

Income/Franchise:

New Jersey Tax Court Holds that Some of Taxpayer's In-State Activity is Protected by P.L. 86-272

Docket No. 015626-2014, N.J. Tax Ct. (5/25/21). In an unpublished opinion, the New Jersey Tax Court (Court) held that, under the presented circumstances, an out-of-state company's conduct of accepting product (*i.e.*, produce) returned to it prior to acceptance by the customer is ancillary to its solicitation of sales and thus protected activity pursuant to P.L. 86-272 for state corporation business tax (CBT) purposes. However, the company's conduct in sending its trucks into New Jersey for the purpose of accepting returns of accepted produce is *not* protected conduct, but because such conduct was "*de minimis*" for the tax years at issue (except for the tax year ending January 2007), the Court held that such conduct was insufficient to warrant imposition of the CBT (except for the tax year ending January 2007). As to the tax year ending January 2007, the Court held that the company's conduct of occasionally sending trucks into New Jersey to obtain produce from a related entity and delivering such produce to its warehouse facility in Pennsylvania, "together with the systematic conduct of sending its trucks for the purpose of picking up produce rejected after delivery," constitutes sufficient contacts to conclude that the company conducted business in New Jersey for CBT purposes. Please contact us with any questions.

URL: <https://njcourts.gov/attorneys/assets/opinions/tax/015626-2014opn2.pdf>

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