

Families and Trustees Should Evaluate Impact of *Fielding v. Commissioner*

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Newsletter from the Trust, Estate, and Charitable Planning Practice Group at Gray Plant Mooty

Because of a new Minnesota Supreme Court decision, families with irrevocable trusts and trustees of irrevocable trusts have a new income tax issue to evaluate. After the Court's decision in *Fielding v. Commissioner*, certain trusts (including trusts that will be created in the future) may not have to pay Minnesota income tax on the trusts' income.

Minnesota Law. Minnesota law requires a "resident trust" to pay Minnesota income tax on all of the trust's income. A "resident trust" means a trust, except a grantor trust, that became irrevocable or was first administered in Minnesota after 1995 if the trust: (1) was created by a will of a person who died while a Minnesota resident or (2) became irrevocable at the time the creator of the trust was a Minnesota resident.

Case Background. The taxpayer in the *Fielding* case is the trustee of irrevocable trusts that were created by a Minnesota resident during his lifetime. The trustee filed Minnesota income tax returns and paid Minnesota income tax on the trusts' income but challenged the constitutionality of the tax because of the trusts' nominal connection to Minnesota. Although the trusts are governed by Minnesota law, hold stock in a Minnesota company, and have one Minnesota beneficiary, the trustee is not a Minnesota resident, the trusts are not administered in Minnesota, and three of the trusts' beneficiaries are not Minnesota residents.

Case Analysis. The Court concluded that Minnesota must have a "minimum connection" to a trust in order to tax

that trust's income. After evaluating the connection between these specific trusts and Minnesota, the Court concluded a "minimum connection" did not exist to Minnesota and, therefore, the trusts cannot constitutionally be required to pay Minnesota income tax on their income. A few elements of the Court's analysis are worth highlighting:

1. Connections between the creator of the trust and Minnesota "are not relevant" to the relationship between the trust and Minnesota.
2. Contacts with Minnesota prior to the tax year at issue are not relevant.
3. A provision of the trust agreement stating that the trust is governed by Minnesota law is not enough to establish a "minimum connection" to Minnesota.
4. The residence of a trust beneficiary is not an appropriate factor to consider.
5. Minnesota's connections to the trustee and where the trustee resides are relevant.
6. Minnesota's connections to the trust and where it is being administered are relevant.

Minnesota law was found unconstitutional "as applied to" the facts presented in the *Fielding* case. This means that, although the law was not struck down, Minnesota's ability to classify a trust created by a Minnesota resident during his or her lifetime as a Minnesota "resident trust" for income tax purposes has been curtailed. The Court did not address the law as it relates to a trust created by a will.

Planning Tips After Fielding

Trustees and beneficiaries of irrevocable trusts created by a Minnesota resident during his or her lifetime should consider how the Fielding case impacts them and what new planning opportunities may be available.

- If a trust's current contacts with Minnesota are insignificant, the trustee may be able to amend prior Minnesota income tax returns to request a refund or stop filing Minnesota income tax returns going forward. Please see the table below regarding deadlines to amend prior year tax returns. The Minnesota Department of Revenue has not yet announced whether they will allow refund claims based on the Fielding case.
- If a trust's current contacts with Minnesota are significant (*e.g.*, the trustee is a Minnesota resident or the trust is administered in Minnesota), the trustee may be able to take certain actions that would minimize or eliminate those contacts, which potentially

could prevent the trust from being subject to Minnesota income tax in the future.

- Individuals should evaluate the Minnesota income tax impact (if any) of the trustee selection of current and future trusts. Income tax is not the only factor to consider when selecting a trustee but, in light of the Fielding case, it is now an important factor.

We recommend that you contact an attorney in Gray Plant Mooty's Trust, Estate, and Charitable Planning team if you have any questions regarding the Fielding case and if you would like an attorney to conduct a "Fielding Review" to determine its impact on your estate plan.



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Minnesota Trust Income Tax Return Refund

Calendar Year	Due Date	Due Date (Extended)	Re
2014	04/15/2015	09/15/2015	
2015	04/15/2016	09/15/2016	
2016	04/18/2017	10/02/2017	
2017	04/17/2018	10/01/2018	

The dates above apply for a trust filing based on a calendar year not a fiscal year.

Tips From a Litigator

Although Fielding is a relatively new decision, ignorance of the law (and important Minnesota Supreme Court decisions clarifying the law) is no defense in an action against an unknowing trustee. For this reason, trustees should review the Fielding case, conduct a Fielding Review, and advise beneficiaries accordingly. Depending on the circumstances, trustees could find themselves in a dispute with beneficiaries if they fail to:

- Advise beneficiaries on the potential impact of Fielding on existing trusts;
- Amend previously filed Minnesota income tax returns (and request a refund) for prior years, within the applicable limitations period, when the trust did not have a “minimum connection” to Minnesota; and

- Conduct a Fielding Review annually going forward to determine whether tax advantages might be realized by limiting or eliminating connections to Minnesota.



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Refund Claim Due Dates

Refund Due Date (No Extension)	Refund Due Date (Extended)
10/15/2018	03/15/2019
10/15/2019	03/15/2020
10/18/2020	04/02/2021
10/17/2021	04/01/2022



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Get to Know Gray Plant Mooty's Newest Trust, Estate, and Charitable Planning Attorney



Kara P. Gray

Kara joined the Gray Plant Mooty Trust, Estate, and Charitable Planning group in November 2018. Based in Minneapolis, Kara's practice focuses on meeting her clients' personal, financial, and tax-planning needs. She works closely with clients to develop an estate plan that achieves their legacy goals and minimizes taxes. More information about Kara and the entire team is below and also online at www.gpmlaw.com.

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