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Conflict of Laws: Foreign Tax Suits

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CONFLICT OF LAWS*

FOREIGN TAX SUITS

Suits for the collection of taxes are permitted to be brought in California by other States which extend a like comity to this State.¹ The Attorney General of California is empowered to bring such suits in other States.

⁵Cal.Stats.(1937), c.508.

*[The material on this topic was prepared by Joseph M. Cormack, Professor of Law, University of Southern California.]

¹Cal.Pol.Code (1937), §3671e, added by Cal.Stats.(1937), c.708.

This is an excellent statute, filling a gap in the law existing throughout the country² which sometimes has been of great practical importance. The traditional refusal to permit such suits³ grew out of a feeling that one sovereign State should not attempt to perform the governmental functions of another.⁴ Such a theoretical consideration should not be permitted to remain as a barrier to the collection of tax revenues. The statute is a part of the general movement throughout the country to plug loopholes in the tax laws.

In general, this sort of comity—that is, having a rule of law in one State dependant upon its existence in another—is a very objectionable principle in the field of conflict of laws. Each State should administer justice and adopt such principles of public policy as it thinks best, without regard to the views of other States. Comity, in the sense mentioned, not only smacks of revenge and spitefulness, but creates uncertainty in the law of the State having it, in effect turning over the making of the law there to the fluctuating desires of the peoples of other States.

There seems to be no objection, however, to the use of a rule of comity, as here, in connection with a forward step in the science of jurisprudence, in order to encourage other States to take similar action.

²In regard to suits on *judgments* for taxes, see *Milwaukee County v. M. E. White Co.*, 296 U.S. 268, 56 Sup.Ct. 229, 80 L.Ed. 220 (1935), discussed in Note, 10 SOUTHERN CALIFORNIA LAW REVIEW, 197 (1937).

³See, in general: Sack, (Non-)Enforcement of Foreign Revenue Laws, in *International Law and Practice*, 81 *Univ.Pa.L.Rev.* 559 (1933); Note, 7 *Corn.L.Quar.* 245 (1922); Note, 18 *Corn.L.Quar.* 581 (1933).

⁴It is expressed thus in the Restatement of Conflict of Laws, §610: "No action can be maintained on a right created by the law of a foreign state as a method of furthering its own governmental interests."

*[The material on this topic was prepared by William G. Hale, Dean of the School of Law, University of Southern California.]

¹*Cal.Stats.*(1937), c.565.

²Osborn, *The Problem of Proof* (1926), 51 *et seq.*; Osborn, *Questioned Documents* (2d ed.1929), 624 *et seq.*

³*People v. Bird*, 124 Cal. 32, 35, 56 Pac. 639, 640 (1899); *People v. Mooney*, 132 Cal. 13, 17, 63 Pac. 1070, 1071, (1901).