

Income/Franchise:

Federal: US Supreme Court Agrees to Hear Case Challenging Constitutionality of Transition Tax

Docket No. 22-800, US (petition for cert. granted 6/26/23). The US Supreme Court has agreed to hear a case brought forth by a couple challenging the one-time mandatory repatriation tax (“transition tax”) provisions under Internal Revenue Code section 965 which resulted in taxes paid on their 2017 federal income tax return as an unapportioned direct tax with retroactive application that violates the US Constitution’s Apportionment Clause and Due Process Clause. Specifically, the taxpayers are challenging the Ninth Circuit’s holding that the transition tax provisions included in Subpart F of the Internal Revenue Code are consistent with the Apportionment Clause and do not violate the Due Process Clause on the basis of retroactivity. In the underlying case, the couple alleges that the one-time transition tax is an unapportioned direct tax in violation of the US Constitution’s apportionment requirements, because it taxes them on ownership of personal property (*i.e.*, their shares in the corporation) rather than on income they had realized. The couple is asking the US Supreme Court whether the Sixteenth Amendment authorizes Congress to tax unrealized sums without apportionment among the states given that the Ninth Circuit approved taxation of their pre-2018 undistributed earnings that they did not realize but which were instead retained and reinvested by a corporation in which they were minority shareholders. In doing so, according to the couple’s petition to the US Supreme Court, the Ninth Circuit became “the first court in the country to state that an ‘income tax’ doesn’t require that a ‘taxpayer has realized income.’” Please contact us with any questions.

URL: <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/22-800.html>

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