The Honorable Christopher Shays
United States House of Representatives
Washington, DC 20515

Dear Representative Shays:

On behalf of the 362,000 members of the National Taxpayers Union (NTU), I write to offer our strong support for your legislation, the Telecommuter Tax Fairness Act (H.R. 1360). This bill would end New York State’s destructive policy of requiring employees of companies based in New York to pay income tax in that state regardless of where the work was performed – so long as the work could be performed in New York. H.R. 1360 would resolve what is already a major problem for workers telecommuting for employers in New York, and would dispel a potential tax nightmare for the nation’s millions of telecommuters.

At issue is an arcane New York tax department regulation that affects many employees who live in another state and telecommute for New York employers. Under this rule, income from work in another state is taxable by New York unless it is done out of state for the “necessity” of the employer. This rule is unfair to telecommuter employees who are taxed on 100 percent of their incomes by New York and then must pay taxes levied by their home states. In fact, New York’s Court of Appeals ruled that Thomas Huckaby, a computer specialist from Nashville, Tennessee, had to pay New York taxes on 100 percent of his income from a New York employer even though he spent only about 25 percent of his time in New York and the other 75 percent in Tennessee. Unfortunately, the Supreme Court refused to hear an appeal on the Huckaby case in late 2005, making Congressional action to stop this unfair practice all the more imperative.

Although New York implemented new rules in 2006 that would not tax income made by an out-of-state telecommuter working in a “bona fide employer office,” the revenue department’s extremely strict reading of that term would still tax any worker mainly relying on non-“specialized” equipment (such as a desk or a computer in a home office) to complete their tasks. Clearly, federal protection for telecommuters is still needed.

Although no other state besides New York currently applies its laws this way, as telecommuting becomes more common states will have strong fiscal and political temptations to apply their laws in a way that harshly penalizes out-of-state workers. Aside from ending this discriminatory practice and thwarting potential “copycats” from other governments, H.R. 1360 is a good way to boost telecommuting and its attendant benefits of less traffic and possibly less pollution.

NTU and its members work to promote tax policies that are fair and equitable. This commonsense legislation addresses an unfair and inequitable law that is clearly within the purview of the United States Congress to change. We hope to work closely with you toward passage of the Telecommuter Tax Fairness Act.

Sincerely,

Kristina Rasmussen
Senior Government Affairs Manager