

## The Legality of Unrealized Taxation

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The Supreme Court case, *Moore v. The United States*, decided in 2024, sets the idea that the federal government is allowed to tax unrealized gains as income. The case involves Charles and Kathleen Moore, an everyday couple that had invested in the American-controlled foreign corporation, KisanKraft. From 2006 to 2017, KisanKraft managed to generate a valid amount of income. Despite this, the corporation did not distribute the income to its American shareholders. By the end of the 2017 tax year, the new Mandatory Repatriation Tax, also known as the MRT caused a bill of more than \$10,000 on the Moores' share of the stock. The Moores paid and then proceeded to sue for a refund on the basis that the MRT violated the Direct Tax Clause of the Constitution. The court ruled in favor of the federal government, eventually dismissing the Moores.

*Moore v. United States* represents the narrow aspects of the 16th amendment and the arguments of how this amendment treats legal entities, such as KisanKraft. In this case, the Federal government chose to tax on unrealized gains, which represent the potential profits on stocks and assets. Normally, only realized gains, which are profits made from sold investments at a higher price than what initially paid for, would be taxed. However, in the case of the Moores', the MRT was applied. The MRT was a one-time tax created by the Tax Cuts and Jobs Act in 2017. It allows the taxation of Americans owning more than 10% of a controlled foreign corporation, regardless of whether the income was realized or not. This greatly expanded the power of the federal government over taxes.

The terms of *Moore v. The United States* is incredibly narrow, causing many factors to affect the decision. Congress treats American controlled foreign corporations in an extremely specific way. Based on subpart F of the Internal Revenue Code, these corporations are seen as pass-through entities, which is actually a common evasion technique as they are not subject to the corporate income tax or any other entity-level tax. This means that income of such business entities to American shareholders are taxed. Despite this, the clause does not specifically mention if the federal government has the ability to tax unrealized income, again leading to a deadlock in the case.

In the past, Congress has mainly focused on imposing direct taxation, rather than indirect. In fact, in the landmark supreme court case, *Pollock v. Farmers' Loan & Trust Co*(1895), the Congress declared that the taxes on income from property were unconstitutional. This case caused a lot of anger in the past, with many people against the government's view of taxation. This case eventually caused the creation of the 16th amendment. Though the case is seen as outdated, the decision of the supreme court at this time is the exact opposite of the decision of the supreme court in *Moore v. United States*. This case reveals the view of taxation, in the eyes of citizens, in comparison to the perspective of government officials. This sets forth a series of questions on the accuracy of the current decision, if inflicted through special-case biases.

The United States Tax Law allows taxation in three separate ways. Direct taxes, which are proportional to the population of the state, indirect taxes(taxes on duties and imposts, and income taxes on humans. Not a single one of these methods permits the taxation of unrealized income, especially in the case of the Moores.

The Moores had argued their case upon the fact that the MRT violated the 16th amendment. The MRT directly violates court ruling of the past. It is a new bill that many Americans had thought would never exist. To many people dedicated to the world of corporate law, this case came as a shock. This decision expands the federal government's power and instigates questions on what could possibly be taxed in the future. If the government can tax income that may never be realized, what else could it tax? To many this bill is not seen as a tax, but as a direct loss of money and financial stability.

## Works Cited

- “Moore v. United States, 602 U.S. \_\_\_\_ (2024).” *Justia Law*,  
supreme.justia.com/cases/federal/us/602/22-800/. Accessed 19 Mar. 2025.
- “Moore v. United States.” *Legal Information Institute*, Legal Information Institute,  
www.law.cornell.edu/supremecourt/text/22-800\_2024-06-20. Accessed 19 Mar. 2025.
- Supremecourt*, www.supremecourt.gov/opinions/23pdf/22-451\_7m58.pdf. Accessed 19 Mar.  
2025.
- Hlr. “Moore v. United States.” *Harvard Law Review*, 11 Nov. 2024,  
harvardlawreview.org/print/vol-138/moore-v-united-states/