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# Extraterritorial Enforcement of State Tax Claims

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# COMMENT

## EXTRATERRITORIAL ENFORCEMENT OF STATE TAX CLAIMS

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"FOR NO country ever takes notice of the revenue laws of another," was the general rule laid down by Lord Mansfield in *Holman v. Johnson.*[1] There he held that an action might be maintained in England for the price of tea sold and delivered in France even though the plaintiff seller knew the buyer was going to smuggle the tea into England in violation of English revenue laws. The rule was first applied in the United States in a similar commercial case,[2] and later there appeared a dictum that the rule might apply where one state attempted to collect a tax due under its laws in the courts of a sister state.[3] The purpose of this comment is to discuss the rule of non-enforcement of sister state tax claims, the problems it has created, and the solutions which have been and may be attempted.

*Early Application of the Rule in the United States*

*Maryland v. Turner*[4] was the first of a long line of New York decisions establishing the general rule of non-enforcement of sister state tax claims.[5] Maryland sought recovery of the personal property taxes assessed against Turner while he was a resident of that State. Plaintiff alleged that the Maryland courts had held that a tax assessment created a duty to pay of a contractual nature and that the New York

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[1] 1 Cowp. 341, 343, 98 Eng. Rep. 1120, 1121 (K.B. 1775). An earlier English case to the same effect was Boucher v. Lawson, Cases temp. Hardwicke 85, 95 Eng. Rep. 53 (K.B. 1734).

[2] Randall v. Rensselaer, 1 Johns. R. 94 (N.Y. 1806) (action on promisory note executed in France without French revenue stamp affixed).

[3] Henry v. Sargeant, 13 N.H. 321, 332 (1843) (action for false imprisonment for non-payment of taxes which were allegedly illegally assessed against plaintiff).

[4] 75 Misc. 9, 132 N.Y. Supp. 173 (Sup. Ct. 1911).

[5] *Accord,* City of Philadelphia v. Cohen, 11 N.Y.2d 401, 184 N.E.2d 167, *cert. denied,* 371 U.S. 934 (1962); Colorado v. Harbeck, 232 N.Y. 71, 133 N.E. 357 (1921) (dictum, but most often cited for the rule); Wayne County v. American Steel Export Co., 277 App. Div. 585, 101 N.Y.S.2d 522 (1950); Wayne County v. Foster & Reynolds Co., 277 App. Div. 1105, 101 N.Y.S.2d 526 (1950); *In re* Buckley's Estate, 31 Misc. 2d 551, 220 N.Y.S.2d 915 (Surr. Ct. 1961); *In re* Bliss' Estate, 121 Misc. 773, 202 N.Y. Supp. 185 (Surr. Ct. 1923). It is apparently the Pennsylvania rule also, Ohio v. Flower, 59 Pa. D. & C. 14 (C.P. 1947); Hamilton County Treasurer v. Hartzell, 55 Pa. D. & C. (C.P. 1945). *Contra,* J.A. Holshouser Co. v. Gold Hill Copper Co., 138 N.C. 248, 50 S.E. 650 (1905).

courts must consider the nature of the claim as established by the Maryland interpretation. The New York court said that the test of whether or not an action by a sister state was for a penal claim[6] was to be made by the forum state, and Maryland's claim under a revenue law was penal. As a penal claim it would not be enforced in a sister state. The court also decided that it was not "bound by any rule of comity to enforce the tax laws of Maryland."[7]

*Moore v. Mitchell*,[8] a federal case arising in New York, denied enforcement of a tax claim brought by the treasurer of Grant County, Indiana. In a concurring opinion,[9] Judge Learned Hand attempted to rationalize the rule of non-enforcement on the ground that to enforce sister state tax laws the forum state would first have to inquire if they were contrary to its public policy, investigating the relations of the sister state with its citizens and perhaps embarrassing the sister state with its findings. The logical criticism of this argument is that the sister state in bringing the action has indicated it is willing to risk the embarrassment to collect the revenue.[10] The Supreme Court affirmed the decision on another ground, avoiding a decision "whether a federal court in one state will enforce the revenue laws of another state."[11]

*Tax Judgments*

The rule of non-enforcement originated in commercial cases where one sovereign nation refused to indirectly enforce the revenue laws of another.[12] One factor that has modified the application of the rule in the United States is the full faith and credit[13] clause of the federal constitution. The Supreme Court in *Milwaukee County v. M. E. White Co.*[14] held that where a tax claim has been reduced to judgment a sister state must, under the full faith and credit clause, allow an action on the judgment in its courts. In this case the original claim was for in-

[6] It is an accepted rule that foreign penal claims will not be enforced. See generally Leflar, *Extrastate Enforcement of Penal and Governmental Claims*, 46 HARV. L. REV. 193 (1932).

[7] 75 Misc. at 13, 132 N.Y. Supp. at 175.

[8] 30 F.2d 600 (2d Cir. 1929), *aff'd on other grounds*, 281 U.S. 18 (1930), 5 IND. L.J. 625, 5 WISC. L. REV. 494.

[9] *Id.* at 603.

[10] See Note, 46 COLUM. L. REV. 1013, 1014 (1946); Note, 18 CORNELL L.Q. 581, 586 (1933); Comment, 47 MICH. L. REV. 796, 800 (1949).

[11] The Court held that the treasurer lacked capacity to sue in the federal courts of another state, saying he "has no better standing to bring suits in courts outside Indiana than have executors, administrators, or chancery receivers without title, appointed under the laws and by the courts of that state." 281 U.S. at 24.

[12] See cases cited notes 1-3 *supra*.

[13] U.S. CONST. art. IV, § 1.

[14] 296 U.S. 268 (1935), 49 HARV. L. REV. 490 (1936), 20 MINN. L. REV. 431 (1936). *Accord*, New York v. Coe Mfg. Co., 112 N.J.L. 536, 172 Atl. 198 (Ct. Err. & App.), *cert. denied*, 293 U.S. 576 (1934).

come taxes, and the Court said, "Even if the judgment is deemed to be colored by the nature of the obligation whose validity it establishes . . . still the obligation to pay taxes is not penal. It is a statutory liability, *quasi*-contractual in nature . . . ."[15] The Court reasoned that no policy of the forum state could have sufficient weight to overbalance the interests of the taxing state and the policy of the full faith and credit clause in enforcing judgments, but, as in *Moore v. Mitchell*, the Court declined to decide the question "whether one state must enforce the revenue laws of another . . . ."[16]

*The Problem of Tax Claims*

Non-enforcement of tax *claims* remained the common law rule without exception until *State ex. rel. Oklahoma Tax Comm'n v. Rodgers*.[17] Oklahoma brought an action in Missouri to collect an income tax obligation incurred by Rodgers and his wife while they were residents of Oklahoma. In reversing a dismissal of the action, the Missouri appellate court reviewed the early development of the general rule of non-enforcement in cases[18] not brought for the collection of taxes and noted that the analogy to penal laws could not be maintained. There was no procedural difficulty, since the Oklahoma statute[19] authorized the Tax Commission to sue for taxes in any court of competent jurisdiction in the same manner as for the enforcement of a debt. Missouri had no local public policy opposed to the imposition of an income tax.[20] Possible inconvenience to the defendant in conducting his defense outside the jurisdiction where the liability arose was no greater than in any other transitory action and, in any event, was brought about by the defendant's voluntary removal from the taxing jurisdiction. If in future cases the forum found that the taxing jurisdiction had its own local remedy it could refuse to allow the action by applying the doctrine of forum non conveniens.[21] The added expense to the forum state in allowing such actions in its courts

[15] 296 U.S. at 271.

[16] *Id.* at 275.

[17] 238 Mo. App. 1115, 193 S.W.2d 919 (1946), 34 CALIF. L. REV. 754, 46 COLUM. L. REV. 1013, 41 ILL. L. REV. 439, 31 MINN. L. REV. 93, 25 TEXAS L. REV. 88. The one earlier case which allowed enforcement did not clearly hold that state tax claims might be enforced extraterritorially on principles of comity, J. A. Holshouser Co. v. Gold Hill Copper Co., 138 N.C. 248, 50 S.E. 650 (1905).

[18] Cases cited notes 1-3 *supra*.

[19] OKLA. STAT. tit. 68, § 1464 (1961).

[20] 238 Mo. App. at 1127, 193 S.W.2d at 926. Thus the application of the Oklahoma statute was not contrary to the public policy of the forum.

[21] "The rule of *forum nonconveniens* is an equitable one embracing the discretionary power of a court to decline to exercise the jurisdiction it has over a transitory cause of action when it believes that the action before it may be more appropriately and justly tried elsewhere." Leet v. Union Pac. R.R., 25 Cal. 2d 605, 609, 155 P.2d 42, 44 (1944).

would probably not be too burdensome. The court concluded that the courts of Missouri would entertain actions for tax claims by other states. "The simplest ideas of comity would seem to compel such a result, and modern conditions demand it."[22]

The reasoning of the *Rodgers* case is sound,[23] but the courts which have since considered the question of extending comity to sister state tax claims are divided. Three jurisdictions have followed *Rodgers*. In *Ohio ex rel. Duffy v. Arnett*[24] the Kentucky court allowed Ohio to bring an action for premiums owed for workmen's compensation insurance regardless of whether it was for a tax claim or a contract claim. Arkansas allowed an action by Oklahoma for an income tax claim in *Oklahoma ex rel. Oklahoma Tax Comm'n v. Neely*[25] without applying an Arkansas reciprocal comity statute[26] which became effective after the liability had accrued in Oklahoma and before suit was filed in Arkansas. The court decided to adopt the *Rodgers* rule as the Arkansas common law rule to be applied where the statute did not apply. *City of Detroit v. Gould*[27] was an action to collect personal property taxes from a resident of Illinois who had owned property while residing in Detroit. Illinois allowed the action on principles of comity, reasoning that since the defendant had enjoyed the protection of the laws of Michigan for the period for which the tax was assessed he should be held to pay the taxes as the cost of the protection.

*California ex rel. Houser v. St. Louis Union Trust Co.*[28] was a case decided by the *Rodgers* court which approved its earlier decision but distinguished the case before it on the facts. The court held that the California statute[29] involved in this case created an exclusive remedy in California for the collection of inheritance taxes. This decision is open to question;[30] it illustrates the risk of an unusual interpretation of

[22] 238 Mo. App. at 1128, 193 S.W.2d at 927.

[23] RESTATEMENT, CONFLICT OF LAWS § 610, comment *c* (1934) took the position that "No action can be maintained by a foreign state to enforce its license or revenue laws, or claims for taxes." The Institute dropped this comment in RESTATEMENT OF THE LAW 174 (Supp. 1948), taking no stand on whether a foreign state could maintain an action on a tax claim and stating that the *Rodgers* rule would be "more desirable" if a stand were to be taken.

[24] 314 Ky. 403, 234 S.W.2d 722 (1950), 39 KY. L.J. 472 (1951), 50 MICH. L. REV. 334 (1951), 26 N.Y.U.L. REV. 517 (1951).

[25] 225 Ark. 230, 282 S.W.2d 150 (1955), 9 VAND. L. REV. 389 (1956).

[26] ARK. STAT. ANN. § 84-4018 (1960).

[27] 12 Ill. 2d 297, 146 N.E.2d 61 (1957), 36 CHI.-KENT L. REV. 71 (1959), 7 DE PAUL L. REV. 243 (1958).

[28] 260 S.W.2d 821 (Mo. Ct. App. 1953), *cert. dismissed as improvidently granted*, 348 U.S. 932 (1954).

[29] CAL. REV. & TAX. CODE § 14651.

[30] See Note, 1958 WASH. U.L.Q. 283, 289. The situation was remedied when the California legislature in 1953 passed CAL. REV. & TAX. CODE § 14350 specifically authorizing the Controller to sue in the courts of other states for California inheritance taxes.

foreign taxing statutes by the forum state whenever one state seeks to recover on a tax claim in the courts of another.

Yet the rule of non-enforcement retains some vitality. A trial court decision in Pennsylvania[31] subsequent to *Rodgers* followed an earlier Pennsylvania decision[32] applying the rule. *City of Detroit v. Proctor*,[33] a Delaware decision, took note of *Rodgers* but declined to follow it and extend comity in the absence of express legislative mandate. The New York court, originator of the rule of non-enforcement of sister state tax claims,[34] has maintained its position. In the latest case, *City of Philadelphia v. Cohen*,[35] the New York Court of Appeals held that Philadelphia could not bring an action in the New York courts on a parking-lot tax claim. The court cited New York decisions as establishing a rule that comity would not be extended to the enforcement of foreign tax laws and approved the much criticized[36] "intrusion-into-the-public-affairs-of-another-state" rationale for the rule. The *Rodgers* case was not mentioned in the opinion. The New York court merely repeated its earlier stand on the question of comity.

The problem of enforcing tax claims was not effectively solved for the taxing states by *Rodgers*, because there is no assurance that the courts of the state where the action is brought will follow the *Rodgers* rule. To effectively overcome the rule of non-enforcement, taxing states need solutions which are not dependent on the view of public policy and common law comity taken by the forum. There are three approaches available: (1) application of the full faith and credit clause; (2) enactment of statutes designed to expand the jurisdiction of the taxing state courts; and (3) enactment of reciprocal comity statutes.

*Solutions Under Full Faith and Credit*

The full faith and credit clause has its roots in the Articles of Confederation.[37] The provision granted recognition of the rights created

[31] Ohio v. Flower, 59 Pa. D. & C. 14 (C. P. 1947). The court did not cite *Rodgers*. Pennsylvania has since adopted a reciprocal comity statute. PA. STAT. tit. —, § — (2 CCH PA. STATE TAX REP. ¶ 99-497 (Aug. 14, 1963)).

[32] Hamilton County Treasurer v. Hartzell, 55 Pa. D. & C. 100 (C.P. 1945) (Ohio county personal property taxes).

[33] 44 Del. (5 Terry) 193, 61 A.2d 412 (Super. Ct. 1948) (action by city of Detroit for personal property taxes), 4 ARK. L. REV. 86 (1949), 47 MICH. L. REV. 796 (1949).

[34] See cases cited notes 4-5 *supra*.

[35] 11 N.Y.2d 401, 184 N.E.2d 167, *cert. denied*, 371 U.S. 934 (1962), 29 BROOKLYN L. REV. 315 (1963), 62 COLUM. L. REV. 1526 (1962), 31 FORDHAM L. REV. 577 (1963), 61 MICH. L. REV. 374 (1962), 37 N.Y.U.L. REV. 1158 (1962).

[36] See citations at note 10 *supra*.

[37] "Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State." ARTICLES OF CONFEDERATION art. IV.

by the records, acts, and judicial proceedings of the courts and magistrates of each state in all the other states. The clause was adopted into the Constitution with the additional proviso that "the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."[38] The first Congress enacted legislation[39] which prescribed the effect only for records and proceedings, providing that they be given the same effect in all states. Fourteen years later Congress enacted another statute[40] describing the manner of proving and the effect of judicial proceedings and records, but again the effect of public acts was omitted. Finally, in 1948, an amendment[41] to the statutes was enacted which codified the Supreme Court interpretation that full faith and credit must be accorded to "public acts."[42] The scarcity of legislation under the clause indicates that it is unlikely that Congress will declare the effect to be given rights created under tax statutes.

In the absence of congressional action, emphasis must be given to the judicial interpretation of the extent of the full faith and credit clause and the statutes enacted to supplement it. In tax cases there is usually a final determination of tax liability by an appropriate state administrative body. Writers have agreed that there is nothing in the clause or statutes to preclude giving full faith and credit to the tax liability as determined by the state taxing authority on either of two bases: the determination itself may be recognized as a "judicial proceeding" entitled to full faith and credit, or the rights created by a state in favor of itself by a "public act,"[43] the tax statute, may be given full faith and credit. The Supreme Court has held that workmen's compensation awards,[44] when final, are entitled to full faith and credit

[38] U.S. CONST. art. IV, § 1. For a general discussion of "judicial proceedings" and "public acts" see Sumner, *The Status of Public Acts in Sister States*, 3 U.C.L.A.L. REV. 1 (1955); Sumner, *Full Faith and Credit for Judicial Proceedings*, 2 U.C.L.A.L. REV. 441 (1954).

[39] Act of May 26, 1790, ch. 11, 1 Stat. 122.

[40] Act of March 27, 1804, ch. 56, 2 Stat. 298.

[41] 28 U.S.C. § 1738 (1948). See the discussion of the possible effect of the amendment in Note, 30 N.Y.U.L. REV. 984 (1955).

[42] In Bradford Elec. Light Co. v. Clapper, 286 U.S. 145, 154-5 (1932) the Court said, "That a statute is a 'public act' within the meaning of that clause is well settled." This statement has been sustained through the years; the most recent case supporting the broad statement is Carroll v. Lanza, 349 U.S. 408, 411 (1954).

[43] See generally Abel, *Administrative Determinations and Full Faith and Credit*, 22 IOWA L. REV. 461 (1936); 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); Sumner, *The Status of Public Acts in Sister States*, 3 U.C.L.A.L. REV. 1 (1955).

[44] In Magnolia Petroleum Co. v. Hunt, 320 U.S. 430 (1943) the Court held that the determination, being entitled to full faith and credit as a judgment, was res judicata so as to preclude any subsequent claims under another state's workmen's compensation statute. A dissenting opinion by Justice Black, concurred in by three other Justices,

as judgments. Yet in *Broderick v. Rosner*,[45] involving a state bank superintendant's assessment of stockholder's liability, the Court declined to consider whether this determination was entitled to full faith and credit as a "judicial proceeding." The holding was that a statutory right had been created and that this right must be accorded full faith and credit. The distinction is important in tax cases. If the state determination of tax liability is brought under the full faith and credit clause as a "judicial proceeding" there is no necessity of interpreting the tax statutes of a sister state to decide what rights are created under those "public acts." Many state tax statutes provide that after a prescribed method of notice and time limit the taxpayer's right to appeal is waived and the claim is final on the merits.[46] If the determination is within the clause as a "judicial proceeding," then the taxpayer is restricted to collateral defenses such as lack of jurisdiction to make the determination of tax liability when an action is brought in a sister state.

Two cases have granted full faith and credit to an administratively determined tax claim without distinguishing between the determination as a "judicial proceeding" and the claim as a right created by a "public act." *City of New York v. Shapiro*[47] held that a final administrative determination of business and use tax liability under the city's municipal code was entitled to full faith and credit. The court reasoned that any distinction between giving credit to a tax judgment and giving it to a final administrative determination on which a judgment could be based was unsound.

In *Ohio Dep't of Taxation v. Kleitch Bros.*[48] Ohio brought suit in Michigan for highway use taxes. The Ohio tax statute[49] provided for assessment and notice to the taxpayer and for a period during which appeal could be filed. If there was no appeal a certified copy of the assessment was filed with the county clerk, who entered a copy in the records of the county court. There was no requirement of personal service on the defendant within the jurisdiction prior to the clerk's entry of the copy in the record, where it became a final order to pay

took issue not with holding the determination entitled to full faith and credit as a judgment but with making it res judicata so as to bar a second claim even though the first award would be credited against the second. The holding of the *Hunt* case was limited in Industrial Commission of Wisconsin v. McCartin, 330 U.S. 622 (1946) to situations where the compensation statute expressly provides that the board's decision is final for all matters which were or might have been presented to it. But the *Hunt* decision is still authority for the statement that determinations of compensation boards are entitled to full faith and credit as judgments. See Mike Hooks, Inc. v. Pena, 313 F.2d 696 (5th Cir. 1963); Chapman v. John St. John Drilling Co., 73 N.M. 261, 387 P.2d 462 (1963).

[45] 294 U.S. 629 (1935).

[46] One such provision is CAL. REV. & TAX. CODE § 6537.

[47] 129 F. Supp. 149 (D. Mass. 1954), 69 HARV. L. REV. 378 (1955).

[48] 357 Mich. 504, 98 N.W.2d 636 (1959).

[49] OHIO REV. CODE ANN. §§ 5728.02-.14 (Supp. 1962).

taxes. The defendant claimed that the procedure was a denial of due process. The Michigan court sustained Ohio's claim, stating that tax proceedings to enforce payment were by their very nature summary and customarily reduced to lien and execution without any "judicial proceeding." The court concluded that a discussion of jurisdiction was not necessary as the Ohio court did not adjudicate anything but was merely the statutory place of record for a final order to pay taxes. The order was held to have been made in accordance with the requirements of due process and to be entitled to full faith and credit as a "record" of Ohio entered in compliance with a "public act."

Though there is no direct Supreme Court authority, there would appear to be no obstacle to extending full faith and credit to rights created by taxing statutes.[50] The only cases where statutory rights are clearly not entitled to full faith and credit are where the statute is penal[51] or where the forum has a pertinent statute and a relation to the case substantial enough to warrant the application of its own statute.[52] The Court in the *White* case stated there was no penal taint to tax claims,[53] and obviously the forum would not have such a relation to the sister state's tax claims as would justify application of its own tax statutes to the claim. The argument that a sister state's statutes might be contrary to the public policy of the forum has been so limited by Supreme Court decisions that the "room left for play of conflicting policies is a narrow one."[54]

*Solutions Under Jurisdictional Statutes*

Many states have enacted statutes which authorize service upon the secretary of state or other designated person in actions arising out of activities within the state brought against foreign corporations, non-residents, or former residents. These statutes may be general in nature,[55] directed specifically to obligations owed to the state,[56] or limited

[50] In the most recent case the New York Court of Appeals found no binding precedent *requiring* them to extend full faith and credit to an administrative determination of tax liability, but an able dissent reasoned that the final determination had essentially the same force and effect as a judgment and should be given full faith and credit as either a "public act" or a "record." City of Philadelphia v. Cohen, 11 N.Y.2d 401, 184 N.E.2d 167, *cert. denied*, 371 U.S. 934 (1962).

[51] Huntington v. Attrill, 146 U.S. 657 (1892).

[52] Pacific Employers Ins. Co. v. Industrial Acc. Comm'n, 306 U.S. 493 (1939); Alaska Packers Ass'n v. Industrial Acc. Comm'n, 294 U.S. 532 (1935).

[53] See quotation accompanying note 15 *supra*.

[54] Broderick v. Rosner, 294 U.S. 629, 642 (1935).

[55] See CAL. CODE CIV. PROC. §§ 412, 413, 417 which provide for substituted service by publication and mail on defendants absent from or not residents of the State.

[56] See CAL. CODE CIV. PROC. § 1018 which directs every foreign corporation and non-resident individual incurring a liability under any tax law of the State to appoint an agent within the State to receive service of process. In the absence of such appointment the Secretary of State may receive service. Notification of such service must then be made to the corporation or individual.

to specified types of activities.[57] Regardless of form, the purpose of such statutes is to enable the state courts to render valid personal judgments without personally serving the defendant within the state while still affording the defendant sufficient notice to adequately prepare a defense. The constitutionality of statutes of this nature is well settled.[58]

In *International Shoe Co. v. Washington*,[59] a Washington statute imposed an unemployment compensation tax upon wages paid by an employer and collection was authorized through suits instituted by substituted service. The Court in sustaining the judgment based on substituted service held that there must be minimum contacts with the state of such "quality and nature" that subjecting the corporation to substituted service is "reasonable and just, according to our traditional conception of fair play and substantial justice . . . ."[60] Statutes of the type held valid in this case can clearly reduce the magnitude of the problem of extraterritorial collection of state taxes. If a state can get a tax judgment against a nonresident corporation or individual through substituted service, it can enforce the judgment in any state under the doctrine of the *White* case.[61]

*Solutions Under Reciprocal Comity Statutes*

Reciprocal comity statutes are another practical solution state legislatures have worked out for the problem of extraterritorial enforcement of tax claims. These statutes provide that the courts of the forum state shall allow an action on a tax claim by any state or any political subdivision of any state which extends a like comity. The number of such statutes is large.[62] However, there are difficulties even if a forum

[57] See ILL. ANN. STAT. ch. 110, § 17 (1956) which authorizes service of process upon the person outside the State on any person who personally or through an agent transacts business, commits a tortious act, owns any interest in real property, or contracts to insure any risk within the State.

[58] Milliken v. Meyer, 311 U.S. 457 (1940) (service on domiciliary outside jurisdiction); Henry L. Doherty & Co. v. Goodman, 294 U.S. 623 (1935) (service on agent of foreign corporation); Hess v. Pawloski, 274 U.S. 352 (1927) (service on secretary of state for non-resident motorist).

[59] 326 U.S. 310 (1945).

[60] *Id.* at 320.

[61] See case cited at note 14 *supra*.

[62] The following are reciprocal comity statutes applicable generally to sister state tax claims. ALA. CODE tit. 51, § 914 (1958); ALASKA STAT. § 43.10.070 (1962); ARK. STAT. ANN. § 84-4018 (1960); CAL. REV. & TAX. CODE § 30; DEL. CODE ANN. tit. —, § — (CCH DEL. STATE TAX REP. ¶ 91705 (January, 1964)); GA. CODE ANN. § 92-8448 (1961); HAWAII REV. LAWS § 115-31 (1955); IDAHO CODE ANN. § 63-3408 (Supp. 1963); IND. ANN. STAT. § 64-4201 (1961); IOWA CODE ANN. ch. 421, § — (Legislative Service No. 4, p. 336, 1963); KAN. GEN. STAT. ANN. § 79-2910a (Supp. 1961); KY. REV. STAT. §§ 131.230, 135.190 (1960); LA. REV. STAT. ANN. tit. 47, § 3 (1952); ME. REV. STAT. ANN. ch. 16, § 54 (1954); MD. ANN. CODE art. 81, § 127 (1957); MICH. STAT. ANN. § 27A.2915 (1962); MINN. STAT. ANN. § 272.58 (Supp. 1963); MISS. CODE ANN. § 9940-02 (Supp. 1962); N.H. REV. STAT. ANN. § 80:51 (1955); N.Y.

state has a statute. If the taxing state has not given positive evidence of a reciprocal extension of comity the forum state may reject its claim.[63] Again the tax statute is open to unusual interpretations yielding results unfavorable to the taxing state. There are additional problems involving the statute of limitations[64] and the collection of penalties on the tax.[65] And there is the final problem that as yet all states do not have such statutes, and thus there are some jurisdictions where a taxing state may still not bring suit on its tax claims.

*Solution in California*

The California Attorney General is empowered to collect taxes due the State in other state courts.[66] The State also opens its courts to suits for collection of taxes by states which extend a reciprocal comity.[67] A recent statutory provision[68] gives the Attorney General the additional power of foreclosing liens in sister state and federal courts.[69] But most tax statutes are summary in nature and the tax claim is reduced to a lien under the summary procedure.[70] Thus the new provision is of little practical importance to the collection of taxes out of state, for unless comity is afforded by the forum state the foreclosure of a tax lien will not be allowed for the same reasons applied to the nonenforcement of the tax claim itself.

The California Attorney General has the opportunity of reducing the tax claim to a judgment despite the absence of the defendant from the State, and this judgment can be enforced under the doctrine of the

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TAX LAW § 902; N.C. GEN. STAT. § 105-268 (1958); N.D. CENT. CODE § 31-09-01.1 (Supp. 1963); OHIO REV. CODE ANN. § 5719.08.1 (Supp. 1962); OKLA. STAT. tit. 68, § 1483 (1961); ORE. REV. STAT. § 305.610 (1963); PA. STAT. tit. —, § — (2 CCH PA. STATE TAX REP. ¶ 99-497 (Aug. 14, 1963)); S.C. CODE ANN. § 15-7.2 (Supp. 1963); S.D. CODE § 57.1029 (Supp. 1960); TENN. CODE ANN. § 20-1709 (1955); VA. CODE ANN. § 46.1-20b (1958); WASH. REV. CODE § 4.24.140 (1957); W. VA. CODE ANN. § 999(50*oo*) (1961); WIS. STAT. ANN. § 256.47 (1957). Other states have statutes applicable only to specific types of taxes, *e.g.*, N.J. STAT. ANN. § 54:8A-46 (Supp. 1963) (commuters' income tax); TEX. REV. CIV. STAT. ANN. art. 20.17 (Supp. 1963) (sales and use tax). For a case applying a reciprocal comity statute see Oklahoma *ex rel.* Oklahoma Tax Comm'n v. H. D. Lee Co., 174 Kan. 114, 254 P.2d 291 (1953).

[63] City of Philadelphia v. Cohen, 11 N.Y.2d 401, 184 N.E.2d 167, *cert. denied*, 371 U.S. 934 (1962). *Contra*, Ohio *ex rel.* Duffy v. Arnett, 314 Ky. 403, 234 S.W.2d 722 (1950).

[64] See Oklahoma *ex rel.* Oklahoma Tax Comm'n v. Neely, 225 Ark. 230, 282 S.W.2d 150 (1955).

[65] See Oklahoma *ex rel.* Oklahoma Tax Comm'n v. H. D. Lee Co., 174 Kan. 114, 254 P.2d 291 (1953).

[66] CAL. REV. & TAX. CODE § 31.

[67] CAL. REV. & TAX. CODE § 30.

[68] Cal. Stat. 1963, ch. 1308.

[69] See 38 CAL. S. BAR. J. 653 (1963).

[70] See text accompanying note 48 *supra*.

*White* case. This procedure is permitted by a statute[71] authorizing service of process upon the Secretary of State for any individual or corporation having incurred a tax or other liability to the State, but no longer living within the State.

Thus California has available the two solutions possible by state legislative action. In practice, claims for California tax liabilities are reduced to judgment under the substituted service statute rather than by reliance upon an extension of comity by the state where the defendant can be found.[72]

*Conclusions*

The rule of non-enforcement of sister state tax claims can no longer be defended. The better view is to judicially extend comity to sister state tax claims, and, failing this, a statutory extension of comity to such claims on a reciprocal basis can alleviate the problem. It would seem to be a logical extension of the trend of Supreme Court decisions to require that full faith and credit be given to rights created under tax statutes in favor of the taxing state. But under both the comity and full faith and credit approaches the taxing state's statutes will be open to unfavorable interpretation by the courts of the forum state. Moreover, these solutions depend upon the willingness of the forum or the Supreme Court to declare a rule favorable to the taxing state. A solution should be provided by the taxing state to operate in its favor regardless of the view of the state where the tax evader is found. Under statutes expanding the jurisdiction of state courts to render valid personal judgments after substituted service, tax claims against corporations or individuals residing in other states can be reduced to judgment in the courts of the taxing state. This judgment is entitled to full faith and credit in an action in another state under *White*. Thus substituted service statutes for expanding jurisdiction seem to be the most effective method of solving the problem presented by the outmoded rule of non-enforcement of sister state tax claims.

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[71] CAL. CODE CIV. PROC. § 1018.

[72] Interview with Mr. Ernest Goodman, Deputy Attorney General, San Francisco, California, October, 1963.