

**MEMO# 23154**

December 31, 2008

## **New Jersey Law Eliminates "ThrowOut" Rule**

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TO: ADVISER DISTRIBUTOR TAX ISSUES TASK FORCE No. 18-08  
TAX MEMBERS No. 55-08 RE: NEW JERSEY LAW ELIMINATES "THROWOUT" RULE

New Jersey Governor Jon Corzine has signed into law Assembly Bill A-2722 (the "Act") [1], which repeals New Jersey's "throwout rule." New Jersey's corporation business tax ("CBT") allocates income to the state using an allocation formula based on a property, payroll and double-weighted sales fraction. The throwout rule, which was enacted in 2002, excludes from the denominator of the sales fraction receipts that are assigned to but not taxed by another state, possession or territory of the United States or foreign country. [2] The throwout rule can increase CBT taxes for a taxpayer with receipts assigned to a state that does not impose an income tax or where the taxpayer is not subject to tax due to lack of nexus.

The Act also repeals the CBT's place of business requirement, which prohibits taxpayers that do not maintain a regular place of business outside New Jersey from using the CBT's allocation formula. Such taxpayers must allocate 100% of their income to New Jersey.

The Act is effective for privilege periods beginning on or after July 1, 2010.

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### **endnotes**

[1] Go to [http://www.njleg.state.nj.us/2008/Bills/AL08/120\\_.PDF](http://www.njleg.state.nj.us/2008/Bills/AL08/120_.PDF).

[\[2\]](#) See N.J.S.A. § 54: 10A-(6)(B).

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