

**NEWS**

## Myrick and Bloomfield Successful in NC Supreme Court Ruling

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Charlotte Litigation Members Tom Myrick and Neil Bloomfield obtained a 6-1 ruling from the North Carolina Supreme Court in favor of our client.

### About the Ruling

On June 8<sup>th</sup>, the North Carolina Supreme Court issued an important tax decision with implications for wealth managers everywhere. North Carolina, like a number of other states, taxes a trust based on the in-state physical presence of the trust's beneficiary regardless of the location of the trust. Our client is a New York trust whose sole beneficiary relocated to North Carolina. During the tax years in question, the trust held no assets in North Carolina, had limited contact with the beneficiary, and made no distributions. North Carolina taxed all of the trust's worldwide income based on the beneficiary's residence. We were retained to challenge the action of the N.C. Department of Revenue. We determined the best course, among other strategies, was to challenge the constitutionality of the statute.

The North Carolina Complex Business Trial Court, the North Carolina Court of Appeals, and now the North Carolina Supreme Court agreed with us that the attempt by the State to tax an out of state trust based on the in-state presence of its beneficiary violates the Due Process Clause of the U.S. Constitution. The Court agreed the minimum contacts necessary for the State to exercise its taxation power must be the contacts of the trust, not its beneficiary, because a trust is an entity separate from its beneficiaries.

A number of states have taken the position through legislation or case law that the presence of a beneficiary is either sufficient for a state to exercise its power to tax or a factor to be considered in assessing that power. The NC Supreme Court's decision contrasts with decisions of the highest courts in California and Connecticut, which found this broad interpretation of a state's authority to tax to be consistent with due process.

This case provides a conclusive answer in North Carolina and precedent elsewhere that can help trusts and their beneficiaries in their planning and to avoid unconstitutional taxation.

**MYRICK AND BLOOMFIELD SUCCESSFUL IN NC SUPREME COURT RULING**

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