



State & Local Tax Advisory ■

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U.S. Supreme Court Carves a Narrow Taxpayer Win on Due Process in *Kaestner*

Exactly one year to the day since its decision in *Wayfair*, the U.S. Supreme Court issued its decision in *North Carolina Department of Revenue v. Kimberley Rice Kaestner 1992 Family Trust*. Unlike the nexus sea change created by *Wayfair*, however, in *Kaestner* a unanimous Court very narrowly held that North Carolina violated the Due Process Clause by taxing an out-of-state trust when the state's only connection with the trust was the beneficiaries' residence in the state. Justice Sotomayor authored the opinion for the Court and reminded the reader—with nearly every turn of the page—that the Court expressed no opinion on anything outside the facts of the case.

The Court narrowly crafted its due process analysis in *Kaestner* to focus solely on the trust context. In its unanimous ruling, the Court affirmed past precedent and concluded that North Carolina did not have nexus with the trust for three main reasons: the beneficiaries did not receive any trust income during the relevant years (or thereafter); they had no right to control, possess, or enjoy the trust assets; and they could not count on receiving any specific amount of trust income in the future.

Justice Alito authored a concurring opinion (which Justice Gorsuch and Chief Justice Roberts joined) to separately clarify that the majority opinion “merely applies our existing precedent and that its decision not to answer questions not presented by the facts of this case does not open for reconsideration any points resolved by our prior decisions.” This statement from the court is particularly eye-catching given its recent trend of overruling past precedent in both *Wayfair* and, more recently, in *California v. Hyatt*, in which Justice Breyer issued a dissent expressing, “Today’s decision can only cause one to wonder which cases the Court will overrule next.” Justice Breyer need not worry on this one because the Court clung firmly to stare decisis in *Kaestner*. Unlike *Wayfair* and *Hyatt*, the Court carefully made sure not to say much of anything by way of an opinion in *Kaestner* that thumps a steady drumbeat of reminders that the decision changes nothing (and to please not try to convince the Court that it does!)

Kaestner does make clear, however, that *Quill*'s analysis of the Due Process Clause lives on. Many of us wondered whether the *Wayfair* opinion would effectively lead to a collapse of the distinct Due Process and Commerce Clause tests created by *Quill*. But both the opinion and the concurrence in *Kaestner* employ the independent Due Process Clause standard as established by *Quill*. Thus, *Kaestner* reinforces the ongoing vitality of separate and distinct Commerce Clause and Due Process Clause analyses for determining whether constitutional nexus exists.

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Unfortunately, for those of us hoping that the Court would speak more broadly to the Due Process Clause as applied to tax matters (and perhaps create a counterbalance to the broadened nexus standards under the Commerce Clause created by *Wayfair*), *Kaestner* left much to be desired. The opinion and concurrence in *Kaestner* together make it overtly clear that the Justices were mindful and very cautious of the argument made by North Carolina that a decision in favor of the trust would have widespread impact and “lead to opportunistic gaming of state tax systems.” On the bright side, however, taxpayers asserting Due Process arguments in defense of nexus assertions are left in the same position today as they were before *Kaestner*. As Justice Sotomayor put it succinctly: “Today’s ruling will have no such sweeping effect.”

Given the narrowness of the opinion, we can’t help but wonder what made the Court agree to hear *Kaestner* in the first place when so few tax petitions are accepted.

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