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CONFLICT OF LAWS -ENFORCEABILITY OF TAX JUDGMENT IN COURTS OF A SISTER STATE - FULL FAITH AND CREDIT

CONFLICT OF LAWS — ENFORCEABILITY OF TAX JUDGMENT IN COURTS OF A SISTER STATE — FULL FAITH AND CREDIT — A court of competent jurisdiction in Wisconsin gave the plaintiff a judgment against the defendant, an Illinois corporation, for taxes levied by Wisconsin upon income earned in that state. A federal district court in Illinois, relying on a theory that one state should not undertake to enforce the revenue laws of a sister state, dismissed an action on the judgment instituted by the plaintiff. The plaintiff appealed. *Held*, principles of comity and the "full faith and credit" clause [1] of the Federal Constitution require that the action be entertained. *Milwaukee County v. M. E. White Co.*, 296 U. S. 268, 56 S. Ct. 229 (1935).

The courts have quite consistently refused to entertain suits for taxes brought by another state.[2] And, prior to the present decision, it was generally felt that actions on foreign tax judgments should be dismissed.[3] Yet one looks in vain for a reason justifying this apparent ignoring of the mandatory provisions of the "full faith and credit" clause.[4] It has been said that revenue laws are to be treated like penal ones,[5] so that Chief Justice Marshall's famous statement [6] that states should refrain from enforcing the laws of another state applies. But

[1] For a general discussion of the "full faith and credit" clause, see Corwin, "The Full Faith and Credit Clause," 81 UNIV. PA. L. REV. 371 (1933).

[2] The leading case is Colorado v. Harbeck, 232 N. Y. 71, 133 N. E. 357 (1921); see also Moore v. Mitchell, (C. C. A. 2d, 1929) 30 F. (2d) 600, 65 A. L. R. 1354 at 1360; In re Bliss' Estate, 121 Misc. 773, 202 N. Y. S. 185 (1925); In re Martin's Estate, 136 Misc. 51, 240 N. Y. S. 393 (1930); Gulledge Bros. Lumber Co. v. Wenatchee Land Co., 122 Minn. 266, 142 N. W. 305, 46 L. R. A. (N. S.) 697 (1913); and Henry v. Sargeant, 13 N. H. 321 (1843); also see 33 HARV. L. REV. 840 (1920). Contra: Holshouser Co. v. Gold Hill Copper Co., 138 N. C. 248, 50 S. E. 650 (1905), and 7 CORN. L. Q. 245 (1922).

[3] RESTATEMENT, CONFLICT OF LAWS, §§ 443, 610 (1934) so states the law, yet the only decided case seems contra, i.e., People v. Coe Mfg. Co., 112 N. J. L. 536, 172 A. 198 (1933), commented on in 83 UNIV. PA. L. REV. 387 (1935).

[4] Leflar, "Extrastate Enforcement of Penal and Governmental Claims," 46 HARV. L. REV. 193 (1932); Hazelwood, "Full Faith and Credit Clause as Applied to Enforcement of Tax Judgments," 19 MARQ. L. REV. 10 (1934); 29 COL. L. REV. 782 (1929).

[5] See cases cited in note 2, supra.

[6] The Antelope, 10 Wheat. (23 U. S.) 66 at 123 (1825).

a tax, ordinarily enforceable in debt or general assumpsit [7] seems more like a debt than a penalty,[8] and can hardly be called penal within the definition of that term given in the leading case of *Huntington v. Attrill.*[9] The whole theory seems to have been somewhat arbitrarily created on the basis of several early English decisions,[10] which, in turn, were based upon considerations of international commercial policy [11] that can have no real significance where present-day relationships of our own states are concerned. The principal case decides that a state should entertain an action of a sister state on a valid tax judgment, but expressly refrains from giving an opinion as to original suits brought by the sister state for tax claims.[12] It is felt that even if actions on tax claims introduce difficulties that justify an exception to the "full faith and credit" clause,[13] these difficulties disappear if the claim has been reduced to judgment. Thus, in considering a foreign judgment, a court has no reason to do more than examine jurisdiction,[14] and need not face possible embarrassment in weighing the legislative policy of the plaintiff state. It is submitted that the Supreme Court cannot logically stop at this point, resting upon such a distinction, and that, when the question is specifically presented, the Court will decide that original actions for taxes should also be entertained. The "full faith and credit" clause speaks with equal force of "public acts" and "judgments." Courts have often given full recognition to other money obligations arising under the statutes of a sister state.[15] In view of the general uniformity of tax policies in the various states — a uniformity not existing in the realm of criminal law — it is not likely that inspection and application of a foreign tax law will present much difficulty.[16] It would seem that the extension of the remedies

[7] United States v. Chamberlin, 219 U. S. 250, 31 S. Ct. 155 (1910); Price v. United States, 269 U. S. 492, 46 S. Ct. 180 (1925).

[8] See 29 COL. L. REV. 782 (1929); and 7 CORN. L. Q. 245 (1922).

[9] 146 U. S. 657, 13 S. Ct. 224 (1892).

[10] Emperor of Austria v. Day, 3 De G. F. & J. 217 at 245, 45 Eng. Rep. 861 (1861); and see 4 GEO. WASH. L. REV. 281 (1936) and 29 COL. L. REV. 782 (1929).

[11] 48 HARV. L. REV. 828 (1935).

[12] 296 U. S. 268 at 279, 56 S. Ct. 229 (1935).

[13] 84 UNIV. PA. L. REV. 526 (1936). It has been pointed out that states may be more embarrassed by refusing to take a suit than by entertaining it. See Leflar, "Extrastate Enforcement of Penal and Governmental Claims," 46 HARV. L. REV. 193 at 219 (1932).

[14] Fauntleroy v. Lum, 210 U. S. 230, 28 S. Ct. 641 (1907); Huntington v. Attrill, 146 U. S. 657, 13 S. Ct. 224 (1892); 10 UNIV. CINN. L. REV. 111 (1936); Hazelwood, "Full Faith and Credit Clause as Applied to Enforcement of Tax Judgments," 19 MARQ. L. REV. 10 (1934). Wisconsin v. Pelican Ins. Co., 127 U. S. 265, 8 S. Ct. 1370 (1888), involving a "pecuniary penalty," has dicta suggesting the contrary.

[15] Converse v. Hamilton, 224 U. S. 243, 32 S. Ct. 415 (1912), and Broderick v. Rosner, 294 U. S. 629, 55 S. Ct. 589 (1935), involve statutes imposing double liability on stockholders. Bradford Elec. Light Co. v. Clapper, 286 U. S. 145, 52 S. Ct. 571 (1931), involves a workmen's compensation act. For further cases and illustrations, see 45 YALE L. J. 339 (1935).

[16] For an analysis and rejection of the alleged difficulties, see Leflar, "Extrastate Enforcement of Penal and Governmental Claims," 46 HARV. L. REV. 193 (1932).

of a taxing state made possible by the principal case will effectively solve the present difficulties faced by states having jurisdiction to levy a tax but no ability to collect it.[17] And, though the courts often have jurisdiction to tax and jurisdiction to enforce a tax,[18] it seems clear that this application of "full faith and credit" does not result in such extra-territorial enforcement of revenue measures as conflicts with notions of due process. Implicit in the "full faith and credit" clause is the limitation that a state need not recognize that which seriously conflicts with local policy.[19] This would be a sufficient limitation upon recognition of tax claims and judgments, allowing states to prevent a flooding of their dockets and to apply the rules of *forum non conveniens*.[20] Further limitation creates an unnecessary obstacle to efficient tax administration.

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[17] 13 N. Y. UNIV. L. Q. REV. 483 (1936); 49 HARV. L. REV. 490 (1936). Difficulties caused by the refusal of a state to give full faith and credit to foreign penal laws have been alleviated by reliance on extradition. The development of reciprocal tax collection systems has been slow. For a list of the present laws, see 1 PRENTICE-HALL, INHERITANCE TAX SERVICE, 11th ed., tit. "Reciprocity" (1935). Also see 48 HARV. L. REV. 828 at 834-835 (1935).

[18] See the leading case of Colorado v. Harbeck, 232 N. Y. 71, 133 N. E. 357 (1921).

[19] Broderick v. Rosner, 294 U. S. 629, 55 S. Ct. 589 (1935); Bradford Elec. Light Co. v. Clapper, 286 U. S. 145, 52 S. Ct. 571 (1931); Huntington v. Attrill, 146 U. S. 657, 13 S. Ct. 224 (1892).

[20] Leflar, "Extrastate Enforcement of Penal and Governmental Claims," 46 HARV. L. REV. 193 at 218 (1932).