In The Law of Trusts and Trustees, George Gleason Bogert describes trusts as a “legal abstraction: a fiction created to represent the tripartite relationship among a settlor, a trustee, and a beneficiary.” The debatable location of a trust makes it difficult for courts to agree which jurisdictions may tax a trust’s income. For example, what if only a trust beneficiary is located in the state, may the state tax the trust’s income?


Kimberly Kaestner and her children reside in North Carolina and are the beneficiaries of a family trust. The trust was created in New York and the trustee resides in Connecticut. For the years in question the Kaestners received no distribution from the trust, but the trust paid income tax to North Carolina of over $1.3 million over a four-year period. The trust sued the North Carolina Department of Revenue claiming the tax collection violated the Due Process Clause because the trust doesn’t have sufficient minimum contacts with the state.

The North Carolina Supreme Court ruled in favor of the trust holding that the Due Process Clause prohibits the state from taxing the trust in this case based on the trust beneficiaries’ in-state residency. The U.S. Supreme Court has frequently stated that “[t]he Due Process Clause ‘requires some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax.’” According to the North Carolina Supreme Court, “it is essential in each case that there be some act by which the [party] purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.”

The North Carolina Supreme Court found insufficient minimum contacts between the trust and North Carolina to allow North Carolina to tax the trust. The court noted that a trust and its beneficiaries are “legally independent entities” and that “a taxed entity’s [the trust’s] minimum contacts with the taxing state [North Carolina] cannot be established by a third party’s [Kaestners’] minimum contacts with the taxing state.” According to the court in this case the trust’s beneficiaries, not the trust, “reaped the benefits and protections of North Carolina’s laws by residing [in North Carolina].”

According to North Carolina’s petition for review [3] in this case: “More than $120 billion of our nation’s income flows through trusts. That income is a vital source of tax revenue for the states. Eleven states, including North Carolina, tax trust income when a trust’s beneficiaries are state residents.” Very likely more states would tax trust income based on beneficiaries in-state status if the Supreme Court rules this practice meets the requirements of the Due Process Clause.