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CONFLICT OF LAWS-ENFORCING TAX LAWS OF SISTER STATES

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CONFLICT OF LAWS—ENFORCING TAX LAWS OF SISTER STATES—In the recent case *City of Detroit v. Proctor*,[1] the defendant, a resident of Detroit, was owner of personal property located there in the year 1939. The city levied a tax on this property, which tax became a debt under the laws of Michigan on the first day of April, 1939, and became due and payable on the 15th of July, 1939. During the month of June, 1939, the defendant removed both his person and his property from the state of Michigan and has since resided elsewhere. The treasurer of the city of Detroit, who is empowered by law to sue in the name of the city for the tax,[2] filed an action in Delaware courts, obtained personal service on the defendant, and attempted to secure a judgment for the amount of the claim. In affirming a dismissal of the action, a superior court of Delaware followed the rule that one state will not enforce the revenue laws of another state. The court found the rule too well established to overthrow, and felt jurisdiction should be refused since the question involves vital interstate relations with which the courts are incompetent to deal without legislative mandate.

In this comment an attempt will be made to show that there is not sufficient reason for the rule against enforcement of foreign tax laws to justify its application in the *Proctor* case and other similar fact situations. The observations made are intended to be confined, however, to cases where the action: (1) is brought on a tax claim by one state of the United States in the courts of a sister state; (2) is one for which the laws of the taxing state give a civil action at law in the nature of debt (taxes collectible only by an exclusive procedure before special tribunals set up by the taxing state present an entirely different problem); (3) is primarily for unpaid taxes and not for penalties assessed by the taxing state for failure to pay taxes, and (4) is uncollectible in the taxing state. That is, the delinquent taxpayer must have put himself and his property beyond the jurisdiction of the taxing state. It is believed that the rule against enforcing foreign tax laws should not apply to cases presenting the above set of circumstances, because as originally developed the rule was intended to promote a purpose not involved in this situation.[3] The few reasons given for the rule are not usually of sufficient importance to justify its application to this fact picture;[4] and the opposite result, which is desirable, could be easily reached by applying ordinary conflict of laws principles.

[1] (Del. 1948) 61 A. (2d) 412.

[2] 6 Mich. Stat. Ann. (Henderson, 1936) § 7.91.

[3] Boucher v. Lawson Cas. t. Hard. 85, 95 Eng. Rep. 53 (1734).

[4] See cases cited in Detroit v. Proctor, supra, note 1, and in Oklahoma v. Rodgers, 238 Mo. App. 1115, 193 S.W. (2d) 919 (1946). See also 34 CALIF. L. REV. 754 (1946); 46 COL. L. REV. 1013 (1946); 31 MINN. L. REV. 93 (1946); 41 ILL. L. REV. 439 (1946).

A. English and American Judicial Background

In *Boucher v. Lawson,*[5] the first case in which the rule was enunciated, the defendant had contracted to ship a quantity of gold from Portugal to England for the plaintiff. Upon arrival in England the defendant refused to deliver the cargo and interposed as a defense that the contract was in violation of a Portuguese revenue law which prohibited the export of gold. Lord Hardwicke refused to give effect to the Portuguese law, because to do so, he felt, would have detrimental effects on English commerce. In several subsequent cases the English courts refused to allow contravention of a foreign revenue law to be used as a defense to an action for breach of commercial contracts.[6] The primary reason for each holding was to prevent foreign revenue laws from clogging English trade. In none of these cases was there an attempt to collect a tax due under a foreign statute, but in at least two instances Lord Mansfield laid down the broad rule by way of dictum that one country will never take notice of the revenue laws of another.[7] This statement of the rule was obviously more inclusive than was necessary to reflect accurately the holding of the court.

The doctrine made its first appearance in the United States in 1806 when the New York Court of Appeals recognized the validity of a promissory note executed in France and payable in New York even though it was not stamped as required by French law.[8] The New York court said it was not required to take notice of French revenue laws. This holding was undoubtedly a proper application of the rule as set forth by Lord Hardwicke in 1734. In 1843 Lord Mansfield's broad statement of the doctrine was reiterated by the New Hampshire Supreme Court in making the observation that it would not enforce the collection of a tax assessed under the statutes of a sister state.[9] This observation was pure dictum, and the New Hampshire court made no attempt to justify applying the rule to this new set of circumstances.

The problem of enforcing payment of taxes assessed under a statute of a sister state was squarely presented to an American court for the first time in the case of *Maryland v. Turner.*[10] In disposing of the question;

[5] Supra, note 3.

[6] Holman v. Johnson, 1 Cowp. 341, 98 Eng. Rep. 1120 (1775); Planche v. Fletcher, 1 Dougl. 251, 99 Eng. Rep. 164 (1779); Sharp v. Taylor, 2 Phi. 801, 41 Eng. Rep. 1153 (1849); James v. Catherwood, 3 Dow and Ry. 190 (1823).

[7] Holman v. Johnson, supra, note 6; Planche v. Fletcher, supra, note 6.

[8] Ludlow v. Van Renselaer, 1 Johns (3 N.Y.) 94 (1806).

[9] Henry v. Sargeant, 13 N.H. 321, 40 Am. Dec. 146 (1843).

[10] 75 Misc. 9, 132 N.Y.S. 173 (1911).

a New York supreme court there held that such an obligation was unenforceable because it was not contractual. Furthermore, the court said, "It has been held, and is a principle universally recognized, that the revenue laws of one country have no force in another."[11] The court gave neither reason nor authority for this statement and entirely disregarded the fact that Maryland is a sister state and not a foreign country. From this questionable beginning the courts of this country began to apply the rule to the *Proctor* case situation in the same mechanical manner as was employed by the New York court in *Maryland v. Turner*.

In 1921 the celebrated case of *Colorado v. Harbeck*[12] was decided. There the New York Court of Appeals 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 pinciple that the revenue laws of one state have no force in another. The weight of this case as precedent is very questionable, however, because no authority was cited, no jusification for the rule was attempted and the case was adequately disposed of on other grounds.[13] In the case of *In re Bliss*[14] a New York court was confronted with the same problem and facts that characterized *Colorado v. Harbeck*. The court this time restated the rule against enforcing foreign revenue laws, using *Colorado v. Harbeck* as authority, and then added the single observation 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."[15] The case is noteworthy since it represents the first attempt of a court to defend application of the rule to the collection of taxes of sister states. The court failed, however, to explain why it believed that abrogation of the rule would force each state to become a "busy collection agent." The infrequency with which the problem has arisen in the past would fail to justify such a conclusion. Even assuming the court was correct in its belief, it failed to explain why aiding in the collection of other states' taxes is such an intolerable burden.

[11] Id. at 13, quoting Marshall v. Sherman, 148 N.Y. 9 at 25 (1895).

[12] 232 N.Y. 71, 133 N.E. 357 (1921).

[13] The court felt the levy attempted by Colorado would constitute a violation of the due process clause of the United States Constitution (id. at 83). Also, the statutes of Colorado provided for an exclusive procedure in Colorado courts for the collection of this tax, so it was not collectible in New York (id. at 85).

[14] 121 Misc. 773, 202 N.Y.S. 185 (1923).

[15] Id. at 777.

B. Justification for the Rule

The first serious endeavor to justify the rule was made by Judge Learned Hand in *Moore v. Mitchell.*[16] The reasons offered were that: (1) enforcing the revenue laws of sister states might contravene the public policy of the state of the forum; (2) courts of one state should not pass upon provisions for the public order of another; (3) the adjudication of the forum may embarrass the taxing state, and (4) enforcement of taxes is a matter so vital to the taxing state that it should be handled only by the courts of that state.[17] On appeal to the United States Supreme Court the decision was affirmed, but on the ground that under the circumstances of that case the tax collector lacked the capacity to sue in the federal court of another state.[18] The Court declared that whether one state should enforce the revenue laws of another was still an open question.

Judge Hand's arguments upholding the rule are quite plausible, but it is believed they are misapplied in the situation here being considered. It is readily apparent that public policy considerations might prevent the enforcement of foreign revenue laws which clog commerce or which are violative of constitutional guaranties, but these objections are not applicable to the tax laws of sister states. The history of the problem being considered is evidence that the question does not arise frequently enough to present the objection of overburdening the dockets of the forum.[19] It would appear then that there is no public policy objection to collecting taxes due under sister state statutes, unless we adopt the absurd conclusion that each state has a policy against the collection of taxes levied by any other state.

It is suggested that Judge Hand's statement that one state should not pass on provisions for the public order of another is too ambiguous to be useful. All state statutes are to some degree provisions for the public order, and certainly it was not intended that the forum should refuse to take notice of all foreign statutes. Where should the line be drawn? A Massachusetts statute imposing liability for exemplary damages upon a defendant whose negligence caused a death was recognized and enforced by the courts of New York.[20] Statutes of sister states dealing with con-

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

[17] Judge Hand's arguments are set out in full, id., pp. 603-4.

[18] Moore v. Mitchell, 281 U.S. 18, 50 S.Ct. 175 (1930).

[19] The question has arisen in the appellate courts of this country only about fifteen times.

[20] Loucks v. Standard Oil Co. of New York, 224 N.Y. 99, 120 N.E. 198 (1918).

tracts,[21] tort liability[22] and corporations[23] are given effect in the forum under ordinary principles of the conflict of laws. Such statutes declare when an obligation will or will not arise, and it is difficult to see why such statutes are any less provisions for the public order than is legislation defining when a tax obligation shall arise.

Finally, Judge Hand was troubled by the possibility of the sister state's being embarrassed by the forum's adjudication, and by the notion that enforcement of tax laws is a matter so vital that courts of other states should not attempt to deal with it. In answer to these fears, it can be said that in most instances the tax statute involved will have been previously interpreted and applied by the courts of the taxing state.[24] In that event, the forum will have only to apply the law as already enunciated. But even if the statute has not been interpreted previously, it is difficult to feel sympathy for the taxing state if it is embarrassed by the forum's interpretation; the taxing state was responsible for bringing the case to the forum and seeking an adjudication. Admittedly the enforcement of tax laws is a vital matter to the state levying the tax, but it has indicated its willingness to have the sister state handle this vital matter by bringing the action. It is suggested that real sympathy for the taxing state could best be evidenced by offering aid in its attempt to collect lawfully levied taxes from the individual who seeks to escape liability by crossing state lines.

A further objection to abrogation of the rule is that advanced by Professor Beale, who suggests that the forum "may well feel very reluctant to assume the burden of administering an intricate tax system with which it is totally unacquainted. . . ."[25] This objection might justify refusal to take jurisdiction in given instances, but it is believed it does

[21] Seeman v. Philadelphia Warehouse Co., 274 U.S. 403, 47 S.Ct. 626 (1927); Miles v. Vt. Fruit Co., 98 Vt. 1, 124 A. 559 (1924).

[22] Dennick v. Railroad Co., 13 Otto (103 U.S.) 11 at 17 (1880), where the Court in enforcing a New Jersey wrongful death statute said, "It is indeed a right dependent solely on the statute of the State; but when the act is done for which the law says the person shall be liable and the action by which the remedy is to be enforced is a personal and not a real action, and is of that character which the law recognizes as transitory and not local, we cannot see why the defendant may not be held liable in any court to whose jurisdiction he can be subjected. . . ." See also Masci v. Young, 109 N.J.L. 453, 162 A. 623 (1932), affd. 289 U.S. 253, 53 S.Ct. 599 (1933); Loucks v. Standard Oil Co. of New York, supra, note 20.

[23] Sinnott v. Hanan, 214 N.Y. 454, 108 N.E. 858 (1915).

[24] In fact, if Judge Hand is correct in his contention that the taxing state is apt to be embarrassed by the forum's interpretation, it would seem likely that out of state collection would never be sought until an interpretation by the courts of the taxing state could be offered to guide the forum.

[25] 3 BEALE, CONFLICT OF LAWS 1638 (1935).

not justify a strict application of the rule that one state will never enforce the revenue laws of another. In the usual case, the forum would probably have the benefit of prior interpretations by the courts of the taxing state and would probably be dealing with a statute which had a counterpart or a near relative in the tax laws of the forum.[26] If the situation referred to by Professor Beale should present itself to the forum, jurisdiction could be refused on grounds that the forum is incapable of giving the remedy sought.[27] Jurisdiction should be refused, however, only in those cases where some real obstacle to enforcement is present. Mere difficulty of applying the law should not be sufficient reason for refusing jurisdiction, for we are dealing with a situation where the taxing state has no remedy in its own courts due to its inability to secure jurisdiction over the defendant. If such jurisdiction could be secured, the forum could easily refuse relief on the basis of the doctrine of *forum non conveniens*.[28]

C. *Application of Conflict of Laws Principles*

From the foregoing, it may be concluded that the rule against enforcing tax laws of a sister state is not justified and that, although supported by precedent, it is precedent which arose from a misapplication of the doctrine as originally developed. To the objection advanced by the court in the *Proctor* case,[29] that the rule is now too well established to overthrow, suffice it to say that a rule is never so well established as to preclude inquiry into its justification or to preclude its abandonment if justice is promoted by so doing. It is believed that justice will be promoted by abandoning the law which allows a citizen to escape payment of lawfully levied taxes by crossing a state line.

If the rule against taking notice of foreign revenue laws is disregarded, there remains no serious objection to enforcing tax laws of a sister state. There are a few instances where the rule has been disregarded. In *Holshouser Co. v. Gold Hill Copper Co.*,[30] a sister state was allowed to participate in the distribution of a decedent's estate by virtue of a tax

[26] It is believed that tax laws in the several states, although differing in details, follow general patterns as to basic concepts because of common background, constitutional requirements and the practice of adopting legislation from other states. See 29 COL. L. REV. 782 at 786 (1929).

[27] Slater v. Mexican National R.R. Co., 194 U.S. 120, 24 S.Ct. 581 (1904).

[28] Universal Adjustments Corp. v. Midland Bank Ltd., 281 Mass. 303, 184 N.E. 152 (1933). Also, see Blair, "The Doctrine of Forum Non Conveniens in Anglo-American Law," 29 COL. L. REV. 1 (1929).

[29] Detroit v. Proctor, (Del. 1948) 61 A. (2d) 412 at 416.

[30] 138 N.C. 178, 50 S.E. 650 (1905).

claim against such estate. The question of enforcement of foreign revenue laws was apparently not raised in the proceeding, so the holding does not directly controvert the rule.[31]

In *Milwaukee County v. M. E. White Co.*,[32] the United States Supreme Court expressly held that a tax judgment is within the full faith and credit clause of the federal Constitution. There, the Court said, "The objection that the courts in one state will not entertain a suit to recover taxes due to another or upon a judgment for such taxes, is not rightly addressed to any want of judicial power in courts which are authorized to entertain civil suits at law. It goes not to the jurisdiction but to the merits, and raises a question which district courts are competent to decide."[33] The Court expressly reserved judgment as to whether a tax obligation is to be enforced in a sister state before it is reduced to judgment in the taxing state, but the inference from the above language would be that enforcement is to be granted unless the case involves peculiar circumstances which would make enforcement by the forum inadvisable. If the tax is collectible after being reduced to judgment, there would appear to be no reason it should not be collectible before reduction to judgment, unless the statute itself raises some obstacle which makes enforcement in the forum impossible.

In the recent case of *Oklahoma v. Rodgers*,[34] the state of Oklahoma brought suit in Missouri against a former resident for unpaid income taxes. The defendant had moved to Missouri prior to the action. Upon review, the St. Louis Court of Appeals, after a detailed examination of the origin of the rule against enforcement of foreign revenue laws and a well-reasoned consideration of the effects of its application, rejected the rule as inapplicable to tax claims of sister states. It was decided that a tax claim is quasi-contractual, not penal; that enforcement of the claim contravened no policy of the forum, and that simple principles of comity and justice required that Missouri take notice of the Oklahoma statute.

The conclusion of the St. Louis Court of Appeals, that a tax claim is quasi-contractual rather than penal, is supported by reason and authority.[35] It has frequently been held, however, that a tax claim must

[31] The same result was reached without express abrogation of the rule in Standard Embossing Plate Manufacturing Co. v. American Salpa Corp., 113 N.J. Eq. 468, 167 A. 755 (1933); In re Hollins, 79 Misc. 200, 139 N.Y.S. 713 (1913).

[32] 296 U.S. 268, 56 S.Ct. 229 (1935).

[33] Id. at 272. Effect was also given to a foreign tax judgment by the New Jersey courts in New York v. Coe Co., 112 N.J.L. 536, 172 A. 198 (1934).

[34] 238 Mo. App. 1115, 193 S.W. (2d) 919 (1946).

[35] Milwaukee County v. M. E. White Co., supra, note 32; United States v. Chamberlain, 219 U.S. 250, 31 S.Ct. 155 (1911); Price v. United States, 269 U.S. 492, 46 S.Ct. 180

be classified as penal, because it is an obligation imposed by the state by virtue of its sovereign power and without the consent of the taxpayer.[36] It is true that a tax is imposed by the state and not expressly consented to by the citizen, but this does not create a penal obligation within the definition laid down by the United States Supreme Court[37] and commonly accepted by the courts of this country.[38] A penal law is one which imposes an obligation as a punishment for a designated act or omission to act. It is ordinarily imposed without regard to residence, ownership of property, amount of income or any of the other usual incidents of taxation. A tax, on the other hand, is imposed without regard to the commission of wrongs. It is an obligation created to enable the state to achieve a well-ordered society and provide physical facilities for its citizens and, in a sense, to require the citizen to pay for the benefits he enjoys from living in or doing business in the state. A valid obligation to pay taxes does not arise simply by virtue of the sovereignty of the state. It must be coupled with some action of the taxpayer within the jurisdiction of the state which is a taxable incident. There would appear to be a valid basis for implying a consent to pay lawful taxes as a matter of law when a person enters a state in a capacity involving taxable incidents.

If the obligation to pay taxes is treated as quasi-contractual, rather than penal, is there any further objection to enforcing the tax in a sister state? It is well settled that the courts of state Y will enforce a private contract right arising under the common law of state X[39] or a private right acquired in state X solely by virtue of its statutes.[40] From the de-

(1926); Dollar Savings Bank v. United States, 19 Wall. (86 U.S.) 227 (1873); Stockwell v. United States, 13 Wall (80 U.S.) 531 at 542 (1871); Meredith v. United States, 13 Pet. (38 U.S.) 486 at 493 (1839).

[36] Boyd v. Dillman, 9 W. W. Harr. (39 Del.) 231, 197 A. 830 (1938); Rochester v. Bloss, 185 N.Y. 42, 77 N.E. 794 (1906); Moore v. Mitchell, supra, note 16; Colorado v. Harbeck, supra, note 12; In re Bliss, supra, note 14; Maryland v. Turner, supra, note 10.

[37] "The question whether a statute of one state, which in some aspects 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." Huntington v. Attrill, 146 U.S. 657 at 673 and 674, 13 S.Ct. 224 (1892).

[38] Loucks v. Standard Oil Co. of New York, supra, note 20; Hill v. Boston & Maine R.R. Co., 77 N.H. 151, 89 A. 482 (1914); Boston & Maine R.R. Co. v. Hurd, (C.C.A. 1st, 1901) 108 F. 116. See also 29 COL. L. REV. 782 at 786 (1929).

[39] Pritchard v. Norton, 106 U.S. 124, 1 S.Ct. 102 (1882); Owens v. Hagenbeck-Wallace Shows Co., 58 R.I. 162, 192 A. 158 (1937); Willson v. Vlahos, 266 Mass. 370, 165 N.E. 408 (1929).

[40] Loucks v. Standard Oil Co. of New York, supra, note 20; Young v. Masci, supra, note 22; Hunter v. Derby Foods, (C.C.A. 2d, 1940) 110 F. (2d) 970; Seeman v. Philadelphia Warehouse Co., supra, note 21; Miles v. Vt. Fruit Co., supra, note 21; Converse v. Hamilton, 224 U.S. 243, 32 S.Ct. 415 (1912); Bradford Electric Co. v. Clapper, 286 U.S. 145, 52 S.Ct. 571 (1932).

cided cases it appears, however, that the courts of state *Y* would be reluctant to give effect to a claim made by state *X* as a sovereign when the claim is based on a statute of state *X*. If the claim made by state *X* is quasi-contractual there seems to be no logical justification for making a distinction between private claims and those made by a sovereign. The same conflict of laws theories will support the enforcement of both.[41]

The original theory utilized in this country for enforcing foreign rights was that of comity. This doctrine emphasized that the laws of one state have no real intrinsic force outside the territorial limits of that state, but that such laws would be enforced by the courts of a second state if no public policy or laws of the second state were contravened. It would seem that the tax claims of sister states should be given effect under this theory of enforcement. To deny comity would seem to imply either that the levying of taxes is fundamentally unjust or that each state has a policy against the collection of taxes by any other state.

Justice Cardozo espoused the view that when a party acquires a right in state *X* by virtue of a statute of that state, the right becomes vested in the person and follows wherever he goes.[42] Thus, if the person went into state *Y* and could obtain jurisdiction of the obligor there, he could recover in the courts of state *Y* on the same right which was created by a statute of state *X*. We would have no difficulty under this theory in also allowing state *X* to sue on a tax claim in state *Y*. By virtue of the taxing statute a right was vested in state *X* when the tax fell due and was unpaid. The "vested rights" view would enable the representatives of state *X* to recover the tax in any state where jurisdiction over the defendant could be secured.

Opposed to the "vested rights" view is the doctrine supported by Judge Learned Hand, that one state never enforces a right created by the laws of another state.[43] Rather, says Judge Hand, the forum creates a right in the plaintiff which is similar or identical to the one granted by the statute of the sister state, since the forum can enforce only a right of its own creation. On the surface at least, it would seem more difficult to

[41] Cook, "Recognition of 'Massachusetts Rights' by New York Courts," 28 YALE L.J. 67 (1918); BEALE, CONFLICT OF LAWS, c. 3 (1935); Cook, "The Logical and Legal Bases of the Conflict of Laws," 33 YALE L.J. 457 (1924); Lorenzen, "Territoriality, Public Policy, and the Conflict of Laws," 33 YALE L.J. 736 (1924); DeSloovere, "The Local Law Theory and its Implications in the Conflict of Laws," 41 HARV. L. REV. 421 (1928); Goodrich, "Public Policy in the Law of Conflicts," 36 W. VA. L.Q. 156 (1930).

[42] Loucks v. Standard Oil Co. of New York, supra, note 20; Dean v. Dean, 241 N.Y. 240, 149 N.E. 844 (1925).

[43] Guinness v. Miller, (D.C. N.Y. 1923) 291 F. 769; The James McGee, (D.C. N.Y. 1924) 300 F. 93; Siegmann v. Meyer, (C.C.A. 2d, 1938) 100 F. (2d) 367.

allow enforcement of the tax laws of sister states under this doctrine, since it would be anomalous to hold that state *Y* may create a right in state *X* to collect its own taxes. The anomaly disappears, however, if we look to the correlative duty. Every time state *Y* creates a right in a plaintiff similar to that given by the statutes of state *X*, it is imposing a duty on the defendant similar to that imposed by the statutes of state *X*. What logical objection is there to holding that state *Y* may impose on the defendant the duty of paying the taxes levied under the laws of state *X*, just as it imposes the duty to pay obligations to private persons which arise by virtue of the laws of state *X*? It is believed that if the obligation to pay taxes is treated as quasi-contractual, no difficulty of enforcing sister state tax laws will be encountered under any of the theories commonly utilized for the enforcement of foreign statutes.

D. Conclusions

From the foregoing considerations it may be concluded that the rule against enforcement of foreign revenue laws was not designed to apply to the collection of the taxes of sister states; that no adequate justification has been offered for strictly refusing to enforce such tax laws; that abrogation of the rule is desirable and can be easily justified by treating tax obligations as quasi-contractual and applying ordinary conflict of laws principles.

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