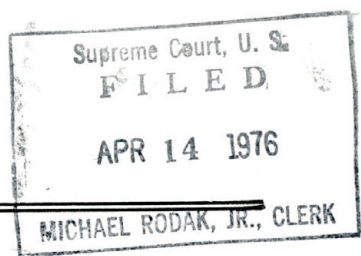


(G-46)



IN THE

Supreme Court of the United States

..... Term, 1976

No. **71** Original

STATE OF NEW YORK,

Plaintiff,

v.

STATE OF NEW JERSEY,

Defendant.

MOTION FOR LEAVE TO FILE COMPLAINT and COMPLAINT and INTERROGATORY

LOUIS J. LEFKOWITZ
Attorney General

RUTH KESSLER TOCH
Solicitor General

ROBERT W. BUSH
FRANCIS V. DOW
Assistant Attorneys General

NEW YORK STATE DEPARTMENT OF LAW
The Capitol
Albany, New York 12224
(518) 474-8101



TABLE OF CONTENTS.

	Page
Motion for Leave to File Complaint	1
Statement in Support of Motion for Leave to File Complaint	2
Complaint	4
Interrogatory	10

TABLE OF CITATIONS.

CASE:

Austin v. New Hampshire, 420 U.S. 656, 95 S. Ct. 1191, 43 L. Ed. 2d 530 (1975)	2
---	---

MISCELLANEOUS:

Constitution of the United States:

Article III, Section 2	3,4
Article IV, Section 2, Clause 1	2,7
Federal Rules of Civil Procedure, Rule 33	10
New Jersey Emergency Transportation Tax Act:	
N.J.S.A. 54; 8A-1 <i>et seq.</i>	2,3,5,6,8,10
New York Tax Law, Article 22, § 601 <i>et seq.</i>	6,7
28 U.S.C. Section 1251(a) (1)	1,3,4

Supreme Court of the United States

..... Term, 1976
No. Original

STATE OF NEW YORK,

Plaintiff,

v.

STATE OF NEW JERSEY,

Defendant.

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 State of New York, by its Attorney General, respectfully requests leave to file its complaint against the State of New Jersey, which is submitted herewith.

LOUIS J. LEFKOWITZ,
Attorney General,

RUTH KESSLER TOCH,
Solicitor General,

ROBERT W. BUSH,
FRANCIS V. DOW,
Assistant Attorneys General.

New York State
Department of Law
The Capitol
Albany, New York 12224
(518) 474-8101

SUPREME COURT OF THE UNITED STATES

..... Term, 1976

No., Original

STATE OF NEW YORK,

Plaintiff,

v.

STATE OF NEW JERSEY,

Defendant.

**Statement in Support of Motion for Leave
to File Complaint**

The State of New York seeks the application in this case of *Austin v. New Hampshire*, 420 U.S. 656, 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 nonresidents' income which was not offset, even approximately, by other taxes imposed upon residents alone and violates the Equal Protection Clause of the Fourteenth Amendment in that the Emergency Transportation Tax Act makes a legislative classification between the residents and nonresidents of New Jersey without a rational basis.

New Jersey Emergency Transportation Tax Act taxes New York residents who earn income in New Jersey while exempting its own citizens from this tax burden (N.J.S.A. 54: 8A-1 *et seq.*).

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

New York, 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,

LOUIS J. LEFKOWITZ,
Attorney General,

RUTH KESSLER TOCH,
Solicitor General,

ROBERT W. BUSH,
FRANCIS V. DOW,
Assistant Attorneys General.

New York State
Department of Law
The Capitol
Albany, New York 12224
(518) 474-8101

SUPREME COURT OF THE UNITED STATES

..... Term, 1976
No. Original

STATE OF NEW YORK,

Plaintiff,

v.

STATE OF NEW JERSEY,

Defendant.

Complaint

The State of New York by its Attorney General, Louis J. Lefkowitz, 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 State of New York, is a state of the United States and brings this action in its sovereign capacity,

- 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 Emergency Transportation Tax Act, N.J.S.A. 54; 8A-1 *et seq.* (hereinafter referred to as the "Act"), imposes a tax on nonresidents of New Jersey on their income derived from New Jersey's Transportation Commissioner, as a critical area state pursuant to N.J.S.A. 54; 8A-5.

5. Plaintiff, State of New York, has been certified as a critical area state since the enactment of the Act on May 29, 1961.

6. The rate of taxation under the Act is now computed on taxable income at the following graduated rates (N.J..S.A. 54; 8A-6):

<i>Taxable Income</i>		<i>Pay</i>	<i>Tax Rate</i>	<i>On Excess</i>
<i>Over</i>	<i>Not Over</i>			<i>Over</i>
\$	\$ 1,000	\$	2%	\$
1,000	3,000	20	3%	1,000
3,000	5,000	80	4%	3,000
5,000	7,000	160	5%	5,000
7,000	9,000	260	6%	7,000
9,000	11,000	380	7%	9,000
11,000	13,000	520	8%	11,000
13,000	15,000	680	9%	13,000
15,000	17,000	860	10%	15,000
17,000	19,000	1,060	11%	17,000
19,000	21,000	1,280	12%	19,000
21,000	23,000	1,520	13%	21,000
23,000	25,000	1,780	14%	23,000
25,000	2,060	15%	25,000

A minimum tax is also imposed based upon the taxpayers' Federal items of tax preference derived or taken from New Jersey sources subject to certain modifications or deductions, at the rate of 6% (N.J.S.A. 54; 8A-6.2). In addition, a 2½% surcharge is imposed which applies to both the regular income tax and minimum income tax (N.J.S.A. 54; 8A-6.01). The rate of tax has always been adjusted by New Jersey by amendatory legislation to be exactly the equivalent to the rate of taxation imposed by New York upon its residents and nonresidents having income derived from or connected with New York sources pursuant to its income tax (New York Consolidated Tax Law, Article 22).

7. The Act also imposes tax upon New Jersey residents whose incomes are derived from New York State, a critical area state, (N.J.S.A. 54; 8A-2) but then relieves New Jersey residents from the tax imposed by providing credit in the same amount (N.J.S.A. 54; 8A-16). Residents of New Jersey subject to the tax imposed by the Emergency Transportation Tax Act, N.J.S.A. 54; 8A-1, *et seq.* who have filed a nonresident income tax return with the State of New York, and had paid the amount on income tax liability computed thereon to the State of New York are not required to file a return with the New Jersey Division of Taxation under the New Jersey Transportation Tax Act.

8. The earned income of New Jersey residents derived from sources within New Jersey is not taxed by New Jersey under any New Jersey statute.

9. By reason of the operation of the Act, New Jersey taxes only the income of nonresidents, or New Yorkers, working in New Jersey derived from sources within New Jersey.

10. New York, pursuant to the New York Tax Law, § 620 permits a tax credit to any New York resident for income taxes paid to other states, like New Jersey; however, the tax credit provisions are not allowed as a credit against the 2½% tax surcharge imposed by New York Tax Law, § 601-B.

11. During the fiscal years of 1962 thru 1975 pursuant to the Act, New Jersey collected the following amounts:

<i>Fiscal Year</i>	<i>Amount Collected (in millions)</i>
1975	\$ 34.7
1974	31.9
1973	25.5
1972	22.1
1971	18.7
1970	16.9
1969	14.4
1968	12.4
1967	10.8
1966	9.7
1965	7.9
1964	6.7
1963	7.4
1962	6.5
	<hr/>
	\$225.6

of which nearly, if not all, was collected from residents of New York.

12. The levying and imposition of taxes collected by New Jersey pursuant to the Act violate the Constitution of the United States: (1) the Privileges and Immunities Clause of Article IV, Section 2, Clause 1. The tax falls

exclusively on nonresidents' income which was not offset, even approximately by other taxes imposed upon residents alone; (2) the Act also violates the Equal Protection Clause of the Fourteenth Amendment in that Act makes a legislative classification between residents and nonresidents of New Jersey without a rational basis.

13. New York State and those it represents are adversely affected by the Act, since New York State has been improperly deprived of revenues totaling approximately \$225.6 million by reason of the New Jersey Emergency Transportation Tax Act between 1962 and 1975. New York is currently being deprived of revenues, and New York's residents have been and are being deprived of governmental services which are not now funded or underfunded by the State of New York because of the revenues New York has not been able to collect.

WHEREFORE, the State of New York respectfully requests that this Court,

- (a) assume jurisdiction of this matter;
- (b) declare the New Jersey Emergency Transportation Tax Act unconstitutional;
- (c) enjoin defendant from enforcing the New Jersey Emergency Transportation Tax Act;

(d) grant such other relief as justice may require.

Dated: April 5, 1976.

LOUIS J. LEFKOWITZ,
Attorney General of the
State of New York,

RUTH KESSLER TOCH,
Solicitor General of
the State of New York,

ROBERT W. BUSH,
FRANCIS V. DOW,
Assistant Attorneys General
of the State of New York.

New York State
Department of Law
The Capitol
Albany, New York 12224
(518) 474-8101

SUPREME COURT OF THE UNITED STATES

..... Term, 1976

No., Original

STATE OF NEW YORK,

Plaintiff,

v.

STATE OF NEW JERSEY,

Defendant.

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.

For fiscal years 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974 and 1975 state the amount of revenues New Jersey has collected or expects to collect from New York residents pursuant to New Jersey's Emergency Transportation Tax Act.

RUTH KESSLER TOCH,
Solicitor General of the
State of New York.

