Georgia Department of Revenue
Policy Bulletin IT-2019-02
Taxation of Nonresident Trust Fiduciaries – Effect of Kaestner Decision

1) **Purpose:** This policy bulletin provides guidance regarding the taxability and filing requirements under Georgia Code §§ 48-7-22 and 48-7-50 when considering the U.S. Supreme Court decision in the case of *North Carolina Department of Revenue v. Kimberley Rice Kaestner 1992 Family Trust*, Slip Opinion No. 18-457 - Decided June 21, 2019.

2) **Effective Date:** All years open by the applicable statute of limitations.

3) **Authority:**

The relevant part of O.C.G.A. §48-7-22 states:

(a) The tax imposed by this chapter shall be:

(1) Imposed upon resident fiduciaries and upon nonresident fiduciaries:

(A) Receiving income from business done in this state;

(B) Managing funds or property located in this state; or

(C) Managing funds or property for the benefit of a resident of this state;

(2) Imposed upon fiduciaries subject to the tax at the rates provided in this article for single individuals;

(3) Levied, collected, and paid annually with respect to:

(A) That part of the net income of an estate or trust which has not become distributable during the taxable year. It is the purpose of this Code section to tax fiduciaries or beneficiaries on all income otherwise taxable under this chapter. Income received by a resident fiduciary shall not be subject to the tax imposed by this chapter when the income is accumulated for, is distributed, or becomes distributable during the taxable year to a nonresident of this state and when the income was received from business done outside this state, property held outside this state, or intangible property, other than from the licensing for use of the property, held by a fiduciary including, but not limited to, gains from the sale or exchange of the property. No return of income exempt under this subparagraph shall be required;

(B) The taxable net income received during the taxable year by a deceased individual who at the time of death was a taxpayer and who died during the taxable year or subsequent to the taxable year without having made a return; and

(C) The entire taxable net income of an insolvent or incompetent person, whether or not any portion of the taxable net income is held for the future use of the beneficiaries, when the fiduciary has complete charge of the net income.

The relevant part of O.C.G.A. §48-7-50 states:

(a) An income tax return with respect to the tax imposed by this chapter shall be filed with the commissioner by every:

(1) Resident who is required to file a federal income tax return for the taxable year;

(2) Nonresident who has federal gross income from sources within this state;

(3) Resident estate or trust that is required to file a federal income tax return;
(4) Nonresident estate or trust that has federal gross income from sources within this state; and
(5) Resident or nonresident who has taxable income subject to Georgia income tax for the taxable year who does not have taxable income subject to federal income tax for the same taxable year.

4) Scope: A Policy Bulletin is intended to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of law to a specific set of facts or a general category of taxpayers, superseding all conflicting documents and oral directives previously issued by the Department. A Policy Bulletin does not have the force or effect of law and is not binding on the public. It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or subsequent Policy Bulletin.

5) Issue: What impact does the *Kaestner* decision have upon income tax administration in Georgia?

6) Discussion of Issue:

On June 21, 2019, the U.S. Supreme Court rendered its decision in the case of *North Carolina Dept. of Revenue v. Kimberly Rice Kaestner 1992 Family Trust*. The Court held that *"the presence of in-state beneficiaries alone does not empower a State to tax trust income that has not been distributed to the beneficiaries where the beneficiaries have no right to demand that income and are uncertain ever to receive it." Also, the Court stated the following: "In limiting our holding to the specific facts presented, we do not imply approval or disapproval of trust taxes that are premised on the residence of beneficiaries whose relationship to trust assets differs from that of the beneficiaries here."*

In reaching its conclusion that the North Carolina beneficiaries alone did not supply the minimum connection necessary to sustain the State's tax, the Court cited the following three factors:

1. The beneficiaries did not receive any income from the trust during the years in question;
2. The beneficiaries had no right to demand trust income or otherwise control, possess, or enjoy the trust, assets in the tax years at issue; and
3. Not only were the beneficiaries unable to demand distributions in the tax years at issue, but it was also uncertain whether they would ever receive any income from the trust in the future.

Although the Department must follow the *Kaestner* decision, it is limited in scope to the facts in that case. Therefore, with respect to facts that are specifically like those in *Kaestner*, a nonresident trust fiduciary would not be subject to Georgia taxation. Otherwise, the fiduciary would be subject to taxation under O.C.G.A. §48-7-22 and must file a return.

With respect to filing a return, O.C.G.A. §48-7-50 when read together with §48-7-22 requires a return to be filed by a nonresident fiduciary when 48-7-22 applies provided *Kaestner* does not apply.