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Lessons from the Maryland Tax Court: Is the Fair Relation Test Having Its Moment?

August 28, 2026

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The U.S. Supreme Court's seminal decision in *Complete Auto Transit* provides that a state tax satisfies the requirements of the Dormant Commerce Clause if the tax:

1. Is applied to an activity with substantial nexus to 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.[1]

The first three prongs have been litigated extensively, and courts have provided substantial, detailed analysis of their application. But the fourth prong? Courts have set the bar so low that it has long seemed like a foregone conclusion that any tax will be deemed fairly related to the services provided by the state.

The fair-relation inquiry asks whether the "measure of the tax [is] reasonably related to the extent of the contact, since it is the activities or presence of the taxpayer in the State that may properly be made to bear a 'just share of state tax burden.'"[2] Thus, the tax must be "'tied to earnings which the State ... has made possible'" such that the tax is in "'proper

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proportion' to [the taxpayer's] activities within the State and, therefore, to [its] 'consequent enjoyment of the opportunities and protections which the State has afforded' in connection with those activities."[3] A taxpayer does not even need to directly benefit from the services that a state provides from collecting the tax; the "advantages conferred by the State's maintenance of a civilized society[] are justifications enough for the imposition of the tax."[4]

The Maryland Tax Court Bucks the Trend

The Maryland Tax Court's recent decisions in *Apple Inc. v. Comptroller of Maryland[5]* (*Apple*) and *Google LLC v. Comptroller of Maryland*,[6] (*Google*) took seriously the taxpayers' arguments that, among other issues, Maryland's Digital Advertising Gross Revenues Tax (the Digital Ad Tax) was not fairly related to the services provided by Maryland. The court ruled for the taxpayers on the fair-relation prong for two related, but distinct, reasons.

Apple argued that the Digital Ad Tax was not fairly related to Maryland's services because the tax rate changes due to fluctuations in global revenues and is not based on the company's revenues in Maryland. Maryland countered that the Digital Ad Tax applies equally to in-state interests that meet Maryland's global revenue and Maryland revenue thresholds, but the court emphasized that "[i]t is not happenstance" that Maryland has no companies that meet these thresholds. Thus, the court held that the economic reality of the Digital Ad Tax is that in its everyday operation it discriminates against global companies engaged in interstate commerce to the advantage of Maryland tax coffers. Since global revenues have no relationship to in-state services, the court concluded in *Apple* that the Digital Ad Tax violated the fair-relation prong.

In *Google*, Google LLC argued that the Digital Ad Tax was not fairly related to Maryland's services because Maryland had designated the tax to fund local in-state educational activities rather than funneling the revenues into the state's general fund. Thus, Google argued, a taxpayer with large global revenues from out-of-state activities pays more than one without such global revenues, but the taxpayer does not benefit from the funding. The court in *Google* again concluded that the economic reality of the Digital Ad Tax's everyday operation is to discriminate against more globally-robust companies, in this case to the advantage of Maryland education funding. Thus, the court held that Google's global revenues have no relationship to state services, and the Digital Ad Tax violated the fair-relation prong.

In both cases, the court distilled the point to the same conclusion: the Digital Ad Tax is not fairly related to Maryland's services because the payors do not receive any extra benefit on account of extra dollars paid that are attributable to higher global revenues. This is notable because the court did not require the taxpayers to show that Maryland failed to provide services or the advantages of a civilized society. Rather, the court merely asked what *additional* services the state provides for those additional tax dollars generated by the global revenue tiers.

Lessons for Taxpayers

While these decisions are both subject to change on appeal, the Maryland Tax Court's analysis offers potential avenues for taxpayers to challenge taxes based on the fair-relation prong of the *Complete Auto* test.

1. Economic reality matters more than facial neutrality.

Maryland's principal fair-relation argument in *Apple* was that the law applied equally to any business that met the same thresholds. The Maryland Tax Court looked instead at the statute's "everyday operation," observing that Maryland only had "possibly one" company meeting the thresholds, and concluded that the burden fell on globally robust interstate companies. That method echoes the Supreme Court's instruction in *Jefferson Lines* to consider a tax's "practical effect."[7] It also fits *Commonwealth Edison*'s focus on the extent of the taxpayer's actual contact, not simply the words used in the statute.[8] A state cannot necessarily rebut a fair-relation challenge by pointing to a hypothetical in-state taxpayer if the tax's real-world structure makes that hypothetical impractical or remote.

2. Global metrics signal vulnerability.

The Digital Ad Tax at issue in *Apple* and *Google* uses a tax base of annual gross revenues derived from digital advertising services in Maryland, but pairs this with a graduated rate structure based on global annual gross revenues.[9] Courts have historically upheld the imposition of taxes in the face of out-of-state activities (for instance, the Supreme Court in *Wisconsin v. J.C. Penney* upheld a tax on the privilege of declaring and receiving dividends because the incidence of the tax and its measure is tied to earnings made possible by the state).[10] Thus, the mere fact that a tax is contingent on events that occur outside of a state does not destroy the nexus between the tax and the in-state transactions that are taxed. Nonetheless, the *Apple* and *Google* decisions suggest that taxpayers should carefully consider whether a tax rate that is tied to out-of-state transactions lacks the requisite nexus to the taxed in-state activities.

3. Proportionality is the through line.

The fair-relation test does not require states to price out every police patrol or public road that benefits a taxpayer and it is unlikely that any court will interpret this prong to require a direct quid pro quo. But fair relation does require a reasonable relationship between the measure of a tax and the taxpayer's state contact. Receipts are often an appropriate proxy for the value of an activity conducted in a state, but that does not hold true when an unrelated global variable comes into play.

Two companies with identical Maryland digital-advertising revenue could owe materially different amounts solely because one has more revenue in India. This gap shows a lack of proportionality rather than a permissible charge for additional public benefits. As *Apple* demonstrated, this analysis takes the fair-relation inquiry from an abstract musing on the benefits of civilized society and converts it into a concrete, quantitative analysis.

4. Earmarks are an opportunity.

Google's fair-relation argument successfully focused on Maryland's decision to earmark its revenues from the Digital Ad Tax for the Blueprint for Maryland's Future Fund rather than the state's general fund. The Maryland Tax Court's reasoning should not be read to mean that a tax fails whenever its proceeds are earmarked for a specific public program, but taxpayers should consider whether a legislature is relying on the public importance of a program to supply the relationship between the measure of a tax and a taxpayer's in-state activities. In *Google*, the spending destination could not transform global revenue into a measure of Maryland's services.

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The Maryland Comptroller has indicated that the State will continue defending the Digital Ad Tax, and further appellate proceedings are expected. In the meantime, the Maryland Tax Court's analysis provides taxpayers facing taxes with global-revenue triggers a framework for mounting fair-relation challenges, and could breathe new life into this prong of the *Complete Auto* test.

[1] 430 U.S. 274 (1977)

[2] *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 626 (quoting *Western Live Stock v. Bureau of Revenue*, 303 U. S. 250, 254 (1938)).

[3] *Id.* (quoting *Wisconsin v. J.C. Penney Co.*, 311 U.S. 435, 444 (1940) and *Gen. Motors Corp. v. Washington*, 377 U.S. 436, 441 (1964)).

[4] *Oklahoma Tax Comm. v. Jefferson Lines, Inc.*, 514 U.S. 175, 200 (1995); see also *Goldberg v. Sweet*, 488 U.S. 252, 267 (1989) (observing that “a taxpayer’s receipt of police and fire protection, the use of public roads and mass transit, and the other advantages of civilized society satisf[y] the requirement that the tax be fairly related to benefits provided by the State to the taxpayer”).

[5] 23-DA-OO-0456 (Aug. 14, 2026).

[6] 23-DA-OO-0649 (Aug. 14, 2026).

[7] 514 U.S. at 205.

[8] *See* 453 U.S. at 649 (“Moreover, the Court’s vigilance has not been limited to taxes that discriminate upon their face: ‘Not the tax in a vacuum of words, but its practical consequences for the doing of interstate commerce in applications to concrete facts are our concern.’”) (internal citations omitted).

[9] Md. Tax-General Code Ann. §§ 7.5-101 *et seq.*

[10] 311 U.S. at 446.
