

Canceling Culture with Foul Tax Laws



by Kathleen Marquardt

December 22, 2023

Do you like your home? Do you want to keep it? Your business?

It isn't Halloween or April Fool's Day, but you'd better be scared. The Supreme Court of the United States is hearing oral arguments on a case that reads like a trip to Dante's hell. But if this case takes a wrong turn, we all will join Dante Alighieri there.

We have recently been warned that property taxes are going to go up, but there hasn't been a mention that we are going to be paying taxes on monies that we might see for years or decades. Well, well, look at what is happening to the Moores.

David Catron's article in *The Spectator*, "The Scariest SCOTUS Case This Term," informs us of one of the evils our federal government is cooking (cooked?) up for us.

Tuesday morning, the U.S. Supreme Court will hear oral arguments pursuant to a case in which Charles and Kathleen Moore argue that an obscure provision of the 2017 Tax Cuts and Jobs Act is unconstitutional.

At issue is the "mandatory repatriation tax" (MRT) and a 13 percent stake owned by the Moores in a company that supplies low-cost equipment to small farmers in India. The couple has never received income from this stock because the company reinvests all its profits in the business. Historically, the

IRS hasn't taxed shareholder "earnings" until they receive dividends or sell their stock for capital gain. Yet, pursuant to the MRT, the Moores received a \$14,729 tax bill on their share of company profits.

According to Amy Howe in SCOTUSblog, "... until 2017, nothing in U.S. tax laws authorized the federal government to tax a controlled foreign corporation's foreign income unless and until that income came to the United States – for example, through a distribution to U.S. shareholders".

The Moores sued the government on the grounds that the IRS violated the Sixteenth Amendment. They lost in federal district court and in the Ninth Circuit Court of Appeals, as legal scholar Steven Calabresi explains at the Volokh Conspiracy. [\[i\]](#)

We've known for decades that the Ninth Circuit Court is almost beyond hope of ever coming down on the right side of the law. Yes, occasionally, they throw in a fair finding just to make people think they are unbiased.

The court of appeals concluded that realization is not a precondition for income, and so the Moores could be taxed on unrealized gains in wealth. That rationale is not limited to the Moores, or to the particular tax, which the court applied in their case. Rather, under the Ninth Circuit's analysis, investors might be taxed on their unrealized capital gains in their Vanguard funds or their stock portfolios. Moreover, homeowners might be taxed on their unrealized capital gains in their houses and land (emphasis mine) ... The Supreme Court should reverse the Ninth Circuit and restore the original, commonsense meaning of the Sixteenth Amendment.

Asking that SCOTUS reverses the Ninth Circuit is definitely in order. If this is allowed to stand, every homeowner and business owner may be looking at onerous "pie in the sky" taxes that may or may not ever be realized. This is so far out

there it boggles the mind, yet how many people will ever hear of it? This “mandatory repatriation tax” is so egregious that one wonders how it was not noticed immediately it was offered up – and then shut down. Who’s minding the store? And, remember, this came in Trump’s term.

To grasp the significance of Moore v. United States, it’s necessary to remember that the original Constitution didn’t permit income tax. [\[ii\]Article I, Section 9](#) prohibited direct taxes on individuals unless apportioned on the basis of the population of each state. The huge cost of the Civil War prompted Congress to pass the first income tax in 1862, but it was phased out after the war. Congress passed another income tax law in 1894, but the Supreme Court [struck it down in 1895](#). The Sixteenth Amendment was passed by Congress in 1909 and [ratified](#) in 1913, and it does indeed bestow on Congress “the power to lay and collect taxes on income,” but it was not as clear as it could have been on the precise definition of “income.”

That issue was resolved in 1920, in Eisner v. Macomber, when the Supreme Court [ruled](#) that an increase in the value of a stock holding, in the absence of a monetary dividend, isn’t income: “Mere growth or increment of value in a capital investment is not income; income is essentially a gain or profit in itself of exchangeable value, proceeding from capital, severed from it, and derived or received by the taxpayer.” (emphasis mine.) The Moores have received no such benefit from the investment in question and therefore never incurred a legitimate tax liability. A ruling in favor of the government in Moore v. United States will eliminate any restrictions on Congress’ taxing power

This is not an “inside baseball” case that only compulsive Court watchers will care about. If the justices rule against the Moores, it will supercharge the government’s confiscatory powers by enabling its inclination to tax unrealized income. This will affect everyone reading this column, not just

investors with large stock portfolios. It would, in theory, permit the IRS to tax an increase in the value of your home as a capital gain – whether you have sold it or not.

“Mere growth or increment of value in a capital investment is not income.”

There is more meat in Catron’s article. Please click on the link and read it. And get mad! Then do something. If this is allowed to stand, many of us will lose our homes and businesses because the government determines the value of our home or business will grow exponentially (we can only hope) and tax us on it now, even if we aren’t realizing that for ten or twenty years down the road. And with our economy going in the direction it is now, our homes will be worthless in a decade. And will the IRS reimburse us – with interest? Dream on.

Join or start a Freedom Pod and add this issue to the fight. Without the right to property, we are slaves.

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Footnotes:

[\[i\]](#)

<https://reason.com/volokh/2023/10/11/taxes-on-wealth-and-on-unrealized-capital-gains-are-unconstitutional/>

[\[ii\]](#)

<https://constitution.congress.gov/browse/article-1/section-9/#:~:text=No%20Tax%20or%20Duty%20shall,Articles%20exported%20from%20any%20State.&text=No%20Preference%20shall%20be%20given,or%20pay%20Duties%20in%20another.>