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Conflict of Laws - Illinois Court Allows Action for Property Taxes Assessed in Foreign State

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CASE NOTES

CONFLICT OF LAWS–ILLINOIS COURT ALLOWS ACTION FOR PROPERTY TAXES ASSESSED IN FOREIGN STATE

The City of Detroit, Michigan, and its treasurer brought an action in the Circuit Court of Cook County against a resident of Illinois to recover 1954 and 1955 personal property taxes assessed against property located in Detroit and owned by the defendant, who resided in Detroit during those years. That court sustained the defendant's motion to dismiss on the ground that Illinois courts will not enforce the revenue laws of another state or country, a principle long adhered to in the field of conflict of laws.[1] On a direct appeal the Supreme Court of Illinois held for the first time that as a matter of comity Illinois courts will enforce the taxing statutes of Michigan, and therefore reversed and remanded for further proceedings. Having decided the issue on the basis of comity,[2] the court declined to determine the constitutional question of whether Illinois courts must give full faith and credit to the taxing statutes of Michigan. *City of Detroit v. Gould,* 12 Ill. 2d 297, 146 N.E. 2d 61 (1957).

Thus the State of Illinois joins three other states[3] which have recently rejected the generally accepted doctrine that no state will enforce the revenue laws of another state. As indicated by the court in the instant case the rule originated in dicta announced in cases presenting the issue of whether an otherwise valid commercial contract which did not comply with the revenue laws of the situs was enforceable in the courts of the

[1] Moore v. Mitchell, 30 F.2d 600 (C.A. 2d, 1929), aff'd on other grounds 281 U.S. 18 (1929); Colorado v. Harbeck, 232 N.Y. 71, 133 N.E. 357 (1921); City of Detroit v. Proctor, 5 Terry (Del. Super. Ct.) 193, 61 A.2d 412 (1948); In re Martin's Estate, 136 Misc. 51, 240 N.Y.S. 393 (1930); In re Bliss' Estate, 121 Misc. 51, 202 N.Y.S. 185 (1923); State v. Turner, 75 Misc. 9, 132 N. Y. S. 173 (1911); Queen of Holland v. Drukker [1928] 1 Ch. 877; Sydney v. Bull [1908] 1 K.B. 7; Beale, Conflict of Laws § 610.2 (1935); Rest., Conflict of Laws §610, Comment c (1934). For a general discussion of the problem see Daum, Interstate Comity and Governmental Claims, 33 Ill. L. Rev. 249 (1938); Leflar, Extrastate Enforcement of Penal and Governmental Claims, 46 Harv. L. Rev. 193 (1932); Action for Tax Due in Another State, 165 A.L.R. 796 (1946); Comment, 28 Calif. L. Rev. 507 (1940).

[2] Milwaukee County v. White, 296 U.S. 268, 272 (1935). "A state court, in conformity to state policy, may, by comity, give a remedy which the full faith and credit clause does not compel."

[3] Arkansas: State ex rel. Oklahoma Tax Commission v. Neely, 225 Ark. 230, 282 S.W.2d 150 (1955); Kentucky: Ohio ex rel. Duffy v. Arnett, 314 Ky. 403, 234 S.W.2d 722 (1950); Missouri: State ex rel. Oklahoma Tax Commission v. Rodgers, 238 Mo. App. 1115, 193 S.W.2d 919 (1946).

forum.[4] In none of these cases was there an attempt made to recover taxes in the courts of another state or country. The first time an American court was squarely confronted with the issue was in the case of *Maryland v. Turner*,[5] where the State of Maryland and the City of Baltimore sued in New York to recover taxes assessed by Maryland and Baltimore upon the personal property of the defendant while he was a resident of that state and city. Plaintiffs claimed that the obligation to pay a duly assessed tax was contractual, and therefore that the action was in the nature of common law action for debt. The New York Supreme Court denied the claim, specifically holding that taxes are forced contributions, obligations imposed upon citizens to pay the expenses of government, and consequently do not rest upon either express or implied contract. The reasoning of the court was that since tax laws are penal in nature, and since no state enforces the penal laws of another,[6] no state should enforce the taxing statutes of another. Similar reasoning was employed in *Moore v. Mitchell*[7] and *State of Colorado v. Harbeck*,[8] considered to be leading authorities supporting the proposition. However, it is important to note that neither of these holdings was directly in point, for in each case the suit was by a state or state official to collect an inheritance tax on intangible personal estate of a former deceased resident. Neither the property nor the person was present within the state at the time the tax was levied. Thus the taxing state was held to have no jurisdiction to constitutionally levy the tax. It is obvious that the facts of the instant case are materially different because here both the defendant and his personal property were in Detroit when the taxes were assessed.

The United States Supreme Court has never expressly determined the problem. However, in *Milwaukee County* v. *White*[9] it was clearly established that the forum must give full faith and credit to the tax *judgments* of sister states. Faced with its own holding in *State of Wisconsin v. Pelican Insurance Co.*[10] the Supreme Court said:

[4] Ludlow v. Van Rensselaer, 1 Johns (N.Y.) 94 (1806) (failure to affix stamps on promissory note); James v. Catherwood, 3 Dow. & Ry. 190 (1823) (failure to use stamps on receipt for a loan); Planche v. Fletcher, 1 Doug. 251, 99 Eng. Rep. 164 (1779) (evasion of foreign duties); Boucher v. Lawson, Cas.t.H. 85, 95 Eng. Rep. 53 (1734) (law of Portugal prohibiting export of gold).

[5] 75 Misc. 9, 132 N.Y.S. 173 (1911).

[6] Huntington v. Attrill, 146 U.S. 657 (1892); Wisconsin v. Pelican Ins. Co. of New Orleans, 127 U.S. 265 (1888); The Antelope, 10 Wheat. (U.S.) 66 (1825).

[7] 30 F.2d 600 (C.A. 2d, 1929), aff'd on other grounds 281 U.S. 18 (1929).

[8] 232 N.Y. 71, 133 N.E. 357 (1921). [9] 296 U.S. 268 (1935).

[10] 127 U.S. 265 (1887) wherein Wisconsin brought an action of debt in the forum on a penal judgment obtained against a Louisiana corporation in a Wisconsin court. The Supreme Court held that one state need not give full faith and credit to the penal judgments of sister states.

Even if the judgment is deemed to be colored by the nature of the obligation whose validity it establishes and we are free to reëxamine it and, if we find it to be based on an obligation penal in character, to refuse to enforce it outside the state where rendered . . . still the obligation to pay taxes is not penal. It is a statutory liability, *quasi*-contractual in nature, enforcible, if there is no exclusive statutory remedy, in the civil courts by the common law action of debt or *indebitatus assumpsit*.[11]

This language was directly responsible for the overthrow of the general rule. Eleven years later *State ex rel. Oklahoma Tax Commission v. Rodgers*[12] expressly repudiated the doctrine that one state will not be a tax collector for another. Pursuant to Oklahoma statutes authorizing the Commission to sue to collect taxes in another state, Oklahoma had sued in Missouri to recover income taxes assessed against the defendant while he was a resident of that state. After an exhaustive analysis of the cases supporting the older doctrine, the Missouri Court of Appeals concluded that a tax obligation is in the nature of a debt and is not a penalty. In the language of the court:

Revenue laws are similar to penal laws only in the sense that they are both state regulations of a civic duty, but intrinsically they are different. A penal law is punitive in nature, while a revenue law defines the extent of the citizen's pecuniary obligation to the state, and provides a remedy for its collection.[13]

The *Gould* case directly incorporates the rationale of the *Rodgers* case. Michigan Statutes and the Municipal Code of the City of Detroit provide that as soon as assessed, personal property taxes become a debt against the owner.[14] Furthermore, a municipal corporation by its appropriate officers is empowered to sue in courts of other states to collect taxes legally due to Michigan or its political subdivisions.[15] Since the purpose of a tax law is not to punish, the action is in the nature of a debt for money due in the Circuit Court of Cook County. A taxpayer who enjoys the protection of a state government should bear his share of the expense of maintaining that government. The defendant enjoyed the protection of Michigan law

[11] Milwaukee County v. White, 296 U.S. 268, 271 (1935).

[12] 238 Mo. App. 1115, 193 S.W.2d 919 (1946). This is the first American case that unequivocally challenges the reasoning of the older rule. Most cases antedating the Rodgers case have permitted enforcement of tax claims of a sister state without directly attacking the rule. Standard Embossing Plate Mfg. Co. v. American Salpa Corp., 113 N.J.Eq. 468, 167 Atl. 755 (1933) (claim for franchise taxes filed by Delaware in New Jersey bankruptcy proceedings allowed as preferred claims). Accord: Holshouser Co. v. Gold Hill Copper Co., 138 N.C. 248, 50 S.E. 650 (1905).

[13] State ex rel. Oklahoma Tax Commission v. Rodgers, 238 Mo. App. 1115, 193 S.W.2d 919, 926 (1946). For an illuminating analysis of the distinction between penal and revenue laws refer to comment in 47 Mich. L. Rev. 796 (1949); note in 41 Ill. L. Rev. 439 (1946).

[14] Mich. Stat. Ann. (1948) §7.81; Municipal Code of the City of Detroit c. 81, §1, c. 67, §3.

[15] Mich. Stat. Ann. (1948) §27.605.

while he was present there. Therefore, there is no reason why he should be allowed to escape his obligation by crossing the state line. In substance then, the Illinois Supreme Court holds that a tax is not a penalty because its purpose and effect is not to punish a person for committing a wrong against the state. Instead it is an implied obligation which everyone present within the jurisdiction owes in return for the indirect benefit he enjoys from the protection afforded by state law. In other words it is a statutory liability quasi-contractual in nature. Consequently, it may be collected by the state, just as by a private individual, through a civil action at law.

The theory generally urged for non-enforcement is that only the sovereign against whom a wrong is committed may punish the wrongdoer. In criminal law this is what is called the theory of retributive justice. But if an individual is deemed to be taxed not because he has in some way offended the public justice, but rather as an incident to enjoying the benefit of state law, then the theory of retributive justice no longer remains a bar. Furthermore, in criminal law the device of extradition is often used to return a fugitive to the state where the crime was committed. However, it has never been employed to return a tax evader to the taxing jurisdiction, no matter how wilful and dishonest the evasion, or how great the amount involved. Indirectly this seems to furnish additional support to the holding in the instant case.[16]

At any rate while it may be true that a tax imposed by a state is not expressly consented to by its resident, this does not necessarily create a penal liability within the definition laid down by the United States Supreme Court and generally accepted by the courts of this country:

> 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.[17]

Assuming that revenue laws are not penal, if a suit is brought by a state or local tax collector, it nevertheless might be maintained that such an officer, like an executor or administrator, has no power to sue outside his own jurisdiction.[18] However, where suit is brought by the state itself

[16] One writer avoids making a distinction between penal and revenue laws, and instead asserts that a tax obligation is somewhere in the area between ordinary transitory actions by private citizens to collect a debt, and the process of extradition. He suggests that an action by a state to collect a tax obligation be considered as transitory. Leflar, Extrastate Enforcement of Penal and Governmental Claims, 46 Harv. L. Rev. 193, 219 (1932).

[17] Huntington v. Attrill, 146 U.S. 657, 673 (1892). Accord: Loucks v. Standard Oil Co. of N.Y., 224 N.Y. 99, 120 N.E. 198 (1918).

[18] Moore v. Mitchell, 281 U.S. 18 (1929).

or in the name of the state pursuant to statutes authorizing such action, and where the tax has been assessed while the defendant and his property are within the jurisdiction, it would appear that the contention loses much of its vitality.

But since the forum is not required to give full faith and credit to the revenue laws of a sister state, there are a number of valid objections it might consider. For the principle of comity is basically a practical one. Thus the forum might decline to enforce because of difficulty in interpreting foreign tax law. Or else it might refuse to extend courtesy because collecting such taxes overburdens the pocketbooks of local taxpayers or overcrowds the dockets of the courts. In an appropriate situation the forum could even reject on the ground of local public policy.[19] In fact it has been suggested that if the sister state could have reasonably collected the tax within its borders, the forum can apply the doctrine of forum non conveniens.[20]

According to *City of Detroit v. Gould,* and the two other cases which have arisen since the *Rodgers* case, enforcement of taxing statutes of sister states has no detrimental commercial effect. Nor is there any reason of policy why comity should not be extended to them. However, it is important to remember that in each of these cases 1) the taxing state treated the tax as a debt due and owing to the state or municipality from the moment of assessment; 2) statutes authorized the state or city to bring a civil action in the nature of debt; 3) statutes of the taxing state provided no exclusive remedy for the collection of taxes; 4) both the defendant and his property were physically present within the state at the time the taxes were assessed; 5) the action was to collect a tax, and not a penalty for failure to pay on time. For where the statutes of the taxing state provide an exclusive local remedy for the recovery of a tax, the forum will refuse to enforce the tax (even though it considers revenue laws not to be penal) on the ground that the right and the remedy are so interwoven as to allow recovery only in the taxing state.[21]

Therefore the decisions arising since the *Rodgers* case definitely seem to indicate that there is no absolute bar to extraterritorial enforcement of revenue laws of sister states. *City of Detroit v. Proctor*[22] provides the sole exception. There, in a factual situation identical with that in the *Gould*

[19] Wayne County v. American Steel Export Co., 272 App. Div. 585, 101 N.Y.S.2d 522 (1950); Wayne County v. Foster and Reynolds Co., 277 App. Div. 1105, 101 N.Y.S.2d 526 (1950).

[20] Leflar, op. cit. supra note 16, at 218; note, 41 Ill. L. Rev. 439, 442 (1946).

[21] California ex rel. Houser v. St. Louis Union Trust Co., 260 S.W.2d 821 (Mo. App., 1953) (inheritance tax).

[22] 5 Terry (Del. Super. Ct.) 193, 61 A.2d 412 (1948).

case, the Superior Court of Delaware after admitting that the older rule originally evolved as dictum, nevertheless rejected the reasoning of the *Rodgers* case, and refused to enforce the tax law. Apparently the Delaware court felt that such a change must come from the legislature. On the other hand the Supreme Court of Arkansas believes that the so called modern trend of allowing enforcement as a matter of comity is now the majority view.[23] The American Law Institute lends its weight to this belief in its 1948 Supplement to the Restatement of Conflict of Laws. Whereas the 1934 edition read, "No action can be maintained by a foreign state to enforce its license or revenue laws, or claims for taxes,"[24] the 1948 Supplement provides, "The Institute expresses no opinion whether an action can be maintained by a foreign state on a claim for taxes."[25] When it is considered that practically all the American cases favoring the doctrine of non-enforcement of foreign revenue laws have arisen in the State of New York, while those supporting the modern doctrine have arisen in four separate jurisdictions, it is evident that the Arkansas court might be correct.

[23] State ex rel. Oklahoma Tax Commission v. Neely, 225 Ark. 230, 282 S.W.2d 150, 152 (1955).

[24] Rest., Conflict of Laws §610 c (1934).

[25] Rest., Conflict of Laws §610 c (Supp., 1948).

CONSTITUTIONAL LAW–ORDINANCE REQUIRING PERMIT TO SOLICIT MEMBERSHIP FOR A UNION INVALID AS PRIOR RESTRAINT

Defendant, a salaried employee of the International Ladies Garment Workers Union, was attempting to organize the employees of a manufacturing company located in the town of Hazelhurst, Georgia. Many of these employees lived in Baxley, a nearby city. An ordinance of the City of Baxley provided that no one could lawfully solicit membership for any union or other organization requiring membership fees before first securing a permit from the Mayor and City Council. This permit could be granted or denied on the basis of the character of the applicant, the nature of the organization, and its effects upon the "general welfare" of the citizens.[1] Defendant went to Baxley and, without applying for a permit as

[1] The Baxley ordinance is set out in the instant case at 78 S. Ct. 277, 278 (1958). "Section I. Before any person or persons, firms or organizations shall solicit membership for any organization, union or society of any sort which requires from its members the payment of membership fees, dues or is entitled to make assessment against its members, such person or persons shall make application in writing to Mayor and Council of the City of Baxley for the issuance of a permit to solicit members in such organization from among the citizens of Baxley. . . . Section IV. In passing upon such application the Mayor and Council shall consider the character of the applicant, the nature of the business of the organization for which members are desired to be solicited, and its effects upon the general welfare of citizens of the City of Baxley. . . ."