
Moore v. United States, No. 22-800

Yesterday, the Supreme Court held in a 7-2 decision that Congress's one-time tax on foreign earnings is constitutional.

Background: In 2017, Congress created the Mandatory Repatriation Tax (MRT), a one-time tax on the accumulated income of U.S.-controlled foreign corporations.

Two taxpayers who invested in U.S.-controlled foreign corporations challenged the MRT, arguing that it violated the Constitution's Direct Tax Clause. That Clause requires that any "direct tax" be apportioned among the States on the basis of population. The Sixteenth Amendment limits the Direct Tax Clause, by providing that taxes on "income" are exempt from the apportionment requirement. The Ninth Circuit rejected the taxpayers' argument, holding that the MRT is constitutional because it is an indirect tax on income and thus does not need to be apportioned.

Issue: Whether the MRT violates the Constitution's Direct Tax Clause.

Court's Holding: In an opinion authored by Justice Kavanaugh, the Supreme Court held that the MRT does not violate the Direct Tax Clause. The Court explained that the MRT is an indirect tax on income that is analogous to taxes the Court consistently has upheld, such as certain taxes on partnership income and S-corporation income. The Court also noted that a contrary ruling could render many taxes in the Internal Revenue Code unconstitutional, which would deprive the federal government of trillions of dollars of tax revenue.

The Court expressly noted that it was not addressing whether income must be realized to be taxed without apportionment under the Sixteenth Amendment, or whether a federal wealth tax (which some legislators have proposed) would need to be apportioned. But several Justices expressed views relevant to that question in separate opinions. Justice Jackson (in a concurring opinion) suggested that perhaps Congress *can* tax unrealized income without apportionment. But Justices Barrett and Alito (in an opinion concurring in the judgment), along with Justices Thomas and Gorsuch (in a dissenting opinion), took the view that Congress *cannot* tax unrealized income without apportionment. Read the opinion [here](#).