

Client Alert

September 11, 2013

New Jersey Tax Court Issues Bench Ruling That Dual Nexus Standards Are Inappropriate In Applying Throwout

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

In response to numerous inquiries for copies of our Transcript of ruling and argument following our August 22, 2013 alert, [click here for a copy of the Transcript](#) of the New Jersey Tax Court's bench ruling that the Division of Taxation may not apply dual nexus standards for Throwout purposes. The Tax Court placed "its findings of fact and conclusions of law on the record in the presence of counsel in open court on August 9, 2013." The Tax Court's findings of fact and conclusions of law are on pages 65 through 76 of the Transcript.

In 2011, the New Jersey Supreme Court narrowed the Throwout rule 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. 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.

Please contact [Craig Fields](#) or [Mitchell Newmark](#) with questions regarding the ruling. For a copy of our August 22, 2013 alert and the *Lorillard Licensing Company LLC v. Director, Division of Taxation* order, [click here](#). The companies in both Whirlpool Properties' and Lorillard Licensing's cases were represented by Morrison & Foerster LLP.

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