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Supreme Court, U. S.
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**In the Supreme Court of the
United States**

October Term, 1975

No. — Original

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff

v.

STATE OF NEW JERSEY,
Defendant

**MOTION FOR LEAVE TO FILE COMPLAINT
and
COMPLAINT
and
INTERROGATORY**

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MOTION FOR LEAVE TO FILE COMPLAINT

Invoking the original and exclusive jurisdiction of this Court under the Constitution of the United States and 28 U.S.C. §1251 (a) (1), since this is a controversy between two States, the Commonwealth of Pennsylvania, by its Attorney General, respectfully requests leave to file its complaint against the State of New Jersey, which is submitted herewith.

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SUPREME COURT OF THE UNITED STATES

October Term, 1975No. ——— Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff

v.

STATE OF NEW JERSEY,

Defendant

STATEMENT IN SUPPORT OF MOTION
FOR LEAVE TO FILE COMPLAINT

This case requires application of *Austin v. New Hampshire*, U.S. , 95 S. Ct. 1191, 43 L. Ed. 2d 530 (1975). In that case this Court declared New Hampshire's "Commuter Income Tax" repugnant to the Constitution of the United States and more specifically the Privileges and Immunities Clause of Article IV, Section 2, Clause 1, on the ground that New Hampshire's tax fell exclusively on non-residents' income which was not offset, even approximately, by other taxes imposed upon residents alone.

New Jersey Transportation Benefits Act taxes Pennsylvania's residents who earn income in New

Jersey while exempting its own citizens from this tax burden.

New Jersey's tax is legally indistinguishable from New Hampshire's, and should be declared unconstitutional.

Pennsylvania, as a state of the United States suing another state invokes the jurisdiction of this Court pursuant to Article III of the Constitution and 28 U.S.C. 1251 (a) (1) since it, and the persons it represents *parens patriae*, have been and are aggrieved by the imposition of the tax by the State of New Jersey.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

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COMMONWEALTH OF PENNSYLVANIA,

Plaintiff

v.

STATE OF NEW JERSEY,

Defendant

COMPLAINT

The Commonwealth of Pennsylvania by its Attorney General, Robert P. Kane, files this complaint and in support of it states:

1. The original and exclusive jurisdiction of the Supreme Court of the United States is invoked pursuant to Article III, Section 2 of the Constitution of the United States and 28 U.S.C. §1251 (a) (1) since this is a controversy between two states.

2. The Plaintiff, the Commonwealth of Pennsylvania, is a state of the United States and brings this action,

- a. on behalf of itself and
- b. as *parens patriae* on behalf of its citizens and residents.

3. The Defendant, the State of New Jersey, is a state of the United States.

4. The New Jersey Transportation Benefits Tax Act, N.J.S.A. 54: 8A-58 et seq. (hereinafter referred to as the "Act"), imposes a tax on nonresidents' New Jersey derived income when the nonresident of a state which is certified by New Jersey's Transportation Commissioner as a critical area state.

5. Plaintiff, Commonwealth of Pennsylvania, has been always certified as a critical area state.

6. The rate of taxation under the Act presently is 2%; however, the rate has always been adjusted to be exactly equivalent to the rate of taxation imposed by Pennsylvania pursuant to its income tax, Tax Reform Code of 1971, 72 P.S. §7301 et seq., which is a tax on all income earned in Pennsylvania.

7. The Act also imposes the tax upon New Jersey residents whose income is derived from a critical area state, N.J.S.A. 54:8A-59, but then exempts all such income to the extent it is taxed by such state, N.J.S.A. 54:88-94.

8. Since Pennsylvania, pursuant to the Tax Reform Code of 1971, 72 P.S. §7302(b), taxes its residents and New Jersey residents at a rate of 2% on income earned in Pennsylvania, New Jersey residents working in Pennsylvania are not taxed by New Jersey.

9. The domestic earned income of New Jersey residents is not taxed by New Jersey.

10. By reason of the operation of the Act, New Jersey taxes only the income of non-residents, or Pennsylvanians, working in New Jersey.

11. Pennsylvania, pursuant to the Tax Reform Code of 1971, 72 P.S. §7314(a), permits a tax credit to any Pennsylvania resident for income taxes paid to other states, like New Jersey.

12. During the fiscal years of 1972, 1973 and 1974, pursuant to the Act, New Jersey collected \$6,-100,000.00, \$11,600,000.00 and \$12,000,000.00 respectively, and during the present fiscal year is expected to collect an amount in excess of \$12,000,000.00, of which nearly all, if not all, was and will be collected from residents of Pennsylvania.

13. The levying and imposition of taxes pursuant to the Act violate the Constitution of the United States and more particularly the Privileges and Immunities Clause of Article IV, Section 2, Clause 1. The tax falls exclusively on non-residents' income which was not offset, even approximately by other taxes imposed upon residents alone. The Act also violates the Equal Protection Clause of the Fourteenth Amendment in that the Act makes a legislative classification without a rational basis.

14. Pennsylvania and those it represents are adversely affected by the Act. Pennsylvania has been improperly deprived of revenues totalling approximately \$29,700,000.00. Pennsylvania is currently being deprived of revenues, and Pennsylvania's residents have been and are being deprived of governmental services which are not now funded or underfunded because of the revenues Pennsylvania has not been able to collect.

WHEREFORE, the Commonwealth of Pennsylvania respectfully requests that this Court,

- (a) assume jurisdiction of this matter.
- (b) declare the New Jersey Transportation Benefits Tax Act unconstitutional.
- (c) enjoin defendant from enforcing the New Jersey Transportation Benefits Tax Act.
- (d) grant such other relief as justice may require.

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INTERROGATORY

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, defendant New Jersey, by an appropriate official, shall answer the following interrogatory, under oath, within 45 days of the date after service of the complaint and this interrogatory.

1. For fiscal years 1972, 1973, 1974 and 1975 state the amount of revenues New Jersey has collected or expects to collect from Pennsylvania residents pursuant to New Jersey's Transportation Benefits Tax Act.

(s) LAWRENCE SILVER

