For reasons of tax policy, we oppose the New Hampshire estate tax proposed in House Bill 691.

If adopted, the proposed statute would impose an 8 percent tax on all estates over $2 million passing to anyone other than a spouse. But the adoption of an estate tax will not provide a net benefit to the state.

The proposed tax will affect only the very wealthy who live here or who have property here. These individuals usually can choose where they live, and they can decide whether they want to maintain expensive properties in New Hampshire.

Many of the affluent clients we advise have homes in Florida or other warm-weather states (including California, Arizona and South Carolina) that have no estate tax. Our clients with homes in Florida often ask whether they should be New Hampshire residents or Florida residents. When the estate tax is a neutral issue (meaning neither state has such a tax), New Hampshire and Florida are more or less equal. Not surprisingly, our clients with New Hampshire connections tend to remain New Hampshire residents or to retain residential property here because they are not concerned that it will be exposed to taxation when they die.

The other New England states all have an estate tax. Many people choose New Hampshire as their state of residence rather than one of our neighboring states (notably Massachusetts) because of the absence of an estate tax. Often, these are retirees who would not otherwise be here. Accordingly, we are concerned that if we adopt the proposed estate tax, New Hampshire will lose its favorable position as a place that does not penalize its wealthy property owners

when they die. This could cause people who can conveniently do so to move their state of residence to Florida or elsewhere - or cause others not to move to New Hampshire in the first place.

If this should happen, we would lose the New Hampshire interest and dividends tax revenue these individuals would pay if they were New Hampshire residents, as well as other benefits we could derive from their contributions to the economic life of the state.

The National Bureau of Economic Research has conducted a study on how changes in state tax policy affect the residences of wealthy elderly people. The study concluded that high state inheritance and estate taxes have statistically significant negative impacts on the number of federal estate tax returns filed in a state. This is consistent with the notion that elderly people change their state of residence to avoid high state taxes. The results suggested that migration of wealthy individuals in response to a state estate or inheritance tax would cause revenue losses in the state.

New Hampshire has worked hard in recent years to make this state a desirable place to remain after retirement and to attract other retirees. For example, we have done away with the rule against perpetuities (allowing trusts to last indefinitely, if you choose); revised our trust laws to make them the most modem and flexible in the nation; and liberalized the probate process.

An estate tax will undermine those efforts and send the unwanted message that New Hampshire is not fully committed to being the premiere destination in the country for trust and other wealth-related businesses. In addition, the loss of the interest and dividends tax will not be insignificant. New Hampshire also will suffer other losses, since wealthy people will spend less time and money here.

The fiscal note to HB 691 reported that the revenue gain would be in the range of $5 million in the first year and $10 million in the second year. However, it fails to address the decline in revenue from the losses of interest and dividends tax and other benefits to New Hampshire's economy that result from the in-state activities and expenditures of those who choose New Hampshire as their state of residence.

Those wealthy individuals will seek estate planning and income tax advice from attorneys and accountants, who will be obligated to advise that there are more favorable jurisdictions than New Hampshire in which to live and die.

Wealthy people have choices on where they live, and they most likely will vote with their feet by changing their state of residence to a more tax-friendly jurisdiction.

HB 691 is bad tax policy, bad for the New Hampshire economy and, not insignificantly, bad public relations for the state.

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