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Interstate Commerce, Use Tax, and Aircraft in Maryland: From *W.R. Grace* To *Complete Auto*

INTRODUCTION

THIS ARTICLE WILL ANALYZE THE CASE *W. R. Grace & Co. v. Comptroller of the Treasury* and argue that it should not have much, if any, persuasive value in a Commerce Clause analysis of aircraft taxation.¹ *Grace* held that an aircraft hangared in Maryland was immune from taxation because it remained in the stream of interstate commerce.² *Grace* has never been overruled in Maryland – and, in fact, the Court of Special Appeals cited the case as good law in 1987³ – despite *Complete Auto Transit, Inc. v. Brady*,⁴ which undermines (and effectively neutralizes) the legal premise of *Grace*. The article will conclude by analyzing Maryland’s regulatory scheme, which has made it easier for aircraft owners to avoid taxation,⁵ despite *Complete Auto* empowering the State to more aggressively tax aircraft use.⁶

I. LEGAL BACKGROUND

A. The Commerce Clause & Sales/Use Tax

The Commerce Clause of the United States Constitution grants Congress the power to “regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”⁷ “Though phrased as a grant of regulatory power to Congress, the [Commerce] Clause has long been understood to have a ‘negative’

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1. *W. R. Grace & Co. v. Comptroller of the Treasury*, 255 Md. 550 (1969).
2. *Id.* at 559.
3. *Chesapeake & Potomac Tel. Co. v. Comptroller of the Treasury*, 72 Md. App. 293, 304 (1987), *aff’d sub nom.*, 317 Md. 3 (1989) (holding that telephone directories are not exempt from in-transit interstate commerce taxation or from regulatory use tax).
4. *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 288–89 (1977).
5. *Id.*
6. See generally MD. CODE, TAX–GEN. § 11-208(c)(1) (2012); MD. CODE REGS. § 03.06.01.26(A) (2014).
7. U.S. CONST. art. I, § 8, cl. 3.

aspect that denies the States the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce.”⁸ More specifically, the “negative or dormant implication of the Commerce Clause prohibits state taxation [that] ‘imped[es] free private trade in the national marketplace[.]’”⁹ In other words, “[t]he Commerce Clause balance tips against [a state] tax . . . when it unfairly burdens commerce by exacting more than a just share from the interstate activity.”¹⁰

One “common example of an intrastate burden for which a state may impose a . . . tax is a sales tax,”¹¹ which is “imposed on persons who purchase goods in-state.”¹² Use tax, on the other hand, is “imposed on persons who purchase goods out-of-state where those goods were not subject to a sales tax[.]”¹³ Thus, the taxes are complementary: “even though [they] are differen[t] in substance, they both tax, essentially, the use and enjoyment of personal property and operate to balance the respective burdens on intrastate and interstate commerce[.]”¹⁴ Currently, § 11-102(a) of the Maryland Code Tax-General Article provides that, unless an exemption applies, “a tax is imposed on . . . (1) a retail sale in the State; and . . . (2) a use, in the State, of tangible personal property or a taxable service.”¹⁵

B. The Grace Case: The Maryland Court of Appeals’ View

In *W. R. Grace & Co. v. Comptroller of the Treasury*, the Maryland Court of Appeals examined when a tax on aircraft offends the Commerce Clause.¹⁶ Grace, a Connecticut corporation with a division in Maryland, purchased two airplanes which were used “regularly and exclusively for the transportation of passengers and property, primarily executives and customers of Grace, across state lines and national boundaries to various Grace plants throughout the North American

8. *Or. Waste Sys., Inc. v. Dep’t of Env’tl. Quality*, 511 U.S. 93, 98 (1994) (finding that the dormant Commerce Clause doctrine invalidated a higher surcharge on solid wastes from other states).

9. *Gen. Motors Corp. v. Tracy*, 519 U.S. 278, 287 (1997) (emphasis added) (citations omitted) (quoting *Reeves, Inc. v. Stake*, 447 U.S. 429, 437 (1980) (finding that local exemptions to sales and use taxes are not unconstitutional)).

10. *Dep’t of Revenue v. Ass’n of Wash. Stevedoring Cos.*, 435 U.S. 734, 748 (1978) (holding that Washington’s tax on stevedoring activities does not violate the Commerce Clause, as all interstate commerce activities were within the State).

11. *Frey v. Comptroller of the Treasury*, 422 Md. 111, 151 (2011) (finding that Maryland’s Special Nonresident Tax does not violate the dormant Commerce Clause doctrine because the tax satisfies the compensatory tax doctrine).

12. *Id.* at 162.

13. *Id.* (emphasis added). See also *Foss NIRSystems, Inc. v. Comptroller of the Treasury*, 151 Md. App. 44, 54 (2003) (“Generally, the use tax only applies to transactions subject to the sales tax but on which no tax has been paid.”).

14. *Frey*, 422 Md. at 160.

15. MD. CODE, TAX-GEN. § 11-102 (2012). The sales and use tax rate in Maryland is currently 6% of the article’s purchase price. See MD. CODE., TAX-GEN. § 11-104 (2012).

16. 255 Md. 550, 554, 558 (1969).

continent,” including the Maryland plant.¹⁷ Both airplanes were purchased outside of Maryland, flown immediately post-purchase to other states, and eventually the planes were hangared at Friendship Airport in Maryland for approximately ten days per month between flights.¹⁸

The Maryland Comptroller assessed Grace a use tax on the airplanes for “the privilege of using, storing, or consuming the [airplanes] within the State,”¹⁹ which was first affirmed by the Maryland Tax Court²⁰ and subsequently by the Circuit Court for Baltimore City.²¹ On appeal to the Maryland Court of Appeals, Grace argued, *inter alia*, that “the two airplanes were used exclusively as instruments of interstate commerce and the privilege of such use is not subject to local taxation.”²²

To determine whether the taxation of Grace’s airplanes ran afoul of the Commerce Clause, the *Grace* Court framed the test as whether “the article to be taxed is employed” in a “local activity” that is “separate” from its movement in interstate commerce and sufficient to constitute a “taxable moment.”²³ “This ‘taxable moment’ . . . must be a clearly distinguishable termination of the interstate movement and a separate local activity prior to the rededication of the property to interstate commerce.”²⁴ This test applied the so-called “*Spector* rule,” named after *Spector Motor Serv. v. O’Connor*.²⁵ *Spector*, and other then-valid precedents, interpreted the Commerce Clause as immunizing an article from state taxation so long as it remained in the stream of interstate commerce.²⁶

In *Grace*, the Court of Appeals held that there was no taxable moment and reversed the tax assessment:

The Comptroller urged upon us that because the aircraft were based at Friendship [Airport], they were ‘stored’ in Maryland and were, therefore, subject to state taxation. In our opinion, however, the airplanes are not

17. *Id.* at 552.

18. *Id.* at 551–53 (stating that Grace used the aircraft for business approximately twenty days per month and the aircraft remained in Friendship Airport when not in use).

19. *Id.* at 559. The tax imposed on Grace totaled \$33,481.60 for the period of June 14, 1961 to March 8, 1966. *Id.* at 552.

20. *Id.* at 551.

21. *Id.*

22. *W. R. Grace & Co. v. Comptroller of the Treasury*, 255 Md. 550, 556 (1969).

23. *Id.* at 559.

24. *Id.* at 561.

25. 340 U.S. 602 (1951).

26. See *KSS Transp. Corp. v. Baldwin*, 9 N.J. Tax 273, 282 (1987) (stating that the *Spector* rule “assumes that the aircraft, while an instrumentality of interstate commerce, is not taxable unless a ‘taxable moment’ in which the aircraft is not in interstate commerce can be identified”), *aff’d sub nom.*, 11 N.J. Tax 89 (1989), *cert denied*, 118 N.J. 184 (1989). See also R. Douglas Harmon, Note, *Judicial Review Under Complete Auto Transit: When Is a State Tax on Energy-Producing Resources ‘Fairly Related’?*, 1982 DUKE L.J. 682, 686 n.32 (1982) (instructing that the traditional doctrine was most clearly articulated in *Spector*, which “declared unconstitutional a state tax on the ‘privilege of doing business’ within the state by a company engaged exclusively in interstate commerce”).

"stored" at Friendship Airport. "Storage" connotes the removal of the object from service. The evidence in the present case indicates that the airplanes are in constant service and are used whenever the business of Grace requires that use. All physical equipment used in interstate commerce must, of necessity, be temporarily out of such use from time to time, if for no other reason than to be refueled, repaired and maintained. The aircraft of commercial airlines are regularly placed in hangars at Friendship Airport and, indeed, are "based" in Maryland, yet the Comptroller has conceded that these aircraft have not been and are not subject to the Maryland use tax. Again, tractors and trailers of interstate traders are "based" at Maryland trucking terminals but have not been subjected to the use tax. The lower court concluded that a "taxable moment," or separable local activity, existed in the present case apparently because of the testimony of one witness that the airplanes did not fly for approximately 10 days a month. This testimony, however, was an overall "estimate"; the logs of the two airplanes demonstrate that the days on which no flights occurred were rather evenly distributed throughout each month and that there was no fixed or regularly recurring 10 day period in each month. The mere cessation of flight and lapse of time between the flights of aircraft does not, in itself, indicate a withdrawal of the aircraft from interstate commerce. It is apparent that airplanes cannot be constantly in motion but must make stopovers from time to time. In order to sustain a local use tax, the interstate event or 'taxable moment' is not merely one of a series of such stopovers. . . . In summary, it is our opinion that the two airplanes did not engage in any local activity which can be realistically separated from their use in interstate commerce.²⁷

C. A Fall from Grace

Although one tribunal stated that *Grace* was "correctly decided on its facts,"²⁸ *Grace* is, undoubtedly, a problematic case. First, as a matter of common sense, it is dubious that the airplanes' hangarage for approximately ten days per month was insufficient to remove the airplanes from the stream of commerce.²⁹

Second, "it would appear that the court held that both [airplanes] became instrumentalities of interstate commerce prior to their arrival in the taxing state"

27. *W. R. Grace & Co.*, 255 Md. at 564-66.

28. *In re Iowa Beef Processors, Inc.*, No. 78-30-6B-A, 1981 WL 88974, at *6 (Iowa Dept. Rev. Apr. 29, 1981).

29. See *Inter-State Nurseries, Inc. v. Iowa Dep't of Revenue*, 164 N.W.2d 858, 866 (Iowa 1969) (stating that when personal property is purchased out of state and delivered in-state to the owner, "movement within the channels of interstate commerce end[s]. . . and the product [comes] to rest in [the] state," thus subjecting the owner to a use tax).

merely because “[n]either airplane was [initially] delivered in Maryland”³⁰ The use of this factor is problematic in a Commerce Clause analysis because it

*gives the purchaser control over whether it is subject to tax liability. If the aircraft is brought directly to its home base state, the purchaser is subject to a use tax. If the aircraft is used to transport passengers or property in interstate commerce in the few days preceding its passage to its home base state, the purchaser is not subject to use tax in its home base state and may never be subject to a sales or use tax.*³¹

Third,

Following W.R. Grace, a number of aircraft owners [unsuccessfully] argued that the Commerce Clause prohibited the State from imposing use tax, even where the aircraft was based in the State (a “resident aircraft”).

*However, in all of those cases, the courts either disagreed with the Maryland Court or were able to find that a “taxable moment” had occurred which removed the aircraft from the protection of the Commerce Clause.*³²

In sum, there was “a fall from *Grace*” among the jurisprudence.³³

D. The Complete Auto Case: The Supreme Court Charts a New Course

Eight years after *Grace*, the Supreme Court decided *Complete Auto Transit, Inc. v. Brady*,³⁴ “[t]he seminal case regarding the issue of validity of a state use tax vis-a-vis the commerce clause”³⁵ In *Complete Auto*, a Mississippi tax on the “privilege” of doing business in the state was assessed against Complete Auto and affirmed by a local court.³⁶ On appeal to the United States Supreme Court, Complete Auto’s

30. *Sundstrand Corp. v. Dep’t of Revenue*, 34 Ill. App. 3d 694, 698 (1975). See also *In re Woods Corp.*, 1975 OK 19, 23 (1975) (“The court apparently held the aircraft became instrumentalities of interstate commerce prior to arrival in the taxing state.”). Although the *Grace* Court did not explicitly make that point, “*Grace* does mention the fact that the planes had made other interstate journeys on their owner’s business before landing for the first time at Friendship.” *King v. L & L Marine Serv., Inc.*, 647 S.W.2d 524, 530 (Mo. 1983) (Blackmar, J., dissenting).

31. *KSS Transp. Corp.*, 9 N.J. Tax at 282.

32. Philip E. Crowther, *Taxation of Fractional Programs: “Flying over Uncharted Waters”*, 67 J. AIR L. & COM. 241, 295, 297 (2002); see *First Nat’l City Bank v. Taxation Div. Dir.*, 5 N.J. Tax 310, 319 (1983) (“[T]he case law of various other jurisdictions, where the application of a use tax to airplanes was discussed, shows no difficulty in finding a taxable moment between the point in time when the aircraft were delivered to the taxpayer and that point in time when the taxpayer commenced using the airplanes in interstate commerce.”).

33. *Sundstrand Corp.*, 34 Ill. App. 3d at 699.

34. 430 U.S. 274 (1977).

35. *Exxon Corp. v. Wyo. State Bd. of Equalization*, 783 P.2d 685, 689 (Wyo. 1989).

36. *Complete Auto Transit, Inc.*, 430 U.S. at 274–75.

“attack [wa]s based solely on decisions of [the Supreme] Court holding that a tax on the ‘privilege’ of engaging in an activity in the State may not be applied to an activity that is part of interstate commerce,” i.e., the *Spector* rule.³⁷

In invalidating the *Spector* rule, the Court stated that the rule “has no relationship to economic realities,”³⁸ and observed that other Supreme Court decisions had “rejected the proposition that interstate commerce is immune from state taxation.”³⁹ Rather, a tax will survive a Commerce Clause challenge “when the tax [1] is applied to an activity with a substantial nexus with the taxing State, [2] is fairly apportioned, [3] does not discriminate against interstate commerce, and [4] is fairly related to the services provided by the State.”⁴⁰

The *Complete Auto* test represents the final stanza of the Supreme Court’s evolution on the taxation of interstate commerce:

*Originally, the commerce clause prohibited state taxation of interstate commerce; then the clause was construed to permit some taxation, but only if the instrumentality of interstate commerce had a “taxable moment” in the taxing state; at present, to determine the propriety of a tax on interstate commerce, courts apply the four-prong test enunciated in Complete Auto[.]*⁴¹

The *Complete Auto* test focuses on the “nexus” between the taxed entity and the taxing state, i.e., a “definitive link’ . . . between the state and the person or transaction it seeks to tax.”⁴² Although “[t]he meaning of the term ‘substantial nexus’ is unclear,”⁴³ and “[c]ourts have developed different analyses for determining whether a taxpayer has a substantial nexus with the State to permit it to be taxed,”⁴⁴ courts have nonetheless recognized that such a test is a “more expansive approach” and provides states “with greater authority to tax transactions in interstate commerce.”⁴⁵ Simply put, the *Complete Auto* test “is arguably easier to meet than the ‘taxable moment’ doctrine,”⁴⁶ giving states a greater ability to assess use tax on an aircraft that spends time within its borders.

37. *Id.* at 278.

38. *Id.* at 279.

39. *Id.* at 288 (“It is a truism that the mere act of carrying on business in interstate commerce does not exempt a corporation from state taxation.” (citing *Colonial Pipeline Co. v. Traigle*, 421 U.S. 100, 108 (1975))).

40. *Id.* at 279 (emphasis added).

41. *Square D Co. v. Johnson*, 233 Ill. App. 3d 1070, 1076 n.4 (1992).

42. *AT&T Commc’ns of Md., Inc. v. Comptroller of the Treasury*, 405 Md. 83, 94 (2008).

43. Crowther, *supra* note 32, at 297.

44. *In re Wash. Mut., Inc.*, 485 B.R. 510, 517 (Bankr. D. Del. 2012).

45. John P. Barrie, *Missouri – When Should Prospective-Only Effect be Given?*, J. MULTISTATE TAX’N, Sept.–Oct. 1991, at 188.

46. *Square D Co.*, 233 Ill. App. 3d at 1076 n.4.

In fact, the prevailing view is that the taxable moment test is now extinct: “In recent Commerce Clause cases the Supreme Court has consistently applied the *Complete Auto* test without considering the presence of a taxable moment in order to determine whether a state may apply a tax on interstate commerce.”⁴⁷ Thus, the *Complete Auto* test “has replaced the taxable moment test for purposes of constitutional analysis.”⁴⁸

II. MARYLAND CASE LAW AFTER COMPLETE AUTO: IN NEED OF A TUNE-UP

Although the Maryland Court of Appeals has identified *Complete Auto* as the proper metric in a Commerce Clause analysis,⁴⁹ *Grace* has never been overruled in Maryland.⁵⁰ In fact, even after *Complete Auto*, the Maryland Court of Special Appeals cited *Grace* for the proposition that a “State is not empowered to tax property ‘in transit in interstate commerce,’” and as part of a discussion endorsing the taxable moment test.⁵¹

While *Grace* may technically remain good law in Maryland until the Court of Appeals has the opportunity to revisit it, the case should no longer have much – if any – persuasive value in a Commerce Clause analysis of aircraft taxation. As one commentator observed, “*Complete Auto Transit* effectively eliminated the argument that the Commerce Clause protects a ‘resident aircraft’ from tax[.]”⁵²

III. MARYLAND’S REGULATORY SCHEME: THE NEW FRONTIER

To some extent, however, the spirit of *Spector* and *Grace* lives on. Today, Maryland exempts from sales and use tax aircraft that are used “principally” in interstate commerce.⁵³ The regulation states:

47. *Archer Daniels Midland Co. v. Dep’t of Revenue*, 170 Ill. App. 3d 1014, 1021 (1988).

48. *Kellogg Co. v. Dep’t of Treasury*, 204 Mich. App. 489, 494 (1994).

49. See, e.g., *AT&T Commc’ns of Md., Inc. v. Comptroller of the Treasury*, 405 Md. 83, 93–94 (2008) (noting that “[t]he Supreme Court established a four-prong test for assessing the validity, under the Commerce Clause, of a state tax imposed on a transaction where an out-of-state entity is one of the essential parties” in *Complete Auto*).

50. See, e.g., *W. R. Grace & Co. v. Comptroller of the Treasury*, 255 Md. 550, 566–68 (1969) (holding that two airplanes owned by a Connecticut corporation, but based at a Maryland airfield, were not subject to a use tax because they transported passengers and property across state lines and foreign commerce).

51. *Chesapeake & Potomac Tel. Co. v. Comptroller of the Treasury*, 72 Md. App. 293, 304 (1987), (identifying the *Complete Auto* test as the proper analytic framework, but affirming the result of the intermediary appellate court without criticizing its use of the taxable moment test), *aff’d sub nom.*, 317 Md. 3 (1989).

52. Crowther, *supra* note 32, at 297.

53. MD. CODE, TAX-GEN. § 11-208(C)(1) (2012); MD CODE REGS. § 03.06.01.26(A) (2014). See MD. CODE TAX-GEN. § 11-214(2) (allowing a *de minimis* use exemption, which applies only if the aircraft is in the State less than 30 days).

INTERSTATE COMMERCE, USE TAX, AND AIRCRAFT IN MARYLAND

An aircraft . . . is used principally in interstate or foreign commerce if during the first year of its use, or if the use does not extend to 1 year, then during the lesser period of use, any one of the following tests is met:

(1) More than 50 percent of the total mileage traveled is mileage between a pickup or delivery point in one state and a pickup or delivery point in another state or the District of Columbia (uninterrupted by intervening pickups or deliveries), between a pickup or delivery point within the United States and a pickup or delivery point outside the United States, or between pickup and delivery points wholly outside the United States. The mileage traveled directly between one pickup or delivery point to another pickup or delivery point within the same state or the District of Columbia is not qualifying mileage.

(2) More than 50 percent of all trips between a pickup or delivery point and the next pickup or delivery point, are between a pickup or delivery point in one state and a pickup or delivery point in another state or the District of Columbia, between a pickup or delivery point within the United States and a pickup or delivery point outside the United States, or between pickup and delivery points wholly outside the United States. For the purposes of this test, each segment of a fixed or variable route between one pickup or delivery point and the next pickup or delivery point is a distinct trip, and trips wholly within one state or the District of Columbia are not qualifying trips.

(3) More than 50 percent of the total days of use are days during which there has occurred or is occurring a trip between a pickup or delivery point in one state and a pickup or delivery point in another state including the District of Columbia, between a pickup or delivery point within the United States and pickup or delivery point outside the United States, or between pickup and delivery points wholly outside the United States. A day in which trips are made or are being made solely between pickup and delivery points within any one state or the District of Columbia is not a qualifying day.⁵⁴

In sum, “the exemption generally applies if, during the first year of use, more than 50% of the aircraft’s total mileage, trips, or days of use concern travel beginning and ending in different states, or between the U.S. and another country or wholly outside the U.S.”⁵⁵

54. MD. CODE REGS. § 03.06.01.26(B).

55. Raymond C. Speciale & Ronald D. Golden, *Sales and Tax Planning for Aircraft and Aircraft-Related Transactions: Checklist Discipline*, J. MULTISTATE TAX’N, May 2009, at 23, 31.

Effectively, Maryland's regulatory scheme exempts from taxation aircraft that are used "principally" in interstate commerce regardless of whether there is a "substantial nexus" between the aircraft and Maryland, also known as a "taxable moment."⁵⁶ This makes it, in application, a more lenient version of the old *Spector* rule, which required aircraft to remain in interstate commerce at all times,⁵⁷ and far more forgiving than the current *Complete Auto* test.⁵⁸ Consider, for instance, the following hypothetical: a plane sits unused in a Maryland hangar from January 1 through December 30. On December 31, the plane flies from Maryland to New York. Although there would clearly be both a "substantial nexus"⁵⁹ and a "taxable moment,"⁶⁰ under Maryland's regulatory scheme the aircraft would have been used "principally" in interstate commerce for the taxable year, and thus would be immune from use tax.⁶¹

CONCLUSION

Although some have labeled Maryland as a greedy taxpayer,⁶² Maryland's aircraft taxation policy is pro-business and taxpayer-friendly. The State has chosen not to tax aircraft in certain circumstances where it is nevertheless constitutionally empowered to do so.⁶³ When dealing with aircraft taxation for their clients,

56. MD. CODE, TAX-GEN. § 11-208(C)(1).

57. *Spector Motor Serv., Inc. v. O'Connor*, 340 U.S. 602, 609 (1951).

58. *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).

59. *Id.* Notably, under a modern Commerce Clause analysis, it is possible for a "substantial nexus" to exist between aircraft and state even where more than 50% of an aircraft's total mileage, trips, or days of use concerned travel interstate travel. For example, in *Dir. of Revenue v. Superior Aircraft Leasing Co., Inc.*, the Missouri Supreme Court affirmed the imposition of use tax on a non-resident aircraft, which was used almost 18% of the time in Missouri. 734 S.W.2d 504, 507 (Mo. 1987). The court stated:

Here, even though the plane was hangared and repairs, if needed, were made in Dayton, Ohio, there were contacts with Missouri sufficient to create a substantial nexus. During the period April 2, 1980, through September 1981, 17.7 percent of the total flight hours were logged on flights to Missouri solely for Superior Aircraft's business. All of these flights, with the exception of one for inspecting a construction site, were recorded as being for board meetings of Superior Aircraft. The time spent in Missouri for each of those trips ranged from several days to approximately a week.

Id. See also *Frank W. Whitcomb Constr. Corp. v. Comm'r of Taxes*, 144 Vt. 466, 467–68 (1984) (using an aircraft 17% of the time in Vermont justified imposition of a use tax).

60. *KSS Transp. Corp. v. Baldwin*, 9 N.J. Tax 273, 282 (1987), *aff'd sub nom.*, 11 N.J. Tax 89 (1989), *cert denied*, 118 N.J. 184 (1989). In *Severn Marine, Inc. v. Comptroller of the Treasury*, the tax court held—under the *Grace* standard—that even if a "vessel had not entered into the stream of interstate commerce prior to its coming to Maryland. . . . evidence of its nine month stay in [Maryland] indicates its removal from that stream and renders it subject to Maryland's use tax." No.41, 1976 WL 1440, 1440 (Md. T.C. Dec. 1, 1976).

61. MD. CODE REGS. § 03.06.01.26(A) (2014).

62. See, e.g., Sindhu Madhusudan, *Maryland Among Least Tax-Friendly States for Businesses*, CITYBIZLIST (Oct. 16, 2013), <http://baltimore.citybizlist.com/article/maryland-among-least-tax-friendly-states-business>; *Tax Friendly States 2015*, MONEY-ZINE (Apr. 4, 2015), <http://www.money-zine.com/financial-planning/tax-shelter/tax-friendly-states>.

63. See *supra* Parts I–III.

attorneys and tax professionals should hew to the statutory scheme;⁶⁴ not only is it the current law, but it is also friendlier to taxpayers than *Grace*, which, in light of *Complete Auto*, cannot be considered a reliable authority.

64. See *supra* Part III.