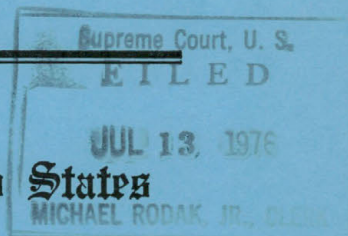


IN THE
Supreme Court of the United States
OCTOBER TERM, 1976



No. 71 Original

STATE OF NEW YORK,

Plaintiff,

v.

STATE OF NEW JERSEY,

Defendant.

On Motion for Leave to File Original Action

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

Questions Presented

1. Is this motion for leave to file an original action distinguishable from the motion to file denied in *Pennsylvania v. New Jersey* (No. 68 Orig.) 44 U.S.L.W. 4916 (June 17, 1976)?

2. Does the original jurisdiction of the Supreme Court extend to a challenge by a state to the tax laws of another state on the grounds that those laws infringe upon the federal constitutional rights of some residents of the plaintiff state?

Statement of the Case

In 1961 the State of New Jersey enacted the Emergency Transportation Tax Act (N.J.S.A. 54:8A-1 *et seq.*). This law imposes an emergency tax for a limited period (which has subsequently been extended for another specific period) for transportation purposes. The tax is measured by certain income and gains derived by residents of New Jersey from sources within another State with respect to which there is a "critical transportation problem" interstate and by residents of such other State from sources within New Jersey. All of the Emergency Transportation Tax Revenues are paid into a special transportation fund which is used exclusively to finance projects and programs to help relieve the transportation problems between New Jersey and the other "critical transportation problem" State.

A "critical transportation problem" has been found to exist in the New Jersey-New York area, and, accordingly, the Emergency Transportation Tax has been applied to those persons who commute to work between these two States. The special transportation fund resulting from the Emergency Transportation Tax has been expended upon projects to alleviate this transportation problem.

A second transportation tax, the Transportation Benefits Tax, was enacted in 1971 (N.J.S.A. 54:8A-58 *et seq.*). This tax is identical in most respects to the Emergency Transportation Tax, although the tax rate differs and it

is restricted to those "severe transportation problem" areas involving 100,000,000 to 300,000,000 interstate crossings annually by commuters between New Jersey and another "severe transportation problem" State. A "severe transportation problem" has been found to exist in the New Jersey-Pennsylvania area requiring the imposition of the Transportation Benefits Tax. Accordingly, receipts from the Transportation Benefits Tax have been used to help relieve the interstate transportation problems between New Jersey and Pennsylvania.

Both the Emergency Transportation Tax Act and the Transportation Benefits Tax Act provide credits to New Jersey residents for income taxes paid to the other "transportation problem" States (*i.e.*, New York and Pennsylvania). N.J.S.A. 54:8A-16(B), N.J.S.A. 54:8A-94. Also, the Emergency Transportation Tax Act permits non-residents a credit against the New Jersey tax for income taxes paid to their State of residence if that State provides a similar credit against its income tax to New Jersey residents who work in that State. N.J.S.A. 54:8A-16(A).

The Commonwealth of Pennsylvania previously sought to challenge the constitutionality of the Transportation Benefits Tax Act and moved this Court for leave to file a bill of complaint.* The Pennsylvania motion was denied in *Pennsylvania v. New Jersey* (No. 68 Orig.) 44 U.S. L.W. 4916 (June 17, 1976). The present motion by New York to file a bill of complaint challenges the other New Jersey "transportation tax", *i.e.*, the Emergency Transportation Tax Act. As noted above, this tax is identical

* Like the New York State Income Tax credit, the Pennsylvania State Income Tax credit for income taxes paid to other states is applicable only to its own residents and is not extended to New Jersey residents who work in that state.

in most respects to the one involved in the Pennsylvania case except for the tax rate and geographical area of applicability.

ARGUMENT

The motion by New York for leave to file an original action challenging the constitutionality of the New Jersey Emergency Transportation Tax should be denied since it is indistinguishable from the motion denied by the Court in *Pennsylvania v. New Jersey*, 44 U.S.L.W. 4516 (June 17, 1976).

The Emergency Transportation Tax is almost identical to the other "transportation tax" imposed by New Jersey, *i.e.*, the Transportation Benefits Tax. The main differences relate to the tax rate and pertinent geographical areas—the Emergency Transportation Tax is applicable to the New York-New Jersey area where there has been a finding of a "critical transportation problem" and the Transportation Benefits Tax applies to the Pennsylvania-New Jersey area where a "severe transportation problem" exists. Significantly, both transportation taxes allow a credit against the taxes for income taxes paid to the other "transportation problem" states, *i.e.*, New York or Pennsylvania, by New Jersey residents. Most importantly, New York and Pennsylvania permit a like credit against their state income taxes for the New Jersey "transportation taxes" paid by their residents. Therefore, due to the reciprocal credit provisions enacted by New York and Pennsylvania, residents from those states who work in New Jersey are not subject to double taxation, but rather pay only the New Jersey "transportation taxes." Likewise, New Jersey residents who work in those states pay

only one tax—the state income taxes of either New York or Pennsylvania. This statutory scheme of reciprocal tax credits, which is identical in both the New York and Pennsylvania state income tax laws as they affect the New Jersey “transportation taxes”, was most recently before the Court in *Pennsylvania v. New Jersey, supra*.

The motion made by New York is indistinguishable from the Pennsylvania motion already denied by this Court. As did Pennsylvania, New York is seeking to file a complaint on its own behalf alleging that it has been harmed by one of the two New Jersey transportation taxes. Not only are the resident credits in the New York and Pennsylvania statutes identical, but also, as noted previously in this brief, the two New Jersey transportation taxes challenged by New York and Pennsylvania are also identical (except for the tax rates and geographical areas of applicability). Moreover, the wording of the New York complaint is parallel to the Pennsylvania complaint—they both allege violations under the Privileges and Immunities and Equal Protection Clauses of the Federal Constitution. This Court rejected these exact same contentions in *Pennsylvania v. New Jersey, supra*:

“The short answer to these contentions is that both clauses protect people, not States.” 44 U.S.L.W. at 4917.

New York is also seeking to file a claim against New Jersey as *parens patriae* on behalf of its citizens, the same as Pennsylvania attempted. This Court disposed of the Pennsylvania contention as follows:

“Pennsylvania’s *parens patriae* suit against New Jersey represents nothing more than a collectivity of private suits against New Jersey for taxes withheld from private parties. No sovereign or quasi-

sovereign interests of Pennsylvania are implicated. Accordingly, Pennsylvania's motion for leave to file suit as *parens patriae* on behalf of its citizens is also denied." 44 U.S.L.W. at 4918.

It is thus apparent that this attempt to invoke the original jurisdiction of the Court is identical to the motion of Pennsylvania denied in *Pennsylvania v. New Jersey*, *supra*, and that it therefore also should be denied.

CONCLUSION

It is respectfully submitted for the foregoing reasons that New York's motion for leave to file an original action challenging the constitutionality of the New Jersey Emergency Transportation Tax Act should be denied.

Respectfully submitted,

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