

MEMO# 20482

October 12, 2006

New Jersey Supreme Court Affirms Lanco's Holding Imposing State Income Tax Based on "Economic Nexus"

©2006 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [20482] October 12, 2006 TO: ADVISER DISTRIBUTOR TAX ISSUES TASK FORCE No. 10-06 TAX MEMBERS No. 37-06 RE: NEW JERSEY SUPREME COURT AFFIRMS LANCO'S HOLDING IMPOSING STATE INCOME TAX BASED ON "ECONOMIC NEXUS" The New Jersey Supreme Court held today in *Lanco, Inc. v. Director, Division of Taxation*¹ that New Jersey may constitutionally impose an income tax on a corporation that lacks physical presence in the state. In adopting the reasoning of the Appellate Court decision it affirmed², the New Jersey Supreme Court concluded that the physical presence standard announced by the U.S. Supreme Court in *Quill Corp. v. North Dakota*³ is limited to sales and use taxes. Lisa Robinson 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 20482, or call the ICI Library at (202) 326-8304 and request the attachment for memo 20482. 1 N.J. Sup. Ct., No. A-89-05, (October 12, 2006). The Institute submitted a brief to the New Jersey Supreme Court supporting the taxpayer's position as amicus curiae. See Institute Memorandum (19276) to Adviser Distributor Tax Issues Task Force No. 8-05 and Tax Members No. 26-05, dated October 20, 2005. 2 See Institute Memorandum (19125) to Adviser Distributor Tax Issues Task Force No. 7-05 and Tax Members No. 23-05, dated August 29, 2005 for New Jersey appellate decision; and see Institute Memorandum (17890) to Adviser Distributor Tax Issues Task Force No. 9-04 and Tax Members No. 38-04, dated August 11, 2004 for the Institute's brief submitted amicus curiae in the litigation before the Superior Court of New Jersey, Appellate Division. 3 504 U.S. 298 (1992).