



Congress of the United States  
House of Representatives  
Washington, DC 20515

April 28, 2021

Honorable Janet Yellen  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue N.W.  
Washington, D.C. 20220

Honorable Charles Rettig  
Commissioner  
Internal Revenue Services  
1111 Constitution Avenue N.W.  
Washington, D.C. 20220

Dear Secretary Yellen & Commissioner Rettig:

In response to the COVID-19 public health emergency, on March 21, 2020, New Jersey Governor Phil Murphy issued a statewide stay-at-home order in accordance with Center for Disease Control (CDC) guidance.<sup>1</sup> New Jersey was one of the earliest hotspots for the pandemic. In accordance with this directive, many of the 400,000 New Jersey residents who typically commute to New York sheltered in place and worked from home. This transition was not made out of convenience for New Jersey residents, but out of necessity to save lives. As tax law dictates, barring an agreement between states, income taxes are levied where the work is actively conducted — not in the location of the employer. The Supreme Court of the United States has previously ruled in support of the principle that taxation is tied to location under *Shaffer v. Carter*, 252 U.S. 37, 57 (1920) and in *Oklahoma Tax Commission v. Chickasaw Nation*, 515 U.S. 450, 463 n. 11 (1995). Yet, in a clear overreach of state-level taxing authority, New York is attempting to apply their state tax regime upon New Jersey residents who have not worked in their state since the pandemic began. These workers lack a tax nexus to New York, and as such New York's actions are a violation of both the Dormant Commerce Clause and the Due Process Clause of the Constitution.

We are requesting the federal government provide guidance on inter-state taxing authority which would clarify that American workers should not have their income taxed by states where they neither live nor work.

For many of our constituents, given modern technology, this shift to working from home may become a permanent arrangement with their employers. This would mean that for many New Jersey residents, employed by a business in New York, they would nonetheless never set foot within the state. This person would be a resident of New Jersey, working in New Jersey, utilizing public resources provided by New Jersey. Their hard-earned income tax should support their local community, not taken across state lines to be spent by a different state government with no connection or accountability to them, the taxpayer.

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<sup>1</sup> <https://www.nj.gov/governor/news/news/562020/20200320j.shtml>

To avoid double taxation, the State of New Jersey credits residents for taxes paid to other states. Nearly \$1.2 billion will be credited to New Jersey workers on their 2020 state income tax forms for income taxes paid to New York for work performed in New Jersey. These resources could instead be used to help fund schools or lower the cost of living in New Jersey, such as helping fund the Senior Freeze program and the Homestead Benefit program. These programs provide vital property tax relief to lower-income and elderly homeowners in New Jersey, which has the highest property taxes in the nation.<sup>2</sup>

This issue, of course, is not limited to only affecting New Jersey; it has a nationwide scope. In October 2020, the State of New Hampshire [filed a claim](#) in the Supreme Court to challenge Massachusetts' policy of imposing their own income tax on New Hampshire residents who worked in Massachusetts prior to the COVID-19 pandemic, but have worked remotely in New Hampshire since. In their filing, New Hampshire asserts that Massachusetts tax laws are unconstitutional extraterritorial assertions of taxing power. [New Jersey submitted an amicus curiae brief](#) in support of New Hampshire's case, joined by Connecticut, Iowa, and Hawaii. Separately, [Ohio also submitted an amicus curiae brief](#) in support of New Hampshire, joined by Arkansas, Indiana, Kentucky, Louisiana, Missouri, Nebraska, Oklahoma, Texas, and Utah. Together, these states represent nearly 100 million Americans, nearly a third of the nation.<sup>3</sup>

In Congress, a legislative fix is also in the works. Last week, Senators John Thune (R-SD) and Sherrod Brown (D-OH), both members of the Senate Finance Committee, reintroduced the Mobile Workforce State Income Tax Simplification Act.<sup>4</sup> In the coming weeks, Members of the House of Representatives, with my support, will introduce similar legislation. However, the legislative process takes time, and until a permanent statutory fix is signed into law, federal guidance would provide significant fiscal certainty and relief for residents in states like ours. We look forward to your timely response and appreciate you addressing these matters for the benefit of New Jersey and our country.

Sincerely,



**Josh Gottheimer**  
MEMBER OF CONGRESS  
New Jersey 5th Congressional District



**Steve Oroho**  
STATE SENATOR  
New Jersey's 24th Legislative District

CC: New Jersey Governor Phil Murphy

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<sup>2</sup> <https://taxfoundation.org/how-high-are-property-taxes-in-your-state-2020/>

<sup>3</sup> <https://www.census.gov/newsroom/press-releases/2021/2020-census-apportionment-results.html>

<sup>4</sup> <https://www.congress.gov/bill/117th-congress/senate-bill/1274?s=3&r=1>