

CROWN CORK & SEAL  
(DELAWARE) INC.

\* IN THE  
\*  
\* MARYLAND TAX COURT  
\*

V.

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COMPTROLLER OF THE TREASURY

\* NO. C-97-0028-01  
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**MEMORANDUM OF GROUNDS FOR DECISION**

Crown Cork & Seal (Delaware) Inc., (hereinafter “Petitioner”), appeals an assessment issued by the Comptroller of the Treasury (hereinafter “Respondent”) for Maryland income tax for the tax years 1989 through 1993. At hearings, testimony was taken, documents presented, and post-trial memorandum were filed.

Petitioner is a wholly owned subsidiary of Crown, Cork & Seal Company, Inc. (hereinafter “Crown Parent”), a public corporation in the business of manufacturing and selling metal cans, crowns, and closures for bottles (plastic and glass), can filling machines and containers. Crown Parent owned and operated manufacturing plants in Maryland and timely filed Maryland corporate income tax returns for the years in question.

Petitioner was formed in Delaware and Crown Parent contributed its trademarks and patents to Petitioner. The marks were licensed back to Crown Parent for an agreed-upon royalty fee. As a result of the licensing arrangement between the related entities, Crown Parent’s Maryland income was reduced by the amount of the royalties paid to Petitioner. Respondent assessed Petitioner on the basis that it was a “phantom” corporation.

The facts and issues presented by this appeal are virtually identical to those addressed in *SYL, Inc. v. Comptroller*, M.T.C. No. C-96-0154-01 (1999) issued the same day as the present case. The decision in *SYL, Inc.* shall be incorporated by reference for the resolution of the legal

issues presented.<sup>1</sup> In *SYL, Inc.*, the Court determined that the assessment of an out-of-state affiliate of a corporate group for income taxes is constitutionally proper only if there exists nexus between the activities of the out-of-state affiliate and Maryland. In addition, the Court concluded that the attribution of nexus to a foreign corporation, under Maryland case law, is limited to phantom entities (i.e. no substance).

Thus, the factual resolution for the Court is whether nexus exists between Petitioner and Maryland. In order to meet Commerce Clause nexus requirements, there must be a “substantial nexus” with the taxing state. *Complete Auto Transit v. Brady*, 430 U.S. 274 (1977). Petitioner does not own or lease property in Maryland. Petitioner has no employees, agents or offices in Maryland. Its income producing activity all occurs outside of Maryland. Crown Parent is the only contact Petitioner has with Maryland and that contact is not sufficient to meet the substantial requirement.

Nexus attributed to an out-of-state entity was found to be proper by the Maryland Courts only when the entities were true phantom corporations.<sup>2</sup> The evidence presented clearly shows that Petitioner is not a phantom or sham corporation. Petitioner is a viable entity established for valid business purposes, including the protection of valuable intellectual property rights from hostile takeovers of the parent corporation. Petitioner maintained an office in Delaware, met all corporate formalities, had separate bank accounts and employees performing services pursuant to written employment agreements. In addition, Petitioner received royalty income from third parties (other than Crown Parent or an affiliate) during some of the years in controversy.

As a non-phantom entity with no nexus with Maryland, Petitioner is not subject to Maryland income tax. The Respondent’s erroneous emphasis on the extent of corporate substance and on the South Carolina decision, *Geoffrey, Inc. v. South Carolina Tax Commission*, 313 S.C. 15 (1993) was addressed in *SYL, Inc.*, supra, and no further discussion is necessary.

The resolution of the remaining issues presented are again fully addressed in *SYL, Inc.*, supra and we adopt the reasoning therein. The Respondent failed to follow the proper rulemaking requirements when it amended its policy towards taxing foreign entities similar to Petitioner. Even if liability had been found, the apportionment formula used by Respondent failed to recognize the

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<sup>1</sup>A copy of *SYL, Inc.* is attached.

<sup>2</sup>The case law is fully analyzed in *SYL, Inc.* and *MCIIT v. Comptroller*, M.T.C. No. C-96-0028-01 (1999).

corporate substance of Petitioner. Finally, if Petitioner was subject to the tax, no penalty should have been imposed.

**Conclusion.**

For the above reasons, we shall pass an Order reversing the assessments imposed on the Petitioner , Crown Cork & Seal (Delaware) Inc. for all of the tax years involved.