In The

Supreme Court of the United States

OCTOBER TERM, 1975

No. 69 Original

STATE OF MAINE,
COMMONWEALTH OF MASSACHUSETTS,
AND
STATE OF VERMONT,
Plaintiffs

v.

STATE OF NEW HAMPSHIRE.
Defendant

BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT

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JURISDICTION

This Complaint is brought by the State of Maine, the Commonwealth of Massachusetts, and the State of Vermont against the State of New Hampshire, and asserts the jurisdiction of this Court under Article III, Section 2 of the Constitution of the United States and 28 U.S.C. §1251, over a controversy between two or more states.

STATUTES INVOLVED

The statutes involved are set out at length in the Appendix to the Brief Supporting Motion for Leave to File Complaint.

QUESTIONS PRESENTED

The questions presented by the Motion for Leave to File Complaint are

(1) whether this action to litigate and collect refund claims, allegedly accruing to certain citizens of the plaintiff states as a consequence of this Court's decision in *Austin v. New Hampshire*, 43 U.S.L.W. 4400 (March 19, 1975), may be brought under the original jurisdiction of this Court as a controversy between two or more states; and

(2) assuming *arguendo* that such an action is technically within the original jurisdiction of this Court, whether this Court should grant leave to file this complaint, even though the plaintiffs have had the power, for the entire duration of the alleged injurious conduct of the defendant, to prevent completely those consequences of that conduct which they now assign as injury to themselves as entities apart from their citizens.

STATEMENT OF THE CASE

On March 19, 1975, this Court held unconstitutional the New Hampshire Commuters Income Tax, New Hampshire Revised Statutes Annotated [RSA] Chapter 77-B, at the suit of three residents of Maine who were taxpayers under the New Hampshire statute. That action began as a petition for declaratory relief and refund in the New Hampshire State courts. The New Hampshire Supreme Court found standing in the taxpayers to challenge the constitutionality of the statute, but held against the plaintiffs on the basis of a lack of substantial demonstrated injury in fact, and so had no occasion to consider further the claims for relief. *Austin v. State Tax Commission*, 114 N.H. 137, 316 A. 2d 165 (1974).

On appeal, this Court reversed, *Austin v. State of New Hampshire*, No. 73-2060, 43 U.S.L.W. 4400 (March 19, 1975), finding a violation of the Privileges and Immunities Clause notwithstanding the position of fiscal indifference of the taxpayer, and held that the constitutionality of the New Hampshire statute could not depend upon the present configuration of Maine statutes. Subsequent references herein "*Austin v. New Hampshire, supra*", or "*Austin*", are to the decision of this Court in No. 73—2060.

In response to this Court's decision, the State of New Hampshire ceased all activity under RSA 77-B prospectively, effective March 19, 1975. Employers required to withhold income were instructed to cease withholding as of that date, and to file and remit in the ordinary course for periods prior to that date, so that the operation of the tax might be wound up on a date certain with respect to all affected persons. Admin. Ruling No. 3 77-B, March 26, 1975 (Pl. Brief Supporting Motion for Leave to File, App., p. 72). In addition, every taxpayer concerned enough to inquire was treated as having requested a refund, and was informed that his or her claim had been received and recorded, but that the State was neither allowing nor denying the claim at that time, pending study of the entire matter and possible litigation by individual claimants. New Hampshire Department of Revenue Administration Form Letter (Pl. Brief, App., p. 73).

The Department of Revenue Administration, apart from the instructions to employers mentioned above regarding cessation and winding up, has taken no action to collect funds from any party, and has in fact, received and refunded payments voluntarily made for periods after March 19, 1975.

Conversely, no party has yet sought the aid of the New Hampshire Supreme Court, to which the *Austin* case was remanded for further proceedings, in securing specific relief grounded upon the invalidity of the tax. Rather, Massachusetts has sent notices to all of its residents who received credit for taxes paid to New Hampshire, informing them of Massachusetts' intention to assess and recover from them all amounts allowed as credit for taxes paid under the New Hampshire Commuters Income Tax, and offering a full discharge from that liability to Massachusetts in return for an assignment of any rights the taxpayer might have to recovery of the amounts paid to New Hampshire. The text of these notices, and of a form, also supplied, on which the assignment could be made, are appended to this brief.

This action, consisting of a Motion for Leave to File Complaint, and Complaint, was then brought, and was docketed on August 13, 1975 as No. 69 original.

SUMMARY OF ARGUMENT

This complaint is not within the original jurisdiction of the Supreme Court. Although nominally titled a suit between states, as a claim by the plaintiffs to a recovery for an alleged injury, the complaint fails to demonstrate that the defendant state is the direct cause of that injury, since the alleged injury is entirely a consequence of the plaintiffs' own statutes. As a claim that the conduct of the defendant New Hampshire has wronged someone, for example, citizens of the plaintiff states, the complaint is an attempt to litigate that claim on behalf of such other parties. In either event, the complaint fails to state an actual controversy between states, and is not within the original jurisdiction of this Court.

Given the nature of the subject matter of the claim, the former taxpayers under the New Hampshire Commuters Income Tax are indispensable parties, as their rights should not be settled here without their presence; yet their presence as defendants would oust the jurisdiction of this Court.

The plaintiffs here are barred by the doctrine of laches from now seeking recovery for an alleged injury which they each had full power to prevent, and may not now use this Court as an alternative forum.

Finally, the plaintiffs' claim-in-chief, apart from being outside the original jurisdiction of this Court, is simply without merit. There is no occasion demonstrated for retroactive application of *Austin v. New Hampshire, supra*, given the known circumstances of the enactment and subsequent history of the Commuters Income Tax. Any further evidence, if elicited, would merely confirm the wisdom of non-retroactive application of *Austin*.

ARGUMENT

I.

THE COMPLAINT DOES NOT STATE A CLAIM WITHIN THE ORIGINAL JURISDICTION OF THE SUPREME COURT.

A. **The Grant of Original Jurisdiction.**

The power of the federal judiciary is derived from Article III of the Constitution of the United States. The scope of that power, and the manner in which it may be exercised, are delineated in Section Two thereof. "The judicial power shall extend . . .to controversies between two or more states. . . . ." U.S. Const., Art. III, §2, cl. 1. Thus, an actual controversy in the constitutional sense is an indispensable requisite for assumption of jurisdiction by this Court, and that requirement may not be avoided by the mere appearance of states as nominal parties plaintiff and defendant. *Massachusetts v. Mellon*, 262 U.S. 447 (1923); *Texas v. Florida*, 306 U.S. 398 (1939); and *Massachusetts v. Missouri*, 308 U.S. 1 (1939).

The provision in Article III, §2, Clause 2 that in cases "in which a state shall be a party, the Supreme Court shall have original jurisdiction" does not operate to enlarge the Supreme Court's jurisdiction beyond that set out in the basic grant. "The effect of [Art. III, §2, cl. 2] is not to confer jurisdiction upon the court merely because a state is a party, but only where it is a party to a proceeding of judicial cognizance. Proceedings not of a justiciable character are outside the contemplation of the constitutional grant". *Massachusetts v. Mellon*, *supra* at 480.

To constitute a justiciable controversy, "it must appear that the complaining state has suffered a wrong through the action of the other state, furnishing ground for judicial redress, or is asserting a right against the other state which is susceptible to judicial enforcement according to accepted principles of the common law or equity systems of jurisprudence". *Massachusetts v. Missouri, supra* at 15; *Florida v. Mellon*, 273 U.S. 12 (1927).

B. **The Complaint Does Not Present A Controversy Between States.**

The two-part test for the existence of a justiciable controversy voiced in *Massachusetts v. Missouri* and *Florida v. Mellon, supra*, provides a convenient and revealing basis for analysis of the instant complaint. Assuming *arguendo* that the loss of tax revenue of which the plaintiffs complain is an injury to them, the complaint, as an attempt to attribute that loss to an action of another state, namely, New Hampshire, fails completely. Similarly, assuming *arguendo* that the specified injurious action of New Hampshire, to wit, collecting taxes in a manner later found unconstitutional, creates a right in someone susceptible of judicial enforcement, the complaint fails to show that the supposed right inheres in the plaintiffs. Thus, the complaint fails to demonstrate the controversy between states required to support the original jurisdiction of this Court. The reasons for that failure are more particularly set out below.

In addition, the two assumptions proferred above for the purpose of argument are each invalid in their own right, as will also be shown below.

1. *The Asserted Interests of Plaintiffs and Defendants In the Funds In Question Are Not Mutually Exclusive.*

In 1939, this Court rendered decisions in *Texas v. Florida* and *Massachusetts v. Missouri, supra*. Subsequently, it is fair to say, no analysis of a complaint by one sovereign state against another with respect to taxation can be complete without dealing with the principles laid down in those cases. Although the two cases were not heard and decided together, both were heard and decided in the same year, and the inference is fairly drawn that the Court had in mind the delineation of a threshold standard which must be met by a complainant state seeking access to this Court. The plaintiffs, however, make only passing reference to these cases in their Brief Supporting Motion for Leave to File Complaint (hereinafter Pls. Brief), and then only in contexts which *assume*, rather than argue for, the existence of a controversy, e.g. at 25.

In *Massachusetts v. Missouri, supra*, the issue was framed around the existence of several trusts, the corpus and trustees of which were then in Missouri, the settlor of those trusts

having died while domiciled in Massachusetts. The latter state claimed the right to tax the value of the trusts under Massachusetts law by virtue of the nature of the trust instruments, which arguably were intended to take effect in possession and enjoyment only after the death of the settlor. Missouri also claimed jurisdiction to tax, notwithstanding Massachusetts' claim that Missouri had waived the right to tax the trusts under a reciprocal exemption provision in its own law. Massachusetts claimed injury at the hands of Missouri in the amount of the lost tax revenue, and said that it had no remedy, as the subject matter was in the possession of the defendant sovereign state. The Court held that no controversy was presented between the states because their claims were not mutually exclusive, in that "the validity of each claim is wholly independent of that of the other and, in light of our recent decisions, may constitutionally be pressed by each state without conflict in point of fact or law with the decision of the other". *Id.* 308 U.S. 15; *see Curry v. McCanless*, 307 U.S. 357 (1939). The allegation that Missouri asserted its jurisdiction upon the property of a Massachusetts resident wrongfully under Missouri law was held not to frame a controversy between the states, as that action by Missouri in no way prevented Massachusetts from pursuing its rights and remedies under Massachusetts law to their fullest extent.

The application of that holding to the present complaint is brought clearly into focus by the undisputed facts that the plaintiff states are not and never have been taxpayers to the State of New Hampshire; that their right to tax is derived entirely from their respective state taxing statutes, and that the loss of revenue of which they now complain was a direct and immediate consequence of those same statutes, which operate to waive that right. *See* Income Tax Credit Laws, (Pls. Brief App., p. 61–62).

Thus, the plaintiff states' rights, if any, to the revenue they claim to have lost are wholly independent of any aspect of New Hampshire law, including its validity. No principle of law, constitutional or otherwise, requires that the plaintiff states forego the collection of revenue which is clearly within their constitutional power, solely because of the configuration or validity of the laws of another state. As the Court said in *Massachusetts v. Missouri*, "[e]ach state has enacted its legislation according to its conception of its own interests. Each state has the unfettered right at any time to repeal its legisla-

tion. Each state is competent to construe and apply its legislation in the cases that arise within its jurisdiction". 308 U.S. at 16, 17.

Thus, because the plaintiffs have the power to recoup their alleged losses through the valid exercise of their own sovereign authority (not to mention their having had the power to prevent any such losses *ab initio, infra* at 12), under the holding of *Massachusetts v. Missouri, supra*, the plaintiffs are not being and have never been injured by New Hampshire, and have no rights against New Hampshire susceptible of judicial enforcement.

The Court in *Massachusetts v. Missouri* distinguished *Texas v. Florida, supra* as a case which, on its facts, could not be resolved through the exercise of sovereignty of the plaintiff states, since under the laws of each the outcome turned upon the same issue of fact, to wit, domicile, and only one state, therefore, could lawfully levy a tax. 306 U.S. at 408. As mentioned above, there is no such mutually exclusive or "watershed" point of fact or law at issue in the present claim, since the plaintiffs' laws each tax their own citizens in the first instance, and they each have full constitutional power to do so irrespective of the power, or lack of power, of New Hampshire to tax the same subject matter.

2. *The Plaintiffs May Not Assert Claims On Behalf of Their Individual Citizens Under the Original Jurisdiction of this Court.*

The plaintiffs' claim, reduced to its bare essentials, is that New Hampshire has inflicted a direct injury upon their treasuries, in which they have a sovereign interest. Pls. Brief at 21-22. Yet, upon reflection, it is clear that there has been no such injury to the plaintiffs' treasuries, since the amounts of revenue conceded by the respective tax credit provisions necessarily caused one of two possible consequences: either additional revenues were raised from other sources to replace those amounts, assuming the level of governmental services to have been maintained; or the level of services to citizens of the plaintiff states has been reduced, assuming no additional revenues to have been raised. Upon either occasion, the impact of the escape of revenue through the tax credit provision must fall upon the citizenry at large, since a government of, by and for the people is not, in theory at least, designed to operate at a profit and put money in the pockets of those in charge of it.

The state, therefore, can have no interest in its treasury apart from that of its citizens, who collectively are entitled to have those funds applied to their benefit. The plaintiffs themselves assert the principle that the interested party is he who ultimately bears the burden, Pls. Brief at 24, but they misapply that principle in their argument, in that the principle is viable only where the shifting of the burden is *not* within the control of the ultimate bearer, as where a vendor of goods passes on a sales tax to purchasers, who have no control over the vendor. Pls. Brief at 24. Here, the transfer of the tax burden from the former taxpayers under the New Hampshire Commuters Income Tax to the plaintiff states, and thence to the citizenry at large of those states, is wholly within the control of the plaintiff states as sovereigns, and of their citizens, who are, through the legislative process, the actual sovereigns. Thus, any equitable disability which attaches to the sovereign states attaches to their citizens as well.

Said another way, any claim of injury by a citizen of the plaintiff states, other than one who was also a taxpayer to New Hampshire, is fundamentally a complaint about the wisdom of the statutory and administrative posture maintained by the plaintiff states throughout the duration of the New Hampshire Commuters Income Tax, and is thus a political complaint properly directed at the plaintiff states themselves through the legislative process.

As a consequence, then, of the very nature of the statutory provisions upon which the plaintiffs' claim to the so-called lost revenue is grounded, two results follow with relentless certainty: first, the chain of causality leading from the alleged injury is severed absolutely at the point at which the plaintiffs, having complete power to do so, failed to prevent the escape of revenue as it occurred, and still refuse to exercise their power to collect the funds from the persons from whom it is now due under their own law. To be consistent, the plaintiffs, having argued that the New Hampshire tax was unconstitutional and void, must also assert that the credits which were claimed with respect thereto were improper, and that those amounts are, in fact and law, now due from the taxpayers upon proper notice and demand. The plaintiffs cannot, we submit, argue for retroactive application of *Austin v. New Hampshire, supra* while at the same time asserting no retroactive application to their tax credit provision. Second, the cause, if any there be, belongs to the former taxpayers whose

incomes were taxed by New Hampshire, and who pursued their objections to that tax to a successful result. That the plaintiff states may not litigate in this Court such causes as accrue to those former New Hampshire taxpayers as a result of *Austin, supra,* is settled beyond question. *Illinois v. Michigan,* 409 U.S. 36 (1972);*Arkansas v. Texas,* 346 U.S. 368 (1953);*North Dakota v. Minnesota,* 263 U.S. 365 (1923);*New Hampshire v. Louisiana,* 108 U.S. 76 (1883). In particular, a state is barred from litigating the interest of a citizen in this Court where, as here, that interest adheres to the state solely as a result of statutes of that state, and not as a consequence of any equitable or contractual right. *Oklahoma ex rel. Johnson v. Cook,* 304 U.S. 387 (1938).

It may not be doubted that the device employed by the plaintiffs of quoting from the Brief for the Appellees in *Austin v. New Hampshire, supra,* has a certain dramatic impact. Pls. Brief at 19. It does not, however, have much probative value when one considers that the position taken by the Appellee in *Austin* was an argumentative one; that that argument was emphatically contravened by the State of Maine in its Brief *amicus curiae* which argued at length the impact of the New Hampshire tax on the Maine taxpayers and citizenry at large; and that this Court found for the taxpayer/Appellant, thus discrediting the Appellee's position.

3. *The Plaintiff States Have No Assertable Quasi-Sovereign Interest Which Cannot Be Asserted By Their Citizens.*

The plaintiffs also attempt reliance upon certain cases in which this Court has taken jurisdiction of a complaint by one state seeking to enjoin actions of another state which are said to constitute a nuisance to citizens of the complaining state, e.g. *Missouri v. Illinois,* 180 U.S. 208 (1901); *Georgia v. Tennessee Copper Co.,* 206 U.S. 230 (1907); or which are said to divert natural resources, e.g. *Arizona v. California,* 373 U.S. 546 (1963); Pls. Brief at 24. Here also, the plaintiffs' reliance is misplaced. The theories upon which such cases are allowed to go forward are that (a) the claimed injury is ongoing and (b) it is not within the sovereign power of the plaintiff state to stop it or correct the damage. In either circumstance, the remedy is by injunction, which is wholly unnecessary here, since the New Hampshire tax has already been held unconstitutional and been terminated, and all col-

lection activities stopped. The plaintiffs' prayer in their complaint for an injunction to order done what has already been done approcahes the frivolous, but is understandable, nevertheless, as a vain attempt to manufacture controversy where none exists, hoping thereby to come within the scope of *Missouri v. Illinois*, *supra*.

C. The Former Taxpayers Under the Commuters Income Tax Are Necessary Parties to this Action.

This Court has held, upon an application by one state for leave to file a complaint against a citizen of another state, that diverse citizens of the plaintiff state were indispensable parties defendant to the controversy, and that the case could not go forward without them, and further held that as those indispensable parties were citizens of the plaintiff state, the case could not go forward since the Court could not enlarge its original jurisdiction to include a suit between a state and citizens of the same state. *California v. Southern Pacific Company*, 157 U.S. 229 (1895).

As mentioned above, the plaintiff states have had no direct dealings with New Hampshire pursuant to the Commuters Income Tax Law, that is to say, they were not taxpayers under the taxing statute, RSA 77-B, and that statute created no rights in favor of the plaintiffs, nor liabilities upon them. The only persons within the contemplation of that statute were non-residents who earned income in New Hampshire, and residents who earned income out-of-state. It was from the former group that taxes were, in practical effect, levied and collected, *Austin v. New Hampshire, supra*. This Court's decision in *Austin* did not include an order for repayment, and none was sought from it. The mandate of the Court was for reversal and remand to the New Hampshire Supreme Court for further proceedings. Clearly, notwithstanding that New Hampshire firmly maintains that retroactive application of *Austin* would be inappropriate and inequitable, any litigation of that question *must* include as parties that class on whose behalf *Austin* was brought and decided, lest New Hampshire be subjected to multiple liability at the suit of such taxpayers, who would not be bound by the outcome of this case unless their interests had been adequately represented.

Moreover, as we assert at some length above, the plaintiffs' claim is really against their own citizens for the return of credits improperly taken, and they must maintain that asser-

tion and claim as an essential element of their claim against New Hampshire. Yet, the mere fact that the present parties to this proceeding might agree upon the liability of a taxpayer to return the credits taken does not mean that the question is closed, since the taxpayer's pocketbook is at stake to a greater or lesser degree, and he has not been given an opportunity to be heard.

Thus, the cause asserted herein, when considered in its proper scope, necessarily includes parties whose presence renders the matter beyond the original jurisdiction of this Court. *California v. Southern Pacific Co., supra.*

D. **This Action Is Barred By the Doctrine of Laches.**

This Court, when considering a matter within its original jurisdiction, applies "the accepted doctrines of the common law or equity systems of jurisprudence", as guides to its decision. *Texas v. Florida, supra*, 306 U.S. at 405.

We have set out at length, above, in other contexts, the uncontrovertible fact that the plaintiff states have always had the power to stop the loss of funds to their treasuries which their tax credit laws caused. The plaintiff states now charge New Hampshire with having enacted the Commuters Income Tax in bad faith, in that its unconstitutionality was "clearly foreshadowed". Pls. Brief at 29. That assertion New Hampshire emphatically denies, but we hasten to point out that if the invalidity of the tax was so obvious from its inception, the plaintiffs, who are equally bound to know the law, have been grossly negligent and in bad faith for having ignored or pointedly failed to take the most patently obvious steps to halt the consequences of that tax which they now assign as an injury to them. *See Austin v. New Hampshire, supra*, (Opinion of Mr. Justice Blackmun, dissenting, *im passim*). In short, the plaintiffs are guilty of laches, and should not be allowed to maintain this action for that reason, quite apart from the other fatal aspects of the complaint set out above.

The extent to which the plaintiffs' damage, if any, is self-inflicted is brought clearly to fore by the observation that the decision of the New Hampshire Supreme Court in *Austin v. State Tax Commission*, 114 N.H. 137; 316 A. 2d 165 (1974) turned upon that court's finding of a lack of substantial injury to the taxpayer, given the availability of the Maine tax credit provision. Had that provision been repealed, or its benefit denied to the plaintiffs therein on the ground that the tax

against which it was claimed was void, the issue would have been squarely joined, and the whole complexion of that case changed, including, possibly, the result.

In either event, the issues now presented by the plaintiffs here could have been developed in the original proceeding in New Hampshire courts, and reviewed here on appeal if necessary. In the face of such a clear disregard of fair opportunities to make their complaints known to New Hampshire and to join in existing litigation, the plaintiffs should not now be permitted to use the original jurisdiction of this Court as an alternative remedy. Such use has been denied in the past, and should be denied here. *Illinois v. Michigan, supra.*

Additionally, the studied disinterest shown by the plaintiffs publicly, while private litigation of the New Hampshire tax was in progress, was clearly interpreted by New Hampshire as acquiescence in the effect, if not the principle, of the New Hampshire tax. Such acquiescence has also been held to bar later assertion of a contrary position. *Ohio v. Kentucky*, 410 U.S. 641 (1973).

II.

THE PLAINTIFFS HAVE NO CLEAR RIGHT TO RELIEF.

The merits of the plaintiffs' claim may be fairly described as comprising the question whether *Austin v. New Hampshire, supra* should be applied retroactively.

It is New Hampshire's sincere belief, and will be its position before this Court if the extant Motion For Leave to File Complaint is granted, that the *Austin* decision should not be so applied.

This is not the proper point procedurally for the defendant's arguments on the merits of retroactive application of *Austin* to be presented, in that many of the facts alleged are in dispute, and the complaint has not been formally allowed and answered. It should suffice at this point to state that each and every assertion and conclusion of law in the plaintiffs' Brief addressing their claim to relief, Pls. Brief at 28 *et seq.*, is emphatically denied.

CONCLUSION

The plaintiffs at this stage must seek and obtain the leave of this Court to bring this complaint under its original jurisdiction. The reasoning and cases set forth above compel the conclusion that such leave should be denied, and we respectfully request that this Court so hold.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

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APPENDIX

MASSACHUSETTS DEPARTMENT OF CORPORATIONS AND TAXATION

INFORMATION FOR MASSACHUSETTS RESIDENTS WHO RECEIVED A MASSACHUSETTS INCOME TAX CREDIT FOR THE NEW HAMPSHIRE COMMUTERS INCOME TAX WHICH HAS BEEN DECLARED UNCONSTITUTIONAL BY THE SUPREME COURT OF THE UNITED STATES

The enclosed notice of intention to assess and a later notice of assessment are required to be sent pursuant to Massachusetts law. This action is protective in nature, and it is not planned to collect the tax from you at this time. The Massachusetts Attorney General has been requested by this Department and he has agreed to pursue all available remedies to collect these taxes directly from the State of New Hampshire. Meanwhile by sending these notices, this Department is preserving the Commonwealth's right to recover, if necessary, from its taxpayers the amounts of credits granted — if Massachusetts does not prevail in its action against New Hampshire.

However in order to protect yourself, you are urged to apply by letter to New Hampshire for a refund of the tax imposed on you under the New Hampshire Commuters Income Tax, which has been declared unconstitutional by the Supreme Court of the United States. For the *1971 tax*, your letter should be filed *before April 15, 1975*. It is suggested that you include your name, address and Social Security number and that you are requesting a refund of the specific amount paid by you for 1971 under the unconstitutional New Hampshire Commuters Income Tax. Send the letter to:

Commissioner of Revenue Administration
Concord, New Hampshire 03301

Similar applications should be made within three years from the due date for each applicable year since 1971.

Form 123-NH INFO

The Commonwealth of Massachusetts

IMPORTANT ADDITIONAL INFORMATION for Massachusetts Residents Who Received A Massachusetts Income Tax Credit for the New Hampshire Commuters Income Tax Which Has Been Declared Unconstitutional

In order to DISCHARGE ANY OBLIGATION you might have under the Notice of Intention to Assess which was mailed to you on April 3, 1975, with respect to repayment of the credit you received against your 1971 Massachusetts Income Tax, you may ASSIGN YOUR CLAIM against New Hampshire to the Commonwealth of Massachusetts and APPOINT THE MASSACHUSETTS ATTORNEY GENERAL to be your attorney for the collection of the taxes you paid to New Hampshire under the New Hampshire Commuters Income Tax, which has been declared unconstitutional.

Signing this form will *not* increase your total tax liability, will *not* make you liable for the costs or expenses of this litigation, and will *not* cost you any money. Signing this form *will* discharge any obligation you may have to repay Massachusetts for the tax credit previously granted for your 1971 payment of the New Hampshire Commuters Income Tax; and it will permit Massachusetts to try to collect from New Hampshire back taxes which the U.S. Supreme Court has ruled New Hampshire has no right to collect.

THE ENCLOSED FORM MUST BE SIGNED BY THE PERSON(S) SIGNING THE 1971 TAX RETURN, DATED AND MAILED BACK NO LATER THAN APRIL 11, 1975, TO:

The Commonwealth of Massachusetts
P. O. Box 7022
Boston, MA 02204

ASSIGNMENT OF TAXPAYER'S INTEREST
and
POWER OF ATTORNEY

I, _____,
(Insert Name and Spouse's Name, if filed jointly)

of _____,
(Number and Street)

_____,
(State and Zip Code)

hereby assign, transfer and set over unto the Commonwealth of Massachusetts, for value received, all of my right, title and interest in and to my claim for a refund of any taxes for 1971 to the State of New Hampshire under the New Hampshire Commuters Income Tax Law.

I do hereby constitute and appoint FRANCIS X. BELLOTTI, Attorney General of the Commonwealth of Massachusetts, my attorney, irrevocably in my name, place and stead, to demand, sue for, levy, recover and receive all such sums of money which are now and which may hereafter become due, payable and owing to me for a tax refund as aforesaid. I grant said attorney full power to take all actions with respect to recovering said sums of money as I might or could do personally, hereby ratifying all that said attorney has lawfully done or caused to be done with respect thereto. All such actions shall be taken without cost or expense to me.

In witness whereof, I have hereunto set my hand this _____ day of April, 1975.

_____
(Taxpayer's Signature)

_____
(Spouse's Signature, if filed jointly)