

Contact

Houston

1200 Smith Street, Suite 1400
Houston, Texas 77002-4310
Tel: 713.658.1818
Fax: 713.658.2553

Atlanta

191 Peachtree Street, N.E.,
Forty-Sixth Floor
Atlanta, Georgia 30303
Tel: 404.659.1410
Fax: 404.659.1852

Philadelphia

300 Conshohocken State Road
Suite 570
West Conshohocken, PA 19428
Tel: 610.772.2300
Fax: 610.772.2305

San Antonio

112 East Pecan Street, Suite
1450
San Antonio, Texas 78205
Tel: 210.253.8383
Fax: 210.253.8384

Two Key SCOTUS SALT Cases to Watch and Their Implications for Pa. Taxpayers

The Legal Intelligencer

In an article published on May 3, 2019 for *The Legal Intelligencer*, Senior Counsel Jennifer Karpchuk offers an analysis of two crucial state and local tax (SALT) cases awaiting ruling by the U.S. Supreme Court, and the national and Pennsylvania-specific implications they could have.

Franchise Tax Board of California v. Hyatt, S.Ct. Dkt. No. 17-1299 centers on the issue of allowing states to be sued in the courts of other states. The root dispute traces back to a claim by the California Franchise Tax Board (FTB) claiming that defendant Gilbert P. Hyatt had misrepresented the date of his move to Nevada and owed California millions in unpaid taxes, penalties and interest. He sued the FTB in Nevada court for tort damages and won before the FTB brought the case before the U.S. Supreme Court, seeking a ruling overturning the 1979 decision in *Nevada v. Hall* allowing states to be sued in the courts of other states. *Hyatt* has been before the high court twice before, including in 2016 when it split four-to-four on whether to overturn *Hall*. The FTB, 45 *amici* states (including Pennsylvania) and the Multistate Tax Commission are seeking a majority opinion overturning *Hall*.

According to Karpchuk, the implications for Pennsylvania are important: From a policy perspective, *Hyatt* will determine whether states can be sued in the courts of other states without their consent. If *Hyatt* overturns *Hall*, individuals similarly situated to Hyatt would have no means of litigating this type of dispute outside of the state that has allegedly harmed them. However, the implications are not just limited to individuals and tortious conduct similar to that in *Hyatt*; the case also has implications for cases in which the taxpayer challenges another state's policies.

Kimberley Rice Kaestner 1992 Family Trust v. Department of Revenue, S.Ct. Dkt. No. 18-457 is a matter from North Carolina regarding the issue of whether an in-state beneficiary is sufficient under the due process clause of the U.S. Constitution for a state to impose tax on an out-of-state trust. The Kimberley Rice Kaestner Trust was originally created in New York for the benefit of three children, including Kaestner.

The North Carolina Department of Revenue issued an assessment against the trust of more than \$1.3 million in taxes for income accumulated during tax years 2005 through 2008, even though no income was distributed to the in-state beneficiary during those years. Kaestner was a resident of North Carolina during those years at issue, but no trustee lived in North Carolina, and the trust documents and custodians of the trust's assets were located in New York and Boston, respectively. Originally taxed by the North Carolina Department of Revenue, the North Carolina Supreme Court reversed that decision and sought *cert* by the Supreme Court to clarify the

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issue, which varies from state to state.

Karpchuk notes that the implications of the *Kaestner* decision will be plentiful:

If the court affirms, trusts with similar fact patterns to *Kaestner Trust* that have been paying tax to any state based purely on the resident status of a beneficiary may be entitled to relief and such a ruling would trigger a flood of refund requests for open tax years.

Alternatively, if the court overturns the decision of the North Carolina Supreme Court, trusts that have not been paying tax under similar circumstances could have exposure. Thus, any trusts whose only contact with a state is the presence of in-state beneficiaries should pay particular attention to this case.

[T]he case has important implications outside of the trust arena for a minimum contacts analysis for purposes of Pennsylvania taxes and the reach of other states taxing jurisdiction on Pennsylvania individuals and businesses. For instance, consider the use of limited liability companies (LLCs) to conduct multistate business operations states routinely argue that the benefits and protections afforded to the LLCs accrue to the benefit of the members, thereby satisfying the due process clause. That argument may be upended by a decision in *Kaestner Trust*.

Further, the ruling may have implications for those selling through third parties like marketplace facilitators or national retailers, even where there is no activity directed specifically at the forum state.

Karpchuk adds, Both *Hyatt* and *Kaestner Trust* have important implications for Pennsylvania and its taxpayers individuals and businesses alike.

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