

18-457 NORTH CAROLINA DEPT. OF REVENUE V. KAESTNER FAMILY TRUST

DECISION BELOW: 814 SE.2d 43

LOWER COURT CASE NUMBER: 307PA15-2

QUESTION PRESENTED:

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.

For the last ninety years, however, this Court has been silent on whether these taxes comport with due process. The Court's last words on the subject come from the *Pennoyer* era of due-process analysis. *Pennoyer v. Neff*, 95 U.S. 714 (1878). As a result, lower courts and state taxing authorities have been searching in vain for modern guidance.

There is now a direct split spanning nine states. Four state courts have held that the Due Process Clause allows states to tax trusts based on trust beneficiaries' in-state residency. Five state courts, including two state supreme courts this year, have concluded that the Due Process Clause forbids these taxes.

The Due Process Clause should not have different meanings in different states—particularly when billions of dollars of state-tax revenue hang in the balance. The question presented to this Court is:

Does the Due Process Clause prohibit states from taxing trusts based on trust beneficiaries' in-state residency?

CERT. GRANTED 1/11/2019