



## Legal Alert: Maryland Court of Appeals: Out-of-State Delaware Holding Companies Licensing Patents to Parent Company Doing Business in Maryland Subject to Maryland Tax

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Today, the Maryland Court of Appeals held that Maryland may tax out-of-state Delaware holding companies that license patents to their parent company, which was doing business in Maryland. *Gore Enterprise Holdings, Inc. v. Comptroller of the Treasury* and *Future Value, Inc. v. Comptroller of the Treasury*. The ramifications of this decision are significant because it calls into question whether a corporation must file a Maryland tax return if it engages in intercompany transactions with an in-state related parent company and also because it conflates the unitary business principle with the economic substance/business purpose doctrine.

Maryland's high court determined that the Maryland Tax Court had applied the correct legal standard: whether the Delaware holding companies had "no economic substance as separate business entities." The Maryland Tax Court had held that the holding companies were dependent upon their parent company because of a dependence on the parent company for their income, a circular flow of cash and the "general absence of substantive activity from either [holding company] that was in any meaningful way separate from Gore." Importantly, the Court of Appeals dismissed as "window dressing" the holding companies' acquisitions of patents from third parties and the license fees paid from third parties. Sutherland provided counsel to Gore in this matter. We will provide further analysis and commentary about this decision.

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