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# New Hampshire law prohibits nonresident state income tax on residents working remotely for out-of-state employers

## Summary

- *New Hampshire legislation seeks to protect residents who work for out-of-state employers by prohibiting nonresident states from imposing an income tax on services performed within the state.*
- *It is unlikely the legislation will deter states like New York from enforcing the convenience of the employer rule.*
- *The U.S. Supreme Court has twice declined to hear cases concerning the constitutionality of the convenience of the employer rule.*

New Hampshire Governor Chris Sununu signed into law [H.B. 1097](#), which declares that income earned or received by New Hampshire residents for services performed entirely within the state shall not be subject to the personal income tax of any other state.

The law is primarily intended to protect New Hampshire teleworkers from nonresident states that require income tax and withholding regardless of the physical work location if the employee works for an employer within the nonresident state (i.e., convenience of the employer rule).

A controversy arose during the COVID-19 emergency when Massachusetts adopted temporary rules that required Massachusetts employers to continue to withhold Massachusetts income tax for employees working remotely in New Hampshire. ([See EY Tax Alert 2020-1081](#).) The effect of the Massachusetts temporary rule was the imposition of Massachusetts income tax on New Hampshire remote workers who were otherwise not subject to a state personal income tax.

Prior to the September 13, 2021 expiration of the Massachusetts temporary rules, New Hampshire filed a

case with the U.S. Supreme Court contesting the Massachusetts income tax imposed on its remote workers. On June 28, 2021, the U.S. Supreme Court [declined](#) to hear the case. ([See EY Tax Alert 2021-1316.](#))

Although the Massachusetts income tax on the wages of New Hampshire's remote workers is no longer required, several states (and localities) have permanently adopted the convenience of the employer rule (e.g., New York).

### **Ernst & Young LLP insights**

It is doubtful that New Hampshire law will deter states like New York from enforcing the convenience of the employer rule; however, it does present a different set of facts should challenges reach the U.S. Supreme Court. The U.S. Supreme Court has twice declined to hear challenges on the constitutionality of the rule.

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