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Enforcement by State Courts of Tax Claims of Sister States--Ohio v. Arnett

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Notes on Recent Cases

ENFORCEMENT BY STATE COURTS OF TAX CLAIMS OF SISTER STATES – OHIO V ARNETT

In *State of Ohio ex rel Duffy, Att. Gen.* v. *Arnett*,[1] the Court of Appeals made a decision contrary to the overwhelming weight of authority with regard to the enforcement by the courts of one state of the revenue laws of another state.

The Ohio Attorney General sued in behalf of Ohio to recover workmen's compensation insurance premiums for protection extended to the defendant under the Ohio Workmen's Compensation statute. Defendant, a contractor working in Ohio but a resident of Kentucky, had applied for this coverage and had paid some $500 of the premiums due, leaving a balance due of $4,701.76 when he returned to Kentucky. His principal defense was that the claim of Ohio was one for taxes and that one state would not allow its courts to be used to collect taxes for another state. The Court of Appeals rejected this defense and asserted:

> "As we see it, whether this action is one to collect a tax due a sister state or one to enforce a contractual obligation, it is one in which appellee, a non-resident of Ohio but temporarily doing business there, submitted himself to the laws of that state for the purpose of carrying on that business. In doing so he incurred certain obligations to that state which the state is now suing to recover. It would be manifestly unjust to allow him to escape his obligations by leaving the state where it was incurred and throwing around him the cloak of nonsuability in the state of his residence."[3]

By such holding, the court fully accepted the trend which originated in the case of *Oklahoma* v. *Rodgers*.[4]

The origin of the contrary established view, that the courts of the forum will not entertain a suit to collect taxes due another jurisdiction, had its inception in a desire upon the part of English judges to make no decision likely to have an adverse effect upon English commerce. In the earliest case, *Boucher* v. *Dawson*,[5] defendant had contracted to transport for plaintiff a quantity of gold from Portugal to England. When the gold arrived in England, defendant refused to deliver it

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[1] 234 S.W 2d 722 (Ky. 1950).

The court had some doubt as to whether the workmen's compensation premiums had the status of taxes due Ohio or merely debts. If the latter, there could be no doubt of the jurisdiction of the forum to entertain an action brought by another state. There had been no adjudication in the Ohio courts on this point, and the Court of Appeals did not feel that it should be the first to decide the matter since, under its holding that the forum had jurisdiction to entertain an action by a foreign state to collect taxes, recovery would be permitted regardless of the exact status of the claim.

There might be a question as to why the state of Ohio itself, rather than a private insurer, was debt claimant here. The answer to this is found in the Ohio Workman's Compensation law which provides for a state insurance fund to be handled by the industrial commission with a further provision that any licenses permitting private companies to indemnify employers in Ohio shall be void. 1-A OHIO GEN. CODE ANN. sec. 1465-54, 101 (Page, 138).

[3] *Supra*, note 1 at 727.

[4] 238 Mo. App. 1115, 193 S.W 2d 919 (1946).

[5] Hardw. 85, 95 Eng. Rep. 53 (1734).

to plaintiff and defended on the ground that Portuguese revenue laws forbade the exporting of gold from Portugal. Lord Hardwicke, in rejecting this defense, said:

> "But if it should be laid down, that because goods are prohibited to be exported by the laws of any foreign country from whence they are brought, therefore the parties should have no remedy or action here, it would cut off all benefit of such trade from this kingdom, which would be a very bad consequence to the principal and most beneficial branches of our trade; nor does it ever seem to have admitted."[6]

Following this policy, Lord Mansfield, by way of dictum in two later English cases, laid down the broad rule that one country would never take notice of the revenue laws of another.

The doctrine as applied to laws of a foreign country was first adopted in the United States by the New York Court of Appeals in 1806.[8] There the New York court refused to take notice of French revenue laws. Not until 1843 was there any intimation that the doctrine would be extended to include sister states. It was then that the New Hampshire Supreme Court, by way of dictim, made the observation that it would not enforce the collection of taxes assessed under the laws of a sister state.[9]

The question was first squarely presented to an American court in the case of *Maryland* v. *Turner*.[10] It was there said that a tax levied by a sister state was not enforceable because it was not contractual. From that time on the rule was followed with monotonous regularity,[11] but not until 1929 was any attempt made to explain it. In *Moore* v. *Mitchell*,[12] Judge Learned Hand gave these reasons in support of the rule; (1) to enforce the revenue laws of a sister state might conflict with the public policy of the enforcing state; (2) the state of the forum might make a decision embarrassing to the sister state; (3) no state should undertake an inquiry which it cannot prosecute without determining whether those laws are consonant with its own notions of what is proper; (4) relations between states are for the legislature, not the courts, to establish.

Although there seems to be great merit in Judge Hand's arguments when applied to situations involving enforcement of penal laws, their applicability to the ordinary tax claim is difficult to see. At the outset, it might be well to point out that tax laws are not penal within the definition of penal laws as set forth

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[6] *Id.* at 55.

[7] Planche v. Fletcher, 1 Doug. 251, 253, 99 Eng. Rep. 164, 165 (1779); Holman v. Johnson, 1 Cow P. 341, 343, 98 Eng. Rep. 1120, 1121 (1775).

[8] Ludlow v. Van Renselaer, 1 Johns 94 (N. Y. 1806).

[9] *See* Henry v. Sargeant, 13 N. H. 321, 332 (1843).

[10] 75 Misc. 9; 132 N. Y. S. 173 (Sup. Ct. 1911).

[11] City of Detroit v. Proctor, 61 A. 2d 412 (Del. 1948); Moore v. Mitchell, 30 F 2d 600 (C.C.A. 2d 1929); In re Bliss, 121 Misc. 773, 202 N. Y. S. 185 (Surr. Ct. 1923). (Although it disposed of the case on other grounds, the court commented that allowing collection of foreign taxes is a matter which far exceeds any question of comity and would create a system whereby each state would become the busy collection agent of another state in gathering its taxes); Colorado v. Harbeck, 232 N. Y. 71, 133 N.E. 357 (1921) (The New York Court refused to enforce payment of a Colorado transfer tax on a New York decedent's estate on the ground, among others, that to do so would conflict with the well settled principle that the revenue laws of one state have no force in another).

[12] 30 F 2d 600 (C.C.A. 2d 1929).

by the United States Supreme Court.[13] As to the public policy argument, it is submitted that sound public policy dictates for, not against, the enforcement of tax laws.[14] In so far as the possibility of a decision embarrassing the taxing state is concerned, there is little danger of such a result. The state has come to the forum seeking an adjudication and thus holds itself ready to accept the decision reached. And as to future cases, an adverse determination by the court would not be binding upon the courts of the sister state.

Furthermore, any possibility that the enforcing state might think the law improper is outweighed by other considerations. Delinquent taxpayers should not be able to escape their lawful obligations merely by crossing state lines and thereby shifting the tax burden to innocent members of the public. The legislature of the taxing state has passed a law it thought proper. If the law is manifestly unjust, then the people have recourse to the courts.[15] Any defense available to the defendant in the taxing state will be available in an action brought against him in a sister state. If he still feels himself unjustly handled, then he may appeal his case just as any other party to an action has a right to do.

In further support of the general rule, Professor Beale has asserted that the state of the forum may feel reluctant to assume the burden of administering an intricate tax system with which it is totally unacquainted.[16] Although in a few cases this argument is quite plausible, a court confronted with this problem not only can and should, according to ordinary rules of statutory construction, turn to decisions of the courts of the taxing state in which the tax law has been interpreted, but is readily able to do so. These interpretations will help it to reach a proper result.[17]

Various other suggestions have been made as to why the rule ought to be enforced, such as: the possibility that the docket of the enforcing state may be overcrowded; inconvenience to the defendant in being forced to defend outside the jurisdiction where the acts giving rise to the claim took place; and the difficulty in proving facts at a place distant from their origin. These arguments seem to be outweighed by the benefits to be derived from the prevention of tax evasion. Further, cases of this sort are relatively few and the possibility of a burden being placed upon an already crowded docket is negligible. The defendant who is seeking to avoid paying his taxes should not be heard to complain.

The Supreme Court of the United States has not made any decision upon the specific problem. However, in the case of *Milwaukee County* v. *White Co.*, the court said, "Whether one state must enforce the revenue laws of another remains an open question in this Court."[18] The court emphati-

[13] Huntington v. Attrill, 146 U.S. 657, 673 (1892), "The question whether a statute of one State, which in some respects may be called penal, is a penal law in the international sense, so that it cannot be enforced in the courts of another State, depends upon the question whether its purpose is to punish an offense against the public justice of the State, or to afford a private remedy to a person injured by the wrongful act."

[14] GOODRICH, CONFLICT OF LAWS 164 (3 ed. 1949).

[15] Further, under well settled principles of conflicts of laws affording an analogy here the forum would have the privilege of denial of relief if the particular statute were contrary to a strong policy of the forum. LEFLAR, CONFLICTS OF LAWS secs. 82, 97, 193 (1938).

[16] 3 BEALE, CONFLICTS OF LAWS 1638 (1935).

[17] CRAWFORD, STATUTORY INTERPRETATIONS 408 (1940).

[18] 296 U.S. 268, 275 (1935).

cally ruled that a tax judgment of one state is entitled to full faith and credit in other states. Although nothing in the United States Constitution requires states to recognize tax claims of sister states, there is certainly nothing there which prevents them from doing so.

In view of the apparent doubt of the Supreme Court as to whether it should give affirmative support to the doctrine, perhaps it could be foreseen that its force would weaken. At any rate, in 1946, the Missouri Supreme Court, in the case of *Oklahoma* v. *Rodgers*,[19] flatly repudiated this doctrine. After disposing of the arguments of Judge Hand already mentioned, the court went on to say:

> "In our opinion, the elimination of the foregoing considerations, which are said to prompt courts to refuse to enforce foreign penal laws, as reasons for excluding suits of this kind, leaves no valid justification for not permitting a suit in this state for a tax lawfully levied in another. The simplest ideas of comity would seem to compel such a result, and modern conditions demand it."[20]

The force of the decision and reasoning of the Missouri court has inaugurated a modern trend which is having its effect elsewhere. It is important to note that the *Restatement of Conflict of Laws* formerly set out the rule: "No action can be maintained by a foreign state to enforce its license or revenue laws, or claims for taxes."[21] The 1948 Supplement has been changed to read: "The Institute expresses no opinion whether an action can be maintained by a foreign state on a claim for taxes."[22] There is further language to the effect that the Institute considers the same view as taken by the Kentucky court to be more desirable.[23]

It is becoming more and more evident today that the United States is a country made up of a union of states whose courts should be and are called upon in certain situations to offer a means by which a sister state may come in and protect the interests of its government. Tax evasion is more serious today than ever before. It is in the interest of every state that tax laws cannot be evaded merely by leaving a jurisdiction. It is submitted that the Court of Appeals has taken a progressive step in the *Arnett* case by declaring that a sister state may come into Kentucky and enforce a claim arising under the tax laws of that state.

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[19] 238 Mo. App. 115, 193 S.W 2d 919 (1946).

[20] *Id.* at — 193 S.W 2d at 927.

[21] RESTATEMENT, CONFLICT OF LAWS sec. 610, comment *c* (1934).

[22] As quoted in Ohio v. Arnett *supra*, note 1 at 725.

[23] GOODRICH, *op. cit. supra* note 14 at 165, esp. n. 248. Upon rehearing of Ohio v. Arnett, KY. REV. STAT. sec. 131.230 (1948) and 135.190 (Supp. 1950) were called to the attention of the Court. Sec. 131.230 provides: "The courts of this state shall recognize and enforce statutes concerning taxation constitutionally imposed by other states that extend like comity." Sec. 135.190 which was passed after the cause of action arose, provides: "Any state of the United States of America or any political subdivision thereof shall have the right to sue in the courts of Kentucky to recover any tax which may be owing to it when the like right is accorded to the Commonwealth of Kentucky and its political subdivisions by such state, whether such right is granted by statutory authority or as a matter of comity."