

Withers' takeaways from Supreme Court oral arguments on major state trust tax

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On Tuesday, April 16 at the Supreme Court of the United States (“SCOTUS”), Withers Bergman LLP partner, David Lehn, was in attendance to witness oral arguments in connection with the historic tax jurisdiction case *North Carolina Department of Revenue v. Kimberley Rice Kaestner 1992 Family Trust*. This case is directly related to important questions of personal jurisdiction and trust law and is widely considered to be one of the most significant state taxation and trust cases in decades. The outcome of this hearing has the potential to create a new national precedent for the taxation of trusts.

Withers Bergman LLP was engaged by state trust associations involved in advanced trust planning (South Dakota, New Hampshire, Nevada, and Tennessee) as well as the Bankers and Bar Associations of Delaware to provide the SCOTUS with the firm’s knowledge of the tax and trust issues presented. A coast-to-coast team of Withers attorneys collaborated on the Amicus Brief that was filed last month with the SCOTUS. The team includes: David Lehn, SCOTUS Counsel of Record, and partners Stanley Bergman, William Kambas, James Dougherty, Jeremy Mellitz, Diana Hastings, Michelle Graham, consulting partner, Lou Mezzullo, special counsel John Farnsworth, and associates Lisa Page, Kelsey Hyde, and Sandra Fung.

Insight and takeaways from the oral arguments include:

- The state of North Carolina tried to argue for taxing North Carolina residents on their “share” of a trust as trust beneficiaries, even if unascertainable or the individuals have received no trust distributions.
- The Court focused on whether there was strength in the logic that a beneficiary could be “entitled” to a share of a discretionary trust. There were several references to taxing income that an individual never receives seemingly recognizing that multiple beneficiaries may or may not receive a trust distribution in some future year.
- While the State of North Carolina returned to its position that state statute was “only taxing the North Carolina beneficiaries,” the Court seemed to question the strength of this approach.
- The Court questioned whether the State of North Carolina was potentially trying to change the terms of trust agreement by hypothetically creating a trust distribution provision that did not exist.
- The discussion addressed the potential impact of prior SCOTUS cases. The Court observed that the State of North Carolina was potentially seeking to overturn those prior cases.
- The Court also sought clarity on the number of states applying a taxing system similar to the State of North Carolina. At times, the answers varied from 3 to 2 to perhaps only one, which was North Carolina.
- The Court focused on the practical application such as the instance where several states sought the same method and how to administer that process.
- The discussion during oral arguments did not focus on the application of technical constitutional principles such as the parameters of due process, the dormant commerce clause’s internal consistency rule, or the four prongs of the Complete Auto case.

A decision in the case is expected in June. Withers Bergman LLP attorneys will be watching and providing updates as developments unfold.

For additional background information on this case, please view our recent Insight, [“SCOTUS to hear oral arguments on state taxation of out-of-state trusts.”](#)

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