To: **New Jersey Law Review Commission**
From: **Arshiya M. Fyazi, Counsel**
Re: *Stanislaus Food Prod. Co. v. Director, Div. of Tax'n;*
      Preemption (N.J.S. 54:10A-5a and 15 U.S.C. §381)
Date: **April 6, 2020**

M E M O R A N D U M

Background

In *Stanislaus Food Prod. Co. v. Director, Div. of Taxation*,[1] the New Jersey Tax Court considered whether the Alternative Minimum Assessment ("AMA")[2] is an obstacle to the accomplishment and execution of the purposes and objectives of the Interstate Income Act of 1959 ("IIA").[3] The Court held that the AMA expressly conflicted with the IIA because it specifically targeted IIA entities.[4] The Court further determined that it constituted conflict preemption because it stands as an obstacle to Congress exempting those same entities from net income taxation.[5] As a result, the Court concluded that based on the Preemption Doctrine, the IIA preempts the AMA. Ultimately, the Court determined that the AMA is preempted by IIA pursuant to the Commerce Clause and Supremacy Clause of the United States Constitution.

In October of 2019, the Commission authorized Staff to engage in additional research and outreach on this subject matter.

Statutory Update

Staff's research began with an examination of N.J.S. 54:10A-5a, at which time Staff confirmed that the Legislature repealed this statute, effective July 31, 2019.[6]

Conclusion

As the Legislature has already addressed the constitutional defect in the statute, by way of repeal, Staff recommends the conclusion of work in this area.

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[1] *Stanislaus Food Products Co. v. Director, Div. of Taxation,* No. 011050-2017, 2019 WL 2720346 (N.J. Tax, June 28, 2019).
[2] N.J.S. 54:10A-5A (2002).
[3] P.L.86-272, 15 U.S.C. §381 (1959).
[4] *Id.* at *6. Express preemption occurs when Congress explicitly indicates through statutory language what type of state law the enactment is attempting to preempt.
[5] *Id.*
[6] N.J.S. 54:10A-5, repealed by L.2018, c. 48, § 32.