

SCOTUS to hear oral arguments on state taxation of out-of-state trusts

12 APRIL 2019

CATEGORY:
[ARTICLE](#)



When and where can a trust's accumulated income be taxed?

We may get an answer from the U.S. Supreme Court ("SCOTUS"). On April 16, 2019 the U.S. Supreme Court will hear oral arguments for the case of *North Carolina Department of Revenue v. Kimberley Rice Kaestner 1992 Family Trust*.

This is a historic tax jurisdiction case that is directly related to important questions of personal jurisdiction and trust law. In what is widely considered to be one of the most significant state taxation and trust cases in decades, the Supreme Court will address whether the due process clause of the U.S. Constitution prohibits states from taxing trusts based on trust beneficiaries' in-state residency. This case made its way to the SCOTUS following a June 2018 decision by the North Carolina Supreme Court which ruled that the due process clause prevented the North Carolina Department of Revenue from taxing the accumulated income in the Kimberley Rice Kaestner's family trust, given a) the settlor and trust's governing law was New York, b) the independent trustee was in Connecticut, and c) the trust's only asset was a portfolio of investments managed in Massachusetts.

There are many reasons why families are well advised to carefully choose the jurisdiction of their family trusts, as state trust and fiduciary legislation varies widely. In an effort to best guide clients with this important matter, Withers Bergman has been following this closely and was also asked to participate in this case as a drafter of an [amicus curiae](#) filed with the SCOTUS. This case has the potential to create a new national precedent for the taxation of trusts.


The Withers Bergman LLP team who collaborated on the brief includes David Lehn, SCOTUS Counsel of Record, and partners Stanley Bergman, William Kambas and James I. Dougherty. Taking advantage of the firm's breadth of experience and knowledge, they collaborated with attorneys across the firm's California, New York, and Connecticut offices, including partners Jeremy Mellitz, Diana Hastings, Michelle Graham, consulting partner Lou Mezzullo, special counsel John Farnsworth and associates Lisa Page, Kelsey Hyde, and Sandra Fung.

Authors

David M. Lehn

PARTNER | GREENWICH

Private client and tax


 +1 203 302 4077

 david.lehn@withersworldwide.com

Stanley N. Bergman

PARTNER | NEW HAVEN

Private client and tax


 +1 203 974 0304


 stanley.bergman@withersworldwide.com

William J. Kambas

PARTNER | NEW YORK, NEW HAVEN,
GREENWICH

Private client and tax


 +1 203 974 0313

 william.kambas@withersworldwide.com

James I. Dougherty

PARTNER | GREENWICH

Private client and tax


 +1 203 974 0333

 james.dougherty@withersworldwide.com

Jeremy A. Mellitz

PARTNER | GREENWICH, NEW HAVEN, NEW
YORK

Litigation and arbitration


 +1 203 974 0320


 jeremy.mellitz@withersworldwide.com

Diana M. Hastings

PARTNER | SAN FRANCISCO, NEW
YORK

Private client and tax


 +1 415 872 3210

 diana.hastings@withersworldwide.com

Michelle B. Graham

PARTNER | SAN DIEGO, RANCHO SANTA FE

Private client and tax


 +1 858 400 1307

 michelle.graham@withersworldwide.com

Louis A. Mezzullo

CONSULTING PARTNER | RANCHO SANTA
FE

Private client


 +1 858 400 1323


 louis.mezzullo@withersworldwide.com

John A. Farnsworth

SPECIAL COUNSEL | GREENWICH,
NEW HAVEN, NEW YORK

Litigation and arbitration


 +1 203 974 0353

 john.farnsworth@withersworldwide.com

Lisa Page

ASSOCIATE | GREENWICH

Trust, Estates and Charitable Planning


 +1 203 328 2234


 lisa.page@withersworldwide.com

Kelsey Hyde

ASSOCIATE | NEW HAVEN

Private client and tax


 +1 203 974 0346

 kelsey.hyde@withersworldwide.com

T. Sandra Fung

ASSOCIATE | NEW YORK

Private client and tax

 +1 212 848-9814

 sandra.fung@withersworldwide.com