

## Income/Franchise:

### **New Jersey Tax Court Holds that Alternative Minimum Assessment is Preempted by P.L. 86-272**

*Case No. 011050-2017*, N.J. Tax Ct. (4/22/21). In an unpublished decision, the New Jersey Tax Court (Court) denied the New Jersey Division of Taxation's (Division) motion for reconsideration of the Court's 2019 holding [see *Case No. 011050-2017*, N.J. Tax Ct. (6/28/19) for details on the Court's earlier ruling in this case], which held that New Jersey's alternative minimum assessment (AMA) – a former state tax that was enacted in 2006 and based on either gross receipts or gross profits and which was subsequently repealed for tax years beginning on or after January 1, 2018 – does *not* apply to certain entities afforded protections under P.L. 86-272 for tax periods after June 30, 2006, because the AMA exclusively applies to "P.L. 86-272 entities" and thus essentially coerces these taxpayers to consent and pay the New Jersey corporation business tax (CBT), which is measured by net income, in violation of the Supremacy Clause. In this most recent ruling, the Court expands on its 2019 ruling "in much greater detail" and continues to note that New Jersey's AMA provisions allowed P.L. 86-272-covered taxpayers to avoid the AMA if they waived their federal protections afforded under P.L. 86-272 and consented to CBT imposition. In this respect, the Court continues to conclude that the AMA served as "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" in enacting P.L. 86-272 and therefore is preempted by the federal law under the Supremacy Clause. The Court additionally explains that "with the AMA displaced by applying the decisional framework of the Supremacy Clause" it never has to reach the issue of whether the AMA is unconstitutional under the dormant Commerce Clause, Due Process Clause or Equal Protection Clause. Please contact us with any questions.

**URL:** <https://www.njcourts.gov/attorneys/assets/opinions/tax/11050-17opn.pdf>

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