



EVOLUTION OF INCOME TAXATION OF TRUST IN NORTH CAROLINA IN THE SEVEN YEARS FOLLOWING *KAESTNER*

ACTEC – FALL MEETING 2026



MORNING *KAESTNER* WAS ARGUED



- 1. Five Post-*Kaestner* Legislative Efforts in NC
- 2. Fiduciary Source Income Approaches in Various States
- 3. What About Income from Intangibles?

FOUR PRIOR LEGISLATIVE EFFORTS

1. **2015 S.B. 468:** Cleared Judiciary Committee, was delayed pending *Kaestner*. Residence of trust based on BOTH (1) presence of North Carolina beneficiary, AND (2) Principal Place of Administration in NC.
2. **3/9/2020 Draft Proposal** from NCDOR. Residence based on BOTH (1) presence of North Carolina beneficiary, where (2) ANY of six additional conditions exist (three *Kaestner* conditions, trustee, PPA, grantor holding “any power”).
3. **5/21/2021** Working draft of Bankers’ Association proposal. Residence based on BOTH (1) presence of North Carolina beneficiary, AND (2) if both (a) majority of Investment decisions AND (b) majority of distribution decisions occur in-state.
4. Approx. **3/1/2022** NCDOR formal *Request for Legislative Changes*. Taxing the accumulated income of all trusts “administered in this state.”

2015 SENATE BILL 468

(b) The tax is computed on the amount of the taxable income of an estate or trust as follows:

On a nonresident estate or nonresident trust, but only to the extent that the income:

(i) is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State or

(ii) is derived from a business, trade, profession, or occupation carried on in this State;

(2) On a resident estate;

(3) On a **resident trust** that is for the benefit of a **resident current beneficiary**....

(e) The following definitions apply in this section:

(5) Resident trust. - A trust which has its **principal place of administration in North Carolina**, as defined in G.S. 36-1-103(13a).

NCDOR PROPOSAL 3/9/2020

(d) Trusts. - The taxable income of a trust includes taxable income that is for the benefit of a resident of this State where any of the following conditions exist:

- (1) The resident of this State received income or other benefit from the trust.
- (2) The resident of this State had a right to demand income or other benefit from the trust.
- (3) The resident of this State is certain to receive income or other benefit from the trust.
- (4) The trustee is a resident of this State.
- (5) The trust is administered in this State.
- (6) The grantor of the trust is a resident of this State and either (i) holds any power over trust assets or trust administration or (ii) receives any benefit from the trust.

BANKERS ASSN WORKING DRAFT 5/21/2021

(b) The tax is computed on the amount of the taxable income of an estate or trust as follows:

(3) On a resident trust that is for the benefit of a resident current beneficiary....

(5) Resident trust. – A trust is a resident trust only if both conditions are met:

(i) a majority of the discretionary decisions of the trustees relative to the **investment** of trust assets are made in North Carolina; and

(ii) a majority of the discretionary decisions of the trustees relative to the **distributions** of trust income and principal are made in North Carolina;

NCDOR 2022 REQUEST FOR LEGISLATIVE CHANGES (~3/1/22)

§ 105-160.1. Definitions.

(b) "Resident trust" is defined as:

- (i) A trust, or a portion of a trust, consisting of property transferred by will of a decedent who at his or her death was domiciled in this state; or
- (ii) a trust administered in this state.

§ 105-160.2. Imposition of tax.

(a) The taxable income of a resident estate or a resident trust is the same as taxable income for such an estate or trust under the provisions of the Code....

NCDOR 2022 REQUEST FOR LEGISLATIVE CHANGES (~3/1/22)

“Reason for Study

[W]hile the Court held that North Carolina’s statute was unconstitutional as applied in the *Kaestner* case, the Court did not fully define the circumstances under which the statute would be constitutional. The Department recommends defining these circumstances statutorily rather than through litigation.”



FINAL LAW

SESSION LAW 2026-31. SECTION 1.3

PASSED 7/2/2026; EFFECTIVE 1/1/2026

- “The tax is computed on the amount of the taxable income of the estate or trust that (i) is derived from North Carolina **sources** and is attributable to the ownership of any interest in real or tangible personal property in this State or (ii) is derived from business, trade, profession, or occupation carried on in this State.” § 105-160.2

Note that the revised statute has removed references to estates and trusts benefiting resident or nonresident beneficiaries.

TYPES OF RESIDENT TRUSTS TAXED ON SOURCE INCOME

State	Primary Trust Residency Trigger	How Non-Source/Portfolio Income Is Handled	Tax Base for Resident Trusts
Missouri	Settlor / Fiduciary / Administration	Statutory subtraction allowed for non-MO income under § 143.341	Source Income Only
North Carolina	Source-income focus (post-Kaestner & N.C.G.S. § 105-160.2)	Non-NC portfolio income not taxed unless trust administration/trustees create nexus	Source Income Only
New York	Grantor Domicile	Exempt if no NY trustees, assets, or source income (N.Y. Tax Law § 605)	Source Income Only (if exempt conditions met)
Connecticut	Grantor Domicile	Exempt if no CT trustees, beneficiaries, or source income (C.G.S. § 12-701)	Source Income Only (if exempt conditions met)
Delaware	Trustee / Administration	Deduction for income accumulated for non-resident beneficiaries (30 Del. C. § 1605)	Source Income Only (if no DE beneficiaries)



STATE FIDUCIARY INCOME TAXATION OF INCOME FROM INTANGIBLES

“The tax is computed on the amount of the taxable income of the estate or trust that ... (ii) is derived from business, trade, profession, or occupation carried on in this State.” § 105-160.2

See *Fowler v. North Carolina Department of Revenue* (gain from sale of equity in NC business taxable to the equity owner domiciled in Florida).

VAS Holdings (a *nonresident* had to pay tax in MA for selling an (intangible) LLC interest in a company operating in MA).

California Franchise Tax Board



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