

MEMO# 16396

July 31, 2003

NEW JERSEY DIVISION OF TAXATION RESPONSE TO INSTITUTE COMMENTS ON PROPOSED REGULATIONS

[16396] July 31, 2003 TO: TAX MEMBERS No. 39-03 ADVISER DISTRIBUTOR TAX ISSUES TASK FORCE No. 12-03 RE: NEW JERSEY DIVISION OF TAXATION RESPONSE TO INSTITUTE COMMENTS ON PROPOSED REGULATIONS The New Jersey Division of Taxation has provided the attached response to the Institute's comments,¹ regarding certain aspects of recently proposed regulations under New Jersey's Corporate Business Tax. The response first addresses the Institute's comment that Example 1 in N.J.A.C. 18:7- 1.6(a) is potentially so overbroad as to encompass the services provided by entities that provide asset management services to regulated investment companies ("RICs") from a location outside of New Jersey ("non-resident RIC service providers"). The response confirms the Division of Taxation's intent to cover non-resident RIC service providers under the proposed regulations and comments that "income derived by asset managers as a result of customers being located in the lucrative economic market fostered by New Jersey should . . . result in a fair tax being due to New Jersey." Second, the response addresses the Institute's assertion that the apportionment provisions of the regulations (particularly the application of the throw-out rule) could result in an unconstitutionally disproportionate amount of a non-resident RIC service provider's income being sourced to New Jersey. The response "disagrees that a non-resident service provider would be required to source a disproportionate amount of receipts to New Jersey" under the proposed regulations. However, the response points out that the New Jersey statute provides for "discretionary adjustment" by the Director of the Division of Taxation and "appropriate relief" if a taxpayer can "establish that the allocation is inequitable." Finally, the response addresses the Institute's comment that non-resident RIC service providers do not have sufficient contacts with New Jersey for the State to establish nexus for tax purposes. The response states that the legislature has "broad discretion" in this area and "chose not to exempt non-resident RIC service providers from the tax." The response concludes that the statute represents a "constitutional exercise of the State's taxing powers." ¹ See, Institute Memoranda to Tax Members No. 34-03 and Advisor Distributor Tax Issues Task Force 8-03, dated June 13, 2003 [16205]. ² We will continue to keep you informed of any additional developments. Catherine Barré Assistant Counsel Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 16396, or call the ICI Library at (202) 326-8304 and request the attachment for memo 16396. Attachment (in .pdf format)

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