

Moore v. United States: Keep the Lid on Pandora's Box

Background

The Supreme Court faces a crucial decision in Moore vs. United States. The Court must rule against the Moores or risk opening Pandora's box, handing out massive tax giveaways to corporations, eroding public trust, and creating legal chaos in the tax code.

The Moores are challenging the constitutionality of the "Mandatory Repatriation Tax" (MRT) based on a radical and incorrect constitutional theory. The MRT requires US shareholders who own at least 10% of US-controlled foreign companies to pay some tax on the past profits of those foreign companies – profits that avoided facing any US tax until the MRT. The Moores contend that the Constitution requires income to be "realized" before it can be taxed. This theory would make it easier for corporations to avoid paying taxes, thereby unraveling a well-established taxation regime on corporate and individual income. **To be clear, there is no explicit constitutional requirement for income to be "realized" before it can be taxed.**

Talking points

Massive tax giveaways for corporations

- While the 2017 Tax Cuts and Jobs Act (TCJA) provided corporations with \$1.9 trillion in tax giveaways, the law did require that they pay the MRT. If the Court strikes down the MRT, multinational corporations stand to reap an additional [\\$270 billion](#) in tax cuts.
- This decision would [disproportionately favor](#) large corporations, with 75% of tax giveaways going to Big Pharma, Big Tech, and Big Finance multinationals, including: Apple (\$37 billion), Microsoft (\$18 billion), Pfizer (\$15 billion), Johnson & Johnson (\$10 billion), and Google (\$10 billion).

Eroding public trust

- Several justices hold stock in these big corporations. At a time of heightened skepticism about the Court's ethics, a ruling favorable to these very corporations would further [undermine public trust](#).
- Congress should maintain legislative authority over taxation. A ruling for the Moores would allow the Court to inappropriately limit Congress's ability to determine the circumstances under which income can be taxed and to legislate accordingly.
- Voters consistently support a taxation system where corporations pay their fair share. [Poll](#) after [poll](#) show there is strong bipartisan support for corporations paying more in taxes, including a plurality of Republicans.

Creating chaos in the tax code

- A ruling in favor of the Moores would create legislative chaos, overthrowing long-standing principles underlying huge swaths of the existing tax code.
- Small businesses are the backbone of the American economy, and they rely on a stable and predictable federal tax framework. A ruling for the Moores will throw them into significant legal and tax compliance upheaval, harming small businesses and our economy.
- We also need to protect states, as their budgets depend on federal revenue to provide public services and their tax codes are often linked directly to the federal code. A ruling for the Moores could create chaos for state revenue agencies and legislatures and put their budgets at risk.

Opposition to the Moores crosses party lines

- Opposition to the Moores' argument is [broad and cuts across ideological lines](#). A bipartisan array of tax professionals, states, former officials and congressional staffers, and business groups have filed amicus briefs in support of the government, underscoring the risks of overturning the MRT.
- Both parties of the legislative branch and Supreme Court have long agreed that there is no constitutional requirement for income to be "realized" before it can be taxed. This would disrupt a settled, bipartisan regime for taxation.

Conservatives agree

Alan D. Viard , Senior Fellow Emeritus, American Enterprise Institute	"The legal and historical landscape is too uncertain to warrant the Court taking the extraordinary step of forcing Congress to invariably adhere to the realization tax principle." September 12, 2023
Paul Ryan , Former Speaker of the U.S. House of Representatives	[Speaking on the Moore argument]: "I think it's a misguided challenge...you're going to basically get rid of, I don't know, a third of the tax code. Be careful what you ask for." September 23, 2023
The Committee for a Responsible Federal Budget	"Experts in tax law and tax policy are virtually unified in their support of the legality and logic of the TCJA's mandatory repatriation tax (MRT)." "Numerous amici briefs have been filed in support of the government's position warning that continued litigation, abusive tax strategies, distortion of income, and widespread effects on federal revenue could follow a ruling in favor of the Moores." November 1, 2023
