

Income/Franchise:

Federal: US Supreme Court Affirms Ninth Circuit's Decision Upholding Constitutionality of Transition Tax

Docket No. 22-800, US (6/20/24). In a case brought forth by a couple challenging the one-time mandatory repatriation tax ("transition tax") provisions under Internal Revenue Code (IRC) section 965 by claiming it 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 [see *State Tax Matters*, Issue 2023-27, for additional details about the couple's challenge], the US Supreme Court (Court) affirmed the Ninth Circuit's holding that the transition tax provisions included in Subpart F of the IRC – "which attributes the realized and undistributed income of an American-controlled foreign corporation to the entity's American shareholders, and then taxes the American shareholders on their portions of that income" – do *not* exceed Congress's constitutional authority. In doing so, the Court explained that Congress has "long taxed shareholders of an entity on the entity's undistributed income," and it did the same with the transition tax. The Court emphasized that its holding in this case is "narrow" and limited to:

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

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230707_2.html

1. Taxation of the shareholders of an entity,
2. On the undistributed income realized by the entity,
3. Which has been attributed to the shareholders, and
4. When the entity itself has not been taxed on that income.

In other words, according to the Court, "our holding applies when Congress treats the entity as a pass-through." Concurring and dissenting opinions follow. Please contact us with any questions.

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