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CONFLICT OF LAWS-ENFORCEMENT OF FOREIGN CLAIMS FOR TAXES AND WORKMEN'S COMPENSATION PREMIUMS

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CONFLICT OF LAWS—ENFORCEMENT OF FOREIGN CLAIMS FOR TAXES AND WORKMEN'S COMPENSATION PREMIUMS—By reason of work done in Ohio, defendant-employer came within the provisions of that state's compulsory workmen's compensation law. The State of Ohio sought to collect insurance premiums due the state fund by an action brought in a Kentucky court. Defendant demurred on the ground that the claim was in the nature of one for taxes, and hence unenforceable extraterritorially. On appeal from an order sustaining the demurrer, *held,* reversed. Regardless of whether or not the claim for premiums can be classified as one for taxes, Kentucky courts may act as forums for the collection of foreign tax claims. *State of Ohio ex rel. Duffy, Atty. Gen v. Arnett,* (Ky. App. 1950) 234 S.W. (2d) 722.

As a matter of conflict of laws rules, one jurisdiction will not lend its courts to the enforcement of foreign penal claims.[1] Whether or not tax claims are so far penal as to come within this principle is a question that is far from settled. However, it can be said that (1) a state court has jurisdiction to entertain an action on a foreign tax statute if it so desires,[2] and that (2) the full faith and

[1] 11 AM. JUR., Conflict of Laws §6. The penal character of a claim is for the forum to decide. Huntington v. Attrill, 146 U.S. 657, 13 S.Ct. 224 (1892).

[2] Milwaukee County v. White, 296 U.S. 268, 56 S.Ct. 229 (1935); Massachusetts v. Missouri, 308 U.S. 1, 60 S.Ct. 39 (1939). Upon petition for rehearing in the principal case, it was pointed out that the Kentucky legislature has authorized the enforcement of revenue laws of sister states extending like comity. Ky. Rev. Stat. (1950 Supp.) §135.190. For a listing and discussion of similar legislation, see 45 ILL. L. REV. 99-104 (1950). In addition, see N.C. Gen. Stat. (1943) §105-268.

credit clause of the Constitution does not demand that one state enforce the penal statutes of a sister state,[3] but (3) does demand that tax judgments of a sister state be recognized.[4] The collateral question whether full faith and credit demands that a state entertain an action on a foreign tax statute has been expressly left open by the United States Supreme Court.[5] Shortly after the instant decision, two New York cases on similar facts were decided contrarily.[6] The principal case takes the so-called minority view, following the lead of a well-considered Missouri case, *State of Oklahoma v. Rodgers.*[7] A close examination of the cases, however, reveals that not as many cases as would be expected have directly decided the point,[8] the vast majority of the decisions being those of New York courts or of federal courts sitting in New York,[9] with practically all of the cases adhering to the New York view in the two or three other jurisdictions where the question has been litigated not reaching the highest court of the jurisdiction.[10] Notwithstanding the sparsity of direct authority on the point, the question with all its ramifications has been a prolific source of discussion by the writers, who criticize the New York view as anomalous in origin, based on inadequate reasoning, and harsh in practice.[11] The most discussed argument in favor of the New York view has come from Judge Learned

[3] Moore v. Mitchell, (2d Cir. 1929) 30 F. (2d) 600, affd. on another ground, 281 U.S. 18, 50 S.Ct. 175 (1930); Huntington v. Attrill, supra note 1.

[4] Milwaukee County v. White, supra note 2; Worner's Deed of Trust, 50 LANC. REV. (Pa.) 107 (1946).

[5] Moore v. Mitchell, 281 U.S. 18, 50 S.Ct. 175 (1930). In Milwaukee County v. White, supra note 2, it was intimated that the Supreme Court would follow the principal case when the question comes before it, as it said by way of dictum ". . . the obligation to pay taxes is not penal. It is a statutory liability, quasi contractual in nature. . . ."

[6] Wayne County v. American Steel Export Co., 101 N.Y.S. (2d) 522 (1950); Wayne County v. Foster & Reynolds Co., 101 N.Y.S. (2d) 526 (1950).

[7] 238 Mo. App. 1115, 193 S.W. (2d) 919 (1946). This case was a natural outgrowth of the dictum in Milwaukee County v. White, supra note 2, to the effect that a tax claim is not penal.

[8] Cases indirectly refusing to enforce foreign tax claims: New York Trust Co. v. Island Oil & Transport Corp., (2d Cir. 1926) 11 F. (2d) 698; In re Martin's Estate, 255 N.Y. 359, 174 N.E. 753 (1931); Gulledge Bros. Lumber Co. v. Wenatchee Land Co., 122 Minn. 266, 142 N.W. 305 (1913). See also State of Minnesota v. Karp, 84 Ohio App. 51, 84 N.E. (2d) 76 (1948). The oft-cited case State of Colorado v. Harbeck, 232 N.Y. 71, 133 N.E. 357 (1921) is not a clear holding. Cases indirectly enforcing tax claims: Holshouser Copper Co. v. Gold Hill Copper Co., 138 N.C. 248, 50 S.E. 650 (1905); Standard Embossing Plate Mfg. Co. v. American Salpa Corp., 113 N.J. Eq. 468, 167 A. 755 (1933). See also Worner's Deed of Trust, 50 LANC. REV. (Pa.) 107 (1946) and In re Pressed Steel Car Co. of N.J., (3d Cir. 1938) 100 F. (2d) 147.

[9] Cases in note 5 supra; Moore v. Mitchell, supra note 5; Maryland v. Turner, 75 Misc. 9, 132 N.Y.S. 173 (1911); In re Bliss' Estate, 121 Misc. 773, 202 N.Y.S. 185 (1923).

[10] Hamilton County Treasurer v. Hartzell, 55 Pa. D. & C. 100 (1945); State of Ohio v. Flower, 59 Pa. D. & C. 14 (1947); City of Detroit v. Proctor, (Del. Sup. Ct. 1948) 61 A. (2d) 412, noted in 4 ARK. L. REV. 86 (1949).

[11] 4 ARK. L. REV. 86-88 (1949); 15 KANSAS CITY L. REV. 52-57 (1946); 31 MINN. L. REV. 93-94 (1946); 18 CORN. L.Q. 581-586 (1933); 47 MICH. L. REV. 796-805 (1949); CONFLICT OF LAWS RESTATEMENT §610, comment *c*, (1948 Supp.). See 3 BEALE, THE CONFLICT OF LAWS §610.2 (1935) approving the rule.

Hand, speaking from the second circuit,[12] to the effect that extraterritorial enforcement and interpretation of taxing statutes would prove to be embarrassing to the relationship between the levying state and its citizens. This argument is answered by the Missouri court in the *Rodgers* case by pointing out that such embarrassment, if any, is within the control of the taxing state, for it is the party initiating the action. It is believed that the principal case reaches the more satisfactory result and provides a much needed re-enforcement of the *Rodgers* case.[13]

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[12] Moore v. Mitchell, supra note 3.

[13] With regard to whether a claim for premiums for workmen's compensation insurance constitutes a claim for taxes for conflict of law purposes, there seems to be little authority. Some analogy may be drawn to a number of decisions holding that unemployment and workmen's compensation premium claims are taxes for purposes of bankruptcy. See 135 A.L.R. 1509 (1941); 161 A.L.R. 217 (1946). On the other hand, one New York City municipal court, on facts identical with the principal case, recently rejected the contention that a claim for workmen's compensation premiums is a tax or penal claim, on the ground that the state in making such collection is acting in a proprietary rather than a public capacity. State of Ohio v. Wilcox Construction Co., 100 N.Y.S. (2d) 508 (1950).