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Law Professor Plans Appeal of NY Ruling on Remote Work Tax

By Mike Vilensky and Danielle Muoio Dunn 2025-05-20T16:21:56000-04:00

- New York taxes remote workers if employer based in state
- Professor argues he couldn't go to office during pandemic

A New York law professor said he will continue to pursue his legal challenge to the state's taxation of remote workers, keeping alive a case closely monitored by lawmakers in neighboring states who are seeking to weaken or kill the statute.

Edward Zelinsky, a Cardozo Law School professor, plans to appeal a recent ruling by the New York Tax Appeals Tribunal that found the state was right to tax wages he earned while working from his Connecticut home, even when the Covid-19 pandemic prevented him from accessing his New York office.

Lawmakers in New Jersey and Connecticut have encouraged these kinds of legal fights in the hopes that one could rise as high as the US Supreme Court, giving them a shot at overturning or scaling back New York's ability to tax out-of-state workers. Zelinsky's case may offer the best opportunity yet of eventually rising beyond the New York court system, though it will next head to the New York Appellate Division Third Department, an Albany-based intermediate appeals court.

"I'm very confident in my legal position," Zelinsky said in a Monday interview.

New York's "convenience of the employer" rule allows the state to tax the income of nonresidents if their New York-based employer doesn't require them to live elsewhere for the job. The statute costs New Jersey and Connecticut billions in lost income tax revenue, and lawmakers in those states have argued that tax money belongs to them as more people work from home.

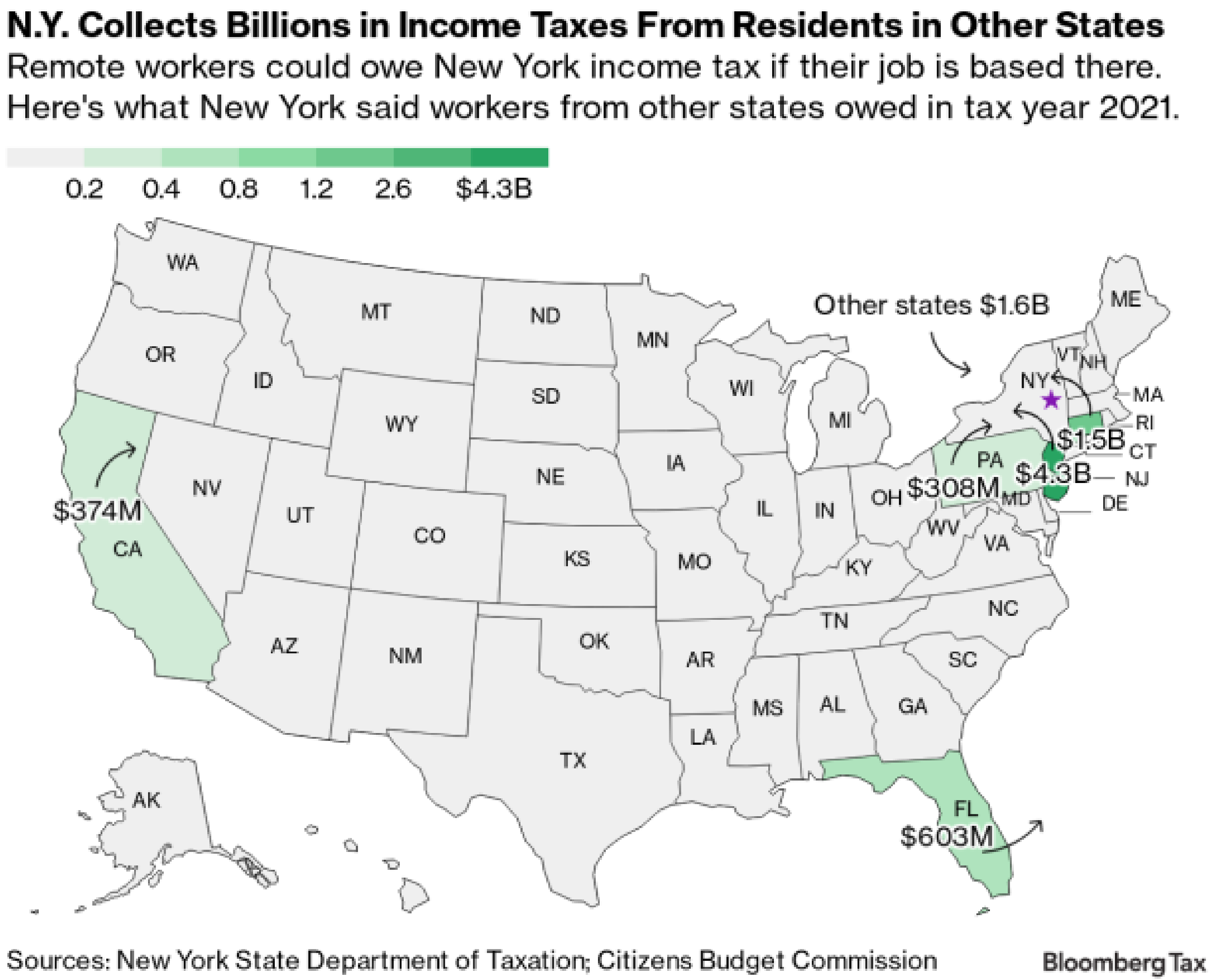
New Jersey created an incentive to encourage residents to sue over New York tax bills they received between 2020 and 2023, offering a credit on taxes they would owe to the state if they successfully earn a refund from New York. Connecticut Gov. Ned Lamont (D) proposed a similar benefit last year but it didn't pass before the close of the legislative session.

While some taxpayers have filed their own suits in recent years, such legal battles are costly and difficult. Tax attorneys have said Zelinsky's case is the farthest along and could eventually set a precedent for other pending suits. The final outcome could also alter how businesses plan their office set-ups.

Zelinsky argued his remote work arrangement during the pandemic was done for Cardozo's necessity because the law school ordered staff not to return to their classrooms. More broadly, he asserted that New York violated the US Constitution's due process and dormant commerce clauses by taxing income he earned while working outside the state.

Zelinsky previously challenged the constitutionality of New York's convenience rule, but New York's high court ruled against him in 2003. Zelinsky has said that decision shouldn't apply anymore because of the rise of telework arrangements since the pandemic.

In upholding New York's right to tax Zelinsky's income, the state Tax Appeals Tribunal ruled the state's convenience rule "boils down to whether the employer established a nexus in another jurisdiction by directing its employee to perform personal services in that out-of-state location for its own necessity."



Timothy Noonan, a partner at Hodgson Russ LLP focused on state and local taxes, said Zelinsky has a good shot at receiving a favorable ruling in the appellate court on the narrow issue of whether his work from Connecticut during the pandemic falls under New York's "necessity" rule—which stipulates that work done outside of New York can't be taxed because the employee was required to perform their duties elsewhere.

"If you have an employer closing the office and forcing employees to work from home—it seems like the dictionary definition of 'employer necessity,'" he said. "I think we're all kind of surprised with what the tribunal held."

Still, that may not force New York to change its rules determining how it taxes remote workers, Noonan said. Rather, the court could determine that New York's interpretation of convenience doesn't apply in instances of a global pandemic when workers are told to remain home, he said.

Noonan said he was less sure the appellate court would side with—or even rule on—Zelinsky's broader constitutional argument.

"That's a larger issue that looms over the whole case," he said.

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