

What is the “Delaware Holding Company” Tax Loophole?

- Delaware Holding Companies are shell corporations—commonly established in Delaware and Nevada--set up for the primary purpose of avoiding state taxes.
- In general, a Delaware Holding Company employs no one, produces nothing, and has one shareholder—the parent corporation that established it.
- The parent corp. transfers ownership of trademarks, logos, etc. to the subsidiary. The parent then pays a fee to the subsidiary for the rights to use the trademarks. These fees transfer profits earned in Maryland and other states to the out of state subsidiary, where the income won't be taxed.
- Delaware Holding Companies cost the state as much as \$150 million a year in lost revenues by shifting as much as \$2.1 billion in Maryland-earned profits to out of state holding companies.
- It is cheap and easy to establish a Delaware Holding Company. Go to <http://www.santorabaffone.com/Delaware.htm>. This firm will arrange office space, mail forwarding, a phone listing and stationery.

One example: “An Educated Consumer is Our Best Customer...” and a \$1 million per year tax dodge.

Syms (the discount men's clothing retailer) owns a Delaware-based subsidiary, Syl Inc. Syl employs no one, produces nothing, and has one shareholder: Syms. Syms transferred to Syl the multiple “S” trademark and the slogan “An educated consumer is our best customer.”

Every Syms store in Maryland pays a fee to Syl for the rights to use the name and the slogan—thus transferring Maryland-earned revenue to the Delaware shell, and avoiding paying state taxes.

The creation of Syl was estimated by Syms to save nearly \$1 million per year in state corporate income taxes.

Another Example: A “Blue Light Special” on Corporate Tax Avoidance

Kmart Corporation owns the Michigan-based subsidiary Kmart Properties, Inc. (KPI). KPI owns the rights to phrases such as “Blue Light Special” and “At home with Martha Stewart.” Every Kmart store pays an amount equal to 1.1 percent of sales to KPI for the rights to use the slogans and other trademarks. This fee effectively transfers profits earned at Kmart stores in Maryland to the Michigan subsidiary, where those profits are sheltered from taxation.

How Many “Delaware Holding Companies” Are There?

- There are likely thousands of trademark holding companies established for the primary purpose of avoiding state corporate income taxes.
- News reports indicate that one floor of one office building in Wilmington, DE is headquarters to more than 500 corporations.

Who Has a Delaware Holding Company?

See the table on the following page.

Who Doesn’t Use a Delaware Holding Company to Avoid Paying Maryland Taxes?

Thousands of locally-owned Maryland businesses—the places in our community where we eat and shop. These businesses are paying taxes on their profits, while their large, multi-state competitors often are not.

Want More Information?

“Raising Revenues Without Raising Rates” at www.marylandpolicy.org

Read The Wall Street Journal’s article on this tax dodge:

http://www.law.wayne.edu/mcintyre/text/diminishing_returns.pdf

Corporations That Have Been Sued by States for Their Use of Passive Investment Corporations*

A.O. Smith Corporation	Aaron Rents	Abercrombie and Fitch, Inc
ADP, Inc.	American Greeting Corp.	Bath and Body Works, Inc
Beatrice Foods	Beloit	Budget Rent-A-Car Corp.
Burger King	Cacique, Incorporated	Colombo, Incorporated
CompUSA	ConAgra Foods	Crown Cork and Seal
D.R. Horton, Inc.	Dover Elevator	Dress Barn
Eaton Administration Corp.	Express, Incorporated	Gap, Inc.
Gore Industries	Hologic	Home Depot
Honeywell International	J.P. Stevens and Co.	Kmart Corporation
Kohl's	Lamb Weston, Inc	Lane Bryant Incorporated
Lerner New York, Inc.	Limited London Paris NY Inc	Limited Too Incorporated
Long John Silver's	Mallinckrodt Medical	Marsh Village Pantries
May Department Stores	McCormick and Company	MCI Telecommunications
Novacare	Premark FEG Corporation	PF Brands
Payless Shoesource	Pep Boys-Manny Moe & Jack	R Scientific Products
Radio Shack	Sherwin Williams	Snap On Tools
Sonoco Products	SSI Medical Services	Staples
Staples	Stanley Works	Structure, Incorporated
Sunglass Hut International	Syms	The Casual Male
The Limited Brands	TJX Companies	Tyson Foods
Toys R Us	United Refrigeration of DE	Urban Outfitters
Victoria's Secret Stores	York International	Yellow Freight Systems

* As noted, there are likely *thousands* of passive investment corporations whose use allows parent corporations to avoid paying taxes on their Maryland-earned profits. This list includes only those that have been litigated against by Maryland and other states.

Sources: Glenn R. Simpson, "A Tax Maneuver in Delaware Puts Squeeze on Other States," *Wall Street Journal* August 9, 2002; and, e-mail correspondence with the Maryland Comptroller's Office of corporations in litigation for tax avoidance resulting from passive investment corporations.