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NY Remote Worker Tax Rule Unconstitutional, Prof Says

Quote by Jennifer Karpchuk in article on NY Remote Worker Tax Rule Unconstitutional, Prof Says

Law360

July 23, 2021

In an article published on July 23, 2021, in Law360, Philadelphia-based Shareholder Jennifer Karpchuk discusses the recent legal challenge by a tax professor and Connecticut resident against New York's tax rule allowing him to claim days worked outside the state as days worked in New York for sourcing purposes.

The article explains that Edward Zelinsky, professor at Yeshiva University's Benjamin N. Cardozo School of Law in Manhattan, argued that New York's so-called convenience of the employer tax rule violates the U.S. Constitution's due process and commerce clauses. The rule says days worked remotely can generally be treated for sourcing purposes as if they were office days.

Karpchuk explains that unlike Massachusetts' rule, New York's policy is permanent and Zelinsky can point to monetary harm from the policy. It's not known whether the Supreme Court declined New Hampshire's case because it wasn't interested in the issues, whether it felt it was a poor vehicle for the issues or whether it had concerns over standing, she said. But if Zelinsky's case works its way through the courts, it could present an opportunity for the justices to review the issue without standing issues or the temporary nature of Massachusetts' policy, said Karpchuk. "While there are only a handful of jurisdictions that employ convenience of the employer rules, they will all certainly be watching to see what happens with this case."

To read the full article, subscribers may [click here](#).