

Miscellaneous:

New Jersey Supreme Court Generally Upholds Validity of Jersey City Payroll Tax on Nonresident Employees

Case No. A-3097-18 (Syllabus), N.J. (5/31/22). In a case involving a Jersey City, New Jersey (Jersey City) 1% payroll tax on nonresident employees and whether it violates the US Constitution, the New Jersey Supreme Court (Court) affirmed the judgment of the New Jersey Superior Court, Appellate Division (Appellate Division), “substantially for the reasons expressed” in the Appellate Division’s published opinion from 2021. In 2021, the Appellate Division largely upheld the local payroll tax as a valid exercise of Jersey City’s authority but remanded the case for further consideration of certain “supervisor provisions” imposing the local tax on employees who work outside of Jersey City but who are supervised by someone in Jersey City. Like the Appellate Division, the Court considered whether the “residency exemption” in Jersey City Ordinance 18-133 – which imposes on every Jersey City “employer a tax equal to one percent of the employers’ payroll” for the purpose of funding public education, but which exempts employers from paying the tax for employees who are residents of Jersey City – violates the US Constitution’s Commerce Clause. While upholding the tax’s general constitutionality, the Court essentially agreed with the Appellate Division that the Jersey City payroll tax’s “supervisor provisions” left as enacted without limitations may lead to double taxation and violate the second prong of the *Complete Auto test*, and thus violate the dormant Commerce Clause of the US Constitution. A dissenting opinion follows. Please contact us with any questions.

URL: https://www.njcourts.gov/attorneys/assets/opinions/supreme/a_8_9_10_11_21.pdf

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