

No. \_\_\_\_\_

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**In the Supreme Court of the United States**

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COMMISSIONER OF THE MINNESOTA DEPARTMENT OF REVENUE , PETITIONER,

v.

WILLIAM FIELDING, TRUSTEE OF THE REID AND ANN MACDONALD IRREVOCABLE GST TRUST FOR  
CATHERINE GRAY MACDONALD, MARIA V. MACDONALD, LAURA REID MACDONALD, AND  
VANDEVER R. MACDONALD, RESPONDENTS.

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**APPLICATION TO EXTEND TIME TO FILE  
A PETITION FOR WRIT OF CERTIORARI**

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To the Honorable Neil M. Gorsuch, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eighth Circuit:

1. Pursuant to Rule 13.5 of the Rules of the United States Supreme Court, Petitioner, Minnesota Commissioner of Revenue, respectfully requests a 30-day extension of time, up to and including November 15, 2018, to file her petition for certiorari in this Court.

2. Minnesota, like most states that impose an income tax, requires fiduciaries of trusts to pay income tax as “residents,” if the settlor is domiciled in Minnesota at the time the trust becomes irrevocable. Minn. Stat. § 290.01, subd. 7b (2014).

3. For tax year 2014, the trusts at issue in this case filed fiduciary income tax returns under protest as Minnesota residents. The trustee then filed refund claims in the Minnesota Tax Court claiming that Minnesota’s taxation of the trusts as residents violated the Due Process Clause of the Fourteenth Amendment and the dormant Commerce Clause. The Minnesota Tax Court subsequently ruled on May 31, 2017, that the application of Minnesota’s statutory

residency standard violated the Due Process Clause. *Fielding v. Commissioner of Revenue*, Docket Nos., 8911-R, 8912-R, 8913-R, 8914-R, 2017 WL 2484593 (Minn. Tax Regular Div.). The cases were considered on a consolidated basis.

4. On July 18, 2018, the Minnesota Supreme Court affirmed the Minnesota Tax Court's ruling on a vote of 4 – 2. *Fielding v. Commissioner of Revenue*, 916 N.W.2d 323 (Minn. 2018). No application for rehearing was sought. By operation of Rule 13.1, petitioners' certiorari petition is currently due on or before October 16, 2018. Petitioner has not before now sought any extension of time from this Court to file its petition.

6. A copy of the Minnesota Supreme Court's decision is attached hereto. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

7. The case presents an important question relating to the application of the Due Process Clause of the Fourteenth Amendment in determining when trusts can be taxed as residents of particular states. In its ruling, the Minnesota Supreme Court failed to correctly apply this Court's precedent in *Curry v. McCannless*, 307 U.S. 357, 59 S. Ct. 900 (1939), and is among a growing number of state supreme courts that have incorrectly and inconsistently applied the Due Process Clause in this area of income taxation. Indeed, among the 24 state taxing jurisdictions with similar statutory structures regarding "residency" for trusts, 10 or more have now seen as-applied challenges under the Due Process Clause, and among the resulting opinions, there are a variety of inconsistent analyses used in determining what the Due Process Clause requires. See J. Hellerstein, W. Hellerstein & J. Swain, *State Taxation* § 20.09 (2018). More importantly, the decisions of the various state supreme courts have reach significantly different conclusions about the degree and types of contacts a trust must have with a jurisdiction before "resident taxation" is allowed under the Due Process Clause. *Id.* at § 20.09[2]. The Petitioner will argue to this Court that it should grant certiorari to resolve the conflicting decisions of the state courts.

8. The Petitioner believes that, because this case will raise significant and complex Due Process issues, it will require additional time to adequately research, draft, and prepare a

petition for certiorari. Petitioners believe that a 30-day extension will be sufficient time to finalize the petition for filing in this Court.

WHEREFORE, Petitioner respectfully request that the time to file their petition for writ of certiorari be extended by thirty days, from October 16, 2018, to and including November 15, 2018.

Dated: October 2, 2018

Respectfully submitted,

OFFICE OF THE ATTORNEY GENERAL  
State of Minnesota

/s/ Kelly S. Kemp

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