

NEWSLETTER

Special Edition

STATE TAXATION OF TRUSTS

As promised (and as He has predicted in our first ne

Special Newsletter!

We ordinarily publish our tax newsletter once each quarter, but there is so much important news that we need to get our newsletter out a month early.

We want you to know about an important deadline of April 1st. Nate Wolf describes it all on page 2.

On page 4, two of our partners, Lisa Taylor and Andy Bosin, explain the new Paid Leave Act for NJ employers.

As always, please let me know of your comments and ideas to make our newsletter better.



Kevin Kilcullen

kkilcullen@sgklaw.com



ORAL ARGUMENTS IN UNITED STATES SUPREME COURT RAISE A FEW EYEBROWS ABOUT THE FUTURE OF STATE INCOME TAXATION OF TRUSTS

Recent developments in a case before the United States Supreme Court are gaining the attention of estate planners. The case, *Kaestner*,¹ is set to be decided in the next few months and could significantly expand a state's ability to tax trusts in other jurisdictions.

The Facts

Kaestner involved a father who created a trust in New York, and then split it into separate trusts for the benefit of his three children. One of the trust beneficiaries lived in North Carolina during the tax years at issue. Apart from the beneficiary's residence, her trust had no other link to North Carolina.

Pursuant to state law, North Carolina attempted to tax the trust on its accumulated income, even though it was not generated in North Carolina or distributed to the beneficiary that resided there. The North Carolina Supreme Court ultimately struck down the state's imposition of this tax, finding that this was a violation of due process.

North Carolina subsequently appealed this decision to the U.S. Supreme Court and the case went to oral argument on April 16th, 2019.

1. *North Carolina Dep't of Rev. v. Kimberley Rice Kaestner 1992 Family Trust*, No. 18-457 (U.S.).

The Issue

While the Court's decision is still forthcoming, its impact could significantly increase a state's authority to tax out-of-state trusts. For example, states like New Jersey are currently authorized to tax out-of-state trusts with certain connections to the state, such as in-state management of trust assets or in-state presence of trustees.

In the past, the mere presence of trust beneficiaries in a state, with nothing more, has been considered insufficient in many states to warrant taxation (especially where the beneficiary's interest is too remote or uncertain). This is what is being argued right now.

The Bottom Line

If the Supreme Court finds that a beneficiary's residence is not enough to tax an out-of-state trust, then it would be a win for taxpayers and would avoid the administrative inefficiency of having to track the locations of trust beneficiaries for reporting purposes.

Alternatively, if the Supreme Court rules in favor of North Carolina, states would have the ability to expand their taxation of out-of-state trusts by updating their laws or more aggressively applying their current tax regimes.

This decision could, for example, subject a Delaware trust with a New Jersey resident beneficiary to some level of New Jersey taxation. Due to the novelty of this issue, however, the further reaching impacts of this decision remain uncertain.

In the event that the Court issues an unfavorable ruling, it may be necessary for certain clients to revisit their estate plans and discuss potential strategies to mitigate the impact of this result. Our firm is carefully monitoring this case and will provide updates as they become available.



Joseph Romano is an Associate in the tax, trusts and estates group of Stern, Kilcullen & Rufolo. He may be reached at jromano@sgklaw.com.