

OPINION

A wealth tax, a SCOTUS case, and a likely Mass. exodus

If you don't believe the \$200 million annual loss to New Hampshire is a threat, consider the wealth drain to Florida.

By Jim Stergios and Christopher Anderson

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A case New Hampshire filed with the US Supreme Court last October against the Commonwealth of Massachusetts could have a huge impact on state finances nationwide. It also raises the stakes as the Massachusetts Legislature considers amending the state constitution to eliminate the state's prohibition against a graduated income tax and to hike taxes on high earners.

Here are the facts on the Supreme Court case. Last spring, in response to the coronavirus pandemic, Beacon Hill enacted a temporary emergency regulation subjecting nonresidents employed by Bay State companies to state income taxes even if their work is performed outside the Commonwealth. The regulation was later made permanent.

For decades states have required only workers physically present in a state to pay that state's income taxes. New Hampshire sued the Commonwealth, relying on the US Supreme Court's original jurisdiction over disputes between states, claiming that the regulation amounts to taxation without representation. New Hampshire asked that the court require Massachusetts to refund taxes collected from residents living and working in the Granite State.

Given that 15 percent of New Hampshire workers commuted to Massachusetts prior to the pandemic, the fiscal impact would be significant if the court takes the case and rules in New Hampshire's favor. The ramifications will be even greater if the ploy to impose a 4 percent surtax on Massachusetts residents' annual income over \$1 million succeeds.

A recent Pioneer Institute analysis of Internal Revenue Service data found that, between 1993 and 2018, Massachusetts experienced a net outflow of \$5.4 billion in adjusted gross income to New Hampshire, which has no state income tax.

With billions of dollars already migrating to New Hampshire under the Commonwealth's current 5 percent income tax, imagine the wealth drain that would ensue were Massachusetts to adopt a top rate of 9 percent. A Supreme Court ruling that high earners working for Massachusetts companies can avoid Bay State income taxes simply by working remotely from New Hampshire would be akin to the Commonwealth offering a relocation bonus to persuade wealthy residents — and the tax revenue they contribute — to leave.

Will the wealthy leave? If the departure of more than \$200 million annually to New Hampshire isn't enough to convince you that people and businesses weigh tax and business climate issues when deciding where to locate, consider the wealth drain to Florida. Over the same 1993-2018 period, the exodus of Massachusetts wealth to Florida, another state with no income tax, was nearly \$10 billion, or \$400 million a year.

Legislators may think their proposed constitutional amendment would raise \$1.9 billion in new annual revenue, but the actual tax haul would be a lot less. The outflows would significantly reduce income tax collections.

Connecticut tried a similar soak-the-rich path over the last two decades. Their hoped-for jackpot turned out to be a booby prize.

Companies and wealthy residents have fled Connecticut. The state still has not regained the jobs lost in the 2009 recession, and from 2008 to 2020 the state budget has grown by only 22 percent. In contrast, Massachusetts, with a flat tax rate of 5 percent, has grown jobs faster than most of the country. More jobs resulted in more tax revenues and a 63 percent hike in the Commonwealth's budget over the same period.

Governor Ned Lamont of Connecticut recently called state policies to tax the wealthy "really dumb" and noted that Connecticut "pay[s] a price for" having "some of the highest income tax rates in the country."

The hard truth is that adopting a surtax on annual income over \$1 million will lead to a wealth drain. Add to that, the threat of an adverse Supreme Court decision in the New Hampshire lawsuit, and this is a disaster in the making.

Work-from-home will remain a big part of the new workplace after the pandemic ends. With many employees of Massachusetts companies working from home and living in New Hampshire, a Supreme Court ruling in favor of the Granite State in its case against Massachusetts would send fiscal shockwaves through the Commonwealth. Adopting the surtax would turn a tremor into an earthquake.

Jim Stergios is executive director of the Pioneer Institute. Christopher Anderson is president of the Massachusetts High Technology Council.