not refuse to hear an original jurisdiction case such as this one.

A group of free market and conservative think tanks supported New Hampshire in this lawsuit, including 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.