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Court

Democratic dreams of imposing a wealth tax on the richest Americans risk being snuffed out by a dispute over a \$14,729 bill.

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By Greg Stohr, Bloomberg News (TNS)

Democratic dreams of imposing a wealth tax on the richest Americans risk being snuffed out by the US Supreme Court in a dispute over a \$14,729 bill.

Calls to tax assets in addition to income have grown since Senator Elizabeth Warren ran for the White House on the issue in 2020, with President Joe Biden's 2024 budget requesting a "billionaire minimum tax" to ease the federal deficit. But in a case set for argument Tuesday, the justices will consider whether the Constitution effectively

precludes Congress from putting a levy on stock holdings, real estate and other

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battle over the nation's tax and budget policies. The court is likely to rule next year in the middle of the presidential election campaign.

The case stems from a 2017 tax law provision that aimed to collect hundreds of billions of dollars on earnings accumulated and held overseas by big multinational companies. The provision, known as the mandatory repatriation tax, was part of a Republican-backed tax overhaul passed during Donald Trump's presidency.

Taxpayers Charles and Kathleen Moore are seeking a refund of the \$14,729 in taxes they paid on their ownership of a stake in KisanKraft Machine Tools Private Ltd., an Indian company that supplies tools and equipment to farmers.

The Moores invested \$40,000 almost two decades ago, acquiring 13% of the company's common shares. Although the KisanKraft has grown steadily since then, it has reinvested its earnings rather than distributing them to shareholders as dividends. The Moores, who are represented by the conservative Competitive Enterprise Institute, contend that they can't be taxed since they never realized any gains.

Along the way, the Moores are arguing for a narrow interpretation of the Constitution's Sixteenth Amendment, the 1913 provision that empowered Congress to levy an income tax.

The Moores themselves have become a subject of scrutiny. Company documents indicate Charles Moore might have been more involved with KisanKraft than the couple revealed in the legal proceedings. He was a director of the company for five years and received thousands of dollars in travel-reimbursement payments, according to the company's filings with India's Ministry of Corporate Affairs, and he engaged in transactions that suggest he was more of an insider than a passive outside shareholder.

One of the Moores' lawyers, David Rivkin of Baker & Hostetler, sparked another

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The Moore case drew relatively scant attention when the court granted review last June, just as it was releasing a flurry of opinions at the end of its 2022-23 term. Outside groups and individuals have since filed more than 40 friend-of-the-court briefs underscoring the potential impact.

Tax 'Chaos'

A victory for the Moores could cause "chaos" across the federal tax code and invite litigation over a swath of provisions enacted over decades, said Chye-Ching Huang, executive director of the Tax Law Center at New York University's law school. She said the Moores and their allies are using the prospect of a wealth tax as a "diversion" in the case.

"What they don't want the court to be focusing on is the very real damage their theory could have on the existing tax regime," Huang said.

The Biden administration says the court can uphold the mandatory repatriation tax without making any judgment on a hypothetical wealth tax. Quoting from a 1943 Supreme Court case, U.S. Solicitor General Elizabeth Prelogar said the court traditionally "does not decide whether a tax may constitutionally be laid until it finds that Congress has laid it."

Prelogar, the administration's top Supreme Court lawyer, said a wealth tax, which would be levied on assets at a particular point in time, would be "fundamentally distinct" from an income tax, which targets economic gains over a period of time. She contends undistributed corporate earnings constitute income under the Sixteenth Amendment.

The Sixteenth Amendment authorizes Congress "to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States."

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