



Federal Tax ALERT ■

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Transition Tax Goes to the Supreme Court

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The Supreme Court recently granted certiorari in the case *Moore v. United States* to review a Ninth Circuit Court of Appeals decision affirming application of the “transition tax” under Section 965, enacted as part of the Tax Cuts and Jobs Act of 2017. The taxpayers, who owned stock in a foreign corporation which had never distributed income to them, challenged the constitutionality of the tax. The thrust of the taxpayers’ argument is that the transition tax violates the 16th Amendment of the Constitution because it is based on income that was not “realized” by the taxpayers. The taxpayers paid the tax and sued for a refund in federal district court.

There has been much speculation in the tax community as to how a pro-taxpayer decision by the Supreme Court might affect many other provisions of the Internal Revenue Code. Even a court decision limited to the Section 965 transition tax suggests that taxpayers who paid the tax may wish to file protective refund claims. The customary statute of limitations to recover refunds of tax is the later of three years from the filing of the tax return or two years from the payment of the tax. We encourage taxpayers to review the applicable statute of limitations for any years in which they were subject to or paid Section 965 transition tax and to consider filing protective refund claims for those years for which the statute of limitations may soon expire.

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