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## Income Taxation of New York Resident Trusts, The (continued)

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### An Effective Employer Response to Complaints of Sexual Harassment

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A written notification of some sort should be provided to both the complaining party and the alleged harasser regarding the investigation and the conclusion reached by the investigator. If no disciplinary action is taken, the complaining party should be informed that no disciplinary action will be taken against her and that the company will not permit the alleged harasser to retaliate against her. The employer should also check periodically with the complaining party regarding further occurrences.

#### D. Educating Company Employees

In addition to an effective company policy and complaint procedure, employers should also educate their employees

in order to sensitize them to sexual harassment issues. The education, or training, should include information on the illegality of sexual harassment and should provide concrete examples of behavior that is acceptable and behavior that is prohibited. It should also reiterate the company's policy and complaint procedure and explain the legal recourse available to a complainant outside the company's internal procedures. Such education will provide valuable evidence of an employer's commitment to establish a workplace free of sexual harassment and lessen the likelihood of employer liability in such cases.<sup>29</sup>

#### E. Conclusion

Sexual harassment continues to be an explosive issue with substantial and increasing costs for employers. Although quid pro quo harassment generally results in strict liability to employers, an opportunity exists for employers to limit their

liability in hostile environment harassment cases. This limitation can be enhanced by the institution of an effective mechanism for responding to complaints of sexual harassment. Such a mechanism should include a company policy and complaint procedure designed to inform employees of the company's disapproval of sexual harassment and its procedure for investigating complaints of sexual harassment and disciplining the harasser. The existence of such a procedure, along with its proper implementation, will provide an employer with a viable defense in the event of a sexual harassment suit. ◀

<sup>29</sup> *Trotta* at 1351. Educating the employer's workforce may be the most effective method of reducing employer liability for sexual harassment not only because it may reduce the incidents of such harassment, but because of the trend to impose stricter standards on employer liability. See *Karibian, supra*.

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### The Income Taxation of New York Resident Trusts

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105.23(c) is met. Since the trust did not prove that the trust corpus had left the State, the Commission did not really reach the critical question. However, the Commission went on to try to distinguish *Mercantile Safe-Deposit* from the current case. It maintained that the case "is not dispositive" because in that case the trustee was domiciled in Maryland, the trust administered there and the corpus "at all times" was located there. In addition, the trust involved provided that it was to be construed under the law of Maryland.<sup>35</sup>

At best, this attempt to distinguish away the holding of *Mercantile Safe-Deposit* seems disingenuous. That case is based on the constitutional command that a state not tax property located outside its borders. It should make no difference that the trust property once was in New York. It should also make no difference, although New York may try to argue to the contrary, whether the trust being moved is an *inter vivos* trust or a testamentary trust. If the trust is no longer in New York, then New York cannot tax it, period.

Somewhat more troubling, however, is the suggestion that the trust in *Mercantile Safe-Deposit* being governed by Maryland law is relevant. Yet, the fact that New York law would be used to govern the trust does not mean that trust property is present in New York. Nor does it mean that New York courts would necessarily be used to answer questions about trust governance or construction. Even if they were, would the possibility that New York courts could be used for trust litigation be enough to sustain income taxation of the trust? The answer to that question must be "no" if we take seriously the constitutional requirement that location of property is crucial to taxation. It should be possible, then, to remove a resident trust from New York's income tax jurisdiction while continuing to use New York financial institutions as custodians, advisors, or even delegates of trustee powers. ◀

<sup>35</sup> *Id.* at 16,892. Emphasis added in the opinion to the quotation from the case.