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Commission. *Armstrong Cork Co.* v. *Ringwalt,* 240 Fed. 1022 (3d Cir. 1917). This was done, and the Commission took appropriate action. *Federal Trade Commission* v. *Ringwalt Linoleum Works,* 1 F. T. C. 436 (1919).

In conclusion, it appears that the *Stahly* decision was against the weight of authority, was based upon questionable theory, and was quite unnecessary, since there was a statutory remedy created especially for the type of situation involved.

John L. Goodell

CONFLICT OF LAWS — RIGHT TO BRING ACTION BASED ON A TAX OR REVENUE STATUTE IN A SISTER STATE

I. The county of Wayne, Michigan, brought an action in the New York City Municipal Court to collect a personal property tax allegedly due and owing from the defendant. Defendant's motion for a dismissal of the complaint was granted on grounds that the court lacked jurisdiction to entertain the action. The Appellate Term reversed. The Appellate Division reversed the Appellate Term and reinstated the the judgment of the Municipal Court, holding that as at matter of policy the New York courts do not lend themselves to the enforcement of the revenue laws of another state. *Wayne County* v. *American Steel Export Co.,* 277 App. Div. 585, 101 N. Y. S. 2d 522 (1st Dept. Dec. 1950).

II. The State of Ohio brought an action in Kentucky to recover certain monies owed by the defendant to the Industrial Commission of the State of Ohio for a workmen's compensation assessment. The Kentucky Court of Appeals, reversing the circuit court, held that whether the action was one to collect a tax due a sister state or one to enforce a transitory contract claim, the Kentucky courts would entertain jurisdiction. *Ohio* v. *Arnett,* — Ky. —, 234 S. W. 2d 722 (Oct. 1950).

These holdings reached by Kentucky and New York reflect the divergent views among our courts, both state and federal, as to whether or not one state should permit its courts to be used by another state seeking to enforce a tax claim. The Supreme Court has held that a *judgment* is not to be denied full faith and credit merely because it is for taxes; *Milwaukee County* v. *M. E. White Co.,* 296 U. S. 268 (1935); but the Court expressly left open the question whether a state is required under full faith and credit to enforce the tax claims of another not yet reduced to judgment.

It has long been a general principle that state laws in and of themselves have no extraterritorial effect. *Magnolia Petroleum Co.* v. *Hunt,* 320 U. S. 430 (1943); *Mertz* v. *Mertz,* 271 N. Y. 466, 3 N. E. 2d 597, 108 A. L. R. 1120 (1936); but see 28 U. S. C. § 1738 (1948). However, states ordinarily enforce

rights giving rise to transitory actions, though arising under the laws of sister states. *James Dickenson Farm Mortgage Co.* v. *Harry,* 273 U. S. 119 (1926); *Silverman v. Rappaport,* 165 Misc. 543, 300 N. Y. Supp. 76 (Sup. Ct. 1937). "The courts are not free to refuse to enforce a foreign right at the pleasure of the judges, to suit the individual notion of expediency or fairness. They do not close their doors unless help would violate some fundamental principle of justice, some prevalent conception of good morals, some deep rooted tradition of the common weal." *Loucks* v. *Standard Oil Co.,* 224 N. Y. 99, 111, 120 N. E. 198, 202 (1918).

A forum will not enforce the penal laws of another state. *Huntington* v. *Attrill,* 146 U. S. 657 (1892); *Christilly* v. *Warner,* 87 Conn. 461, 88 A. 711 (1913); *Scoville* v. *Canfield,* 14 Johns. 338, 7 Am. Dec. 467 (N. Y. 1817). But whether a statute is penal in the international sense, as contrasted with penal in the ordinary sense, is dependent on the purpose of the statute. If the purpose is to afford a private remedy to an aggrieved person injured by the wrongful act of the defendant, rather than to punish an offense against public justice, it is enforceable in all jurisdictions. *Huntington* v. *Attrill, supra; Cross* v. *Ryan,* 124 F. 2d 883 (7th Cir. 1941); *Bartlieb* v. *Carr,* 94 F. Supp. 279 (E. D. Ky. 1950). It must be kept in mind, however, that the forum will determine for itself whether the law is penal or not. *Huntington* v. *Attrill, supra.*

Since an early English decision, *Boucher* v. *Lawson,* Cas. t. H. 85, 95 Eng. Rep. 53 (1734), refused to give effect to a Portuguese revenue law, which prohibited gold exportation, because it would have an adverse effect on English trade [see *Ludlow* v. *Van Rensselaer,* 1 Johns 94 (N. Y. 1806)], it has been uniformly held that tax statutes of foreign countries will not be enforced. *Sydney* v. *Bull,* [1909] 1 K. B. 7; *Cermak* v. *Bata Akciova Spolesnost,* 80 N. Y. S. 2d 782 (Sup. Ct. 1948); *Matter of Spitzer's Estate,* 170 Misc. 160, 9 N. Y. S. 2d 868 (Surr. Ct. 1939).

Due largely to the early belief that an obligation to pay taxes was penal in nature [see *Goodrich, Conflict of Laws* (1949 Ed.) att 163] and to an extension of the policy against the enforcement of tax statutes of foreign countries, it has been almost unanimously held that one state will not open its courts to allow a sister state to bring an action based on a tax or revenue law of the sister state. *Colorado* v. *Harbeck,* 232 N. Y. 71, 133 N. E. 357 (1921); *Matter of Martin's Will,* 255 N. Y. 359, 174 N. E. 753 (1931); *Maryland* v. *Turner,* 75 Misc. 9, 132 N. Y. Supp. 173 (Sup. Ct. 1911); *Moore* v. *Mitchell,* 30 F. 2d 600 (2d Cir. 1929); *Detroit* v. *Proctor,* 61 A. 2d 412 (Del. Super. Ct. 1948); *Pratt* v. *Dean,* 246 Mass. 300, 140 N. E. 924 (1923); cf. *Henry* v. *Sargeant,* 13 N. H. 321, 332, 40 Am. Dec. 146, 147 (1843).

"A well settled principle of private international law precludes one state

from acting as a collector of taxes for a sister state, and from enforcing its penal and revenue laws. The revenue laws of one state have no effect in another." *Colorado* v. *Harbeck, supra* at 85.

Rarely have reasons been advanced in support of the majority doctrine. Judge Learned Hand, concurring in *Moore* v. *Mitchell, supra,* tried to justify the rule, reasoning that the courts of one state should not be called upon to scrutinize the relations of a foreign state with its own citizens, such as are involved in its revenue laws, and thus commit the state of the forum to positions which might be seriously embarrassing to itself or its neighbors. But this view would appear to be tenuous. It is not likely that the foreign state would object or be offended, as it is the one seeking the relief and asking the court to scrutinize the relations. More ill will could result by a refusal to entertain the action.

Despite the overwhelming weight of authority, there is no adequate reason for continued adherence to this dogma. The influence of critics has found expression in two cases prior to *Ohio* v. *Arnett, supra,* one of the two principal cases. See *Holshouser* v. *Copper Co.,* 138 N. C. 178, 50 S. E. 650 (1905); *Oklahoma Tax Commission* v. *Rogers,* 238 Mo. App. 1115, 193 S. W. 2d 919, 165 A. L. R. 785 (1946). "The contrary doctrine [majority rule] . . . was the product of commercial rivalry and international suspicion. It has no place in a union of states such as the United States where the interest of both state and taxpayer will be protected from arbitrary power by the provisions of the Federal Constitution. The taxpayer who enjoys the protection of the government should bear his share of the expense of maintaining that government; and he shouldn't be permitted to escape his obligation by crossing state lines." *Oklahoma Tax Commission* v. *Rogers, supra* at 1128, 193 S. W. 2d at 927, 165 A. L. R. at 795. If unpaid taxes cannot be recovered, it increases the burden of the other taxpayers.

The RESTATEMENT OF THE LAW, CONFLICT OF LAWS, under comment C of section 610, formerly ruled that "no action can be maintained by a foreign state to enforce its license or revenue laws, or claims for taxes." In the 1948 Supplement, comment C is deleted, and a caveat is added to the effect that the American Law Institute "expresses no opinion as to whether an action can be maintained by a foreign state on a claim for taxes." It is further stated that if a position had to be taken, it would be desirable to state a view contrary to the former comment C, and in accord with *Oklahoma Tax Commission* v. *Rogers, supra.*

A tax is not a punishment for a wrong; it is an obligation owed the sovereign to maintain necessary governmental functions. There is nothing in a reasonable taxing statute that outrages public policy. It should rather be the

policy of the state to entertain tax suits by sister states in order to prevent tax avoidance. It would be advisable for the New York Court of Appeals to overrule *Colorado* v. *Harbeck, supra,* and adopt the modern approach as enunciated in *Oklahoma Tax Commission* v. *Rogers,* in THE RESTATEMENT, and now by the Kentucky Court of Appeals in *Ohio* v. *Arnett.*

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