

## Client Alert

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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.

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