

Client Alert

January 14, 2014

New Jersey Throwout: Tax Court Amplifies Its No Dual Nexus Decision

By **Craig B. Fields** and **Mitchell A. Newmark**

The New Jersey Tax Court issued a written amplification of its bench decision in Lorillard Licensing Company LLC's appeal that the Division of Taxation may not apply dual nexus standards for Throwout purposes. For a copy of the Tax Court's January 14, 2014 amplification in *Lorillard Licensing Company LLC v. Director, Division of Taxation*, click [here](#).

In 2011, the New Jersey Supreme Court narrowed Throwout to find it Constitutional on its face in *Whirlpool Properties, Inc. v. Director, Division of Taxation*. In so doing, it held that Throwout does not apply when another state may Constitutionally impose a tax on the taxpayer – regardless of the tax decisions by the other state. In its amplification, the Tax Court applied *Whirlpool Properties* and held that, because New Jersey successfully asserted an economic nexus standard for Corporation Business Tax Constitutional subjectivity purposes, in applying Throwout that same standard must also apply for other states' subjectivity.

The State has appealed the Tax Court's bench decision (now amplified).

Please contact Craig Fields or Mitchell Newmark with questions regarding the decision. The companies in both Whirlpool Properties' and Lorillard Licensing's cases were represented by Morrison & Foerster LLP.

Contact:

Craig B. Fields
(212) 468-8193
cfields@mofo.com

Mitchell A. Newmark
(212) 468-8103
mnewmark@mofo.com

About Morrison & Foerster:

We are Morrison & Foerster—a global firm of exceptional credentials. Our clients include some of the largest financial institutions, investment banks, Fortune 100, technology and life science companies. We've been included on *The American Lawyer's* A-List for 10 straight years, and *Fortune* named us one of the "100 Best Companies to Work For." Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger. This is MoFo. Visit us at www.mofo.com.

Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations. Prior results do not guarantee a similar outcome.