

# Bloomberg Law<sup>®</sup>

## Galvanizing International Tax Case Accepted by Supreme Court (2)

Aysha Bagchi  
June 26, 2023

The US Supreme Court agreed Monday to hear a tax case over foreign earnings that has sparked concerns from several outside groups about the limits to Congress' taxing powers.

The tax under internal revenue code Section 965 was designed to ensure that foreign earnings didn't permanently escape US taxation as the country transitioned to a new international tax regime. It treated foreign corporate earnings of US shareholders from 1987 to 2017 as if they had been repatriated back to the US.

Charles and Kathleen Moore are seeking a \$14,729 refund through their challenge to the tax, but the stakes could be much higher: The government has estimated the tax will bring in \$340 billion over 10 years, and both the Moores and outside groups have argued that permitting the tax gives Congress the green light to pursue new revenue avenues, such as a federal wealth tax.

"The Constitution does not allow Congress to point at any pot of money and call it 'income' and then income-tax it," said Andrew Grossman of Baker & Hostetler LLP, who represents the Moores, in a statement shared Monday with Bloomberg Law.

Grossman said he was confident the high court will "confirm that Congress's power to tax is not unlimited."

The Justice Department declined to comment.

The couple asked the justices to review the US Court of Appeals for the Ninth Circuit's dismissal of their suit, arguing that the tax isn't authorized under the federal government's Sixteenth Amendment power to tax income.

In 2022, that three-judge Ninth Circuit panel ruled taxable income under the Sixteenth Amendment doesn't have to be "realized"—meaning actually received. That meant the couple owed taxes on the earnings attributed to them as shareholders in KisanKraft Machine Tools Private Ltd., an Indian farming equipment company that had retained and reinvested the earnings.

The Moores told the high court that only realized income is taxable under the Sixteenth Amendment, and the tax didn't comply with a constitutional requirement for direct taxes outside that amendment to apply to each state in proportion to the state's population.

The Justice Department said the tax applied to earnings that a corporation has realized, and that the Constitution doesn't prohibit disregarding a corporation's form by taxing a shareholder's income.

The US Chamber of Commerce and the Cato Institute were among several outside groups that submitted briefs urging the justices to take up the case.

The Moores are also represented by the Competitive Enterprise Institute.

The case is Moore v. United States, U.S., No. 22-800, 6/26/23.