

MEMO# 17890

August 11, 2004

INSTITUTE AMICUS BRIEF IN NEW JERSEY TAX CASE

[17890] August 11, 2004 TO: TAX MEMBERS No. 38-04 ADVISER DISTRIBUTOR TAX ISSUES TASK FORCE No. 9-04 RE: INSTITUTE AMICUS BRIEF IN NEW JERSEY TAX CASE The Institute filed the attached brief as amicus curiae in New Jersey litigation involving an attempt by the New Jersey Division of Taxation to tax the income of a nonresident entity providing services outside the State of New Jersey. The New Jersey Tax Court recently held that this attempt at taxation exceeded the State's taxing authority under the United States Constitution.¹ The New Jersey Tax Court's ruling clarified that "physical presence continues to be a requirement of the Commerce Clause."² The Institute's brief was filed in the Superior Court of New Jersey, Appellate Division, where the New Jersey Division of Taxation has appealed the Tax Court's decision. The Institute's brief asserts that application of New Jersey's Corporation Business Tax to taxpayers that have no physical presence in New Jersey is an unconstitutional exercise of the State's taxing authority. Catherine Barré Associate Counsel Attachment (in .pdf format) 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 17890, or call the ICI Library at (202) 326-8304 and request the attachment for memo 17890. 1 Lanco, Inc. v. Dir., Div. of Taxation, 21 N.J. Tax 200 (2003). 2 Id. at 218.

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