

Kaestner Family Trust Case Appealed to North Carolina Supreme Court

By: John Hodnette

Introduction.

On April 23, 2015, North Carolina's state fiduciary income tax was held to be unconstitutional as imposed upon the income earned and accumulated by an out-of-state trust in the case of *The Kimberly Rice Kaestner 1992 Family Trust v. North Carolina Department of Revenue* by the North Carolina Business Court.¹ This ruling was appealed by the North Carolina Department of Revenue ("NCDOR") to the North Carolina Court of Appeals, where it was affirmed on July 5, 2016. The Business Court had ruled that the law was unconstitutional under both the Due Process and Commerce Clauses of the United States Constitution, as well as Article I, Section 19 of the North Carolina Constitution. The Court of Appeals, however, analyzed the constitutionality only under the Due Process clause of the United States Constitution and Article I, Section 19 of the North Carolina Constitution, and finding that the law was unconstitutional, did not move on to analyze the law under the Commerce Clause. Now, the North Carolina Supreme Court has agreed to review the decision of the Court of Appeals at the NCDOR's request. If you or a loved one is a beneficiary of an out-of-state trust, then this case could mean potentially large North Carolina tax refunds for your trust.

Which Trusts Are Affected by the Case?

The **Kaestner** Case involves a scenario that is relatively common in North Carolina: where a beneficiary of a trust that was formed and is administered out-of-state moves to North Carolina. N.C.G.S. § 105-160.2 said that a North Carolina tax may be imposed on the taxable income of estate and trusts that are "for the benefit of a resident of this State." The Business Court and Court of Appeals disagreed, ruling that the mere residency of a beneficiary does not

provide sufficient contact of the trust with North Carolina to warrant taxation under the Due Process clause of the United States Constitution and Article I, Section 19 of the North Carolina Constitution.

What Should I Do if I have a Trust Like This?

We at Culp Elliott & Carpenter, P.L.L.C. have been requesting refunds from the NCDOR for trusts that have been affected by this ruling. If you have a trust that you think may be affected, please reach out to John G. Hodnette or Carl L. King (contact information below). We look forward to providing our legal expertise to assist you.

¹For a full article written on the Kaestner Business Court ruling by Carl L. King of Culp Elliott & Carpenter, P.L.L.C. please click [here](#).