CONFLICT OF LAWS: EXTRATERRITORIAL ENFORCEMENT OF TAX CLAIMS

That one state will not enforce the revenue laws of another is a rule of law which survives in an environment contrary to the reasons for its existence.[1] Although the fiscal needs and demands of modern government impose a heavy burden on the taxpayer, the rule has provided an avenue of escape by enabling an individual to avoid payment of taxes by crossing state lines. For those who accept the responsibilities of citizenship and pay their taxes, this burden is increased. Surely, when the fiscal needs of government are so demanding, rules favoring tax collection and not tax evasion should be stressed. Nevertheless, the doctrine that one state will not enforce the revenue laws of another persists, and until recently few states have recognized that it has little place in a union of states. The purpose of this note is to present and evaluate the reasons given to support the rule, to show a trend toward its rejection, and to suggest some prerequisites for one state to successfully maintain an action to enforce its revenue laws in another state.

The doctrine was first enunciated by an English court in an action between one of her citizens and a citizen of a foreign country and concerned the delivery of gold that had been smuggled out of Portugal.[2] The court refused to give effect to a Portuguese revenue law which prohibited the exportation of gold, stating that it was needed in England and that to hold otherwise would adversely affect English commerce. The rule, then, was born of commercial necessity and was first applied as a principle of international law. This rule was later employed by English courts,[3] but none of the early cases in which it appeared concerned an attempt to collect a tax by a foreign state. The

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1. 3 Beale, Conflict of Laws §§ 610.1, 610.2 (1935); Goodrich, Conflict of Laws § 66 (3d ed. 1949); Restatement, Conflict of Laws § 610, comment c (1934). Numerous writers have criticized the application of this rule in the United States. The following are illustrative of this criticism. Freeze, Extraterritorial Enforcement of Revenue Laws, 23 Wash. U.L.Q. 321 (1938); Leflar, Extrastate Enforcement of Penal and Governmental Claims, 46 Harv. L. Rev. 193, 215-25 (1932); Note, 29 Colum. L. Rev. 782 (1929); Note, 18 Cornell L.Q. 581 (1933); 34 Calif. L. Rev. 754 (1946).

2. Boucher v. Lawson, Cases temp. Hardwick 85, 89, 194, 95 Eng. Rep. 53, 55, 125 (K.B. 1734).

3. Sharp v. Taylor, 2 Phill. 801, 41 Eng. Rep. 1153 (Ch.D. 1849); Planche v. Fletcher, 1 Doug. 251, 99 Eng. Rep. 164 (K.B. 1779); Holman v. Johnson, 1 Cowp. 341, 98 Eng. Rep. 1120 (K.B. 1775). For a discussion of these cases see Freeze, supra note 1, at 322-26.

rule was first applied in the United States in *Randall v. Rensselaer*,[4] a case concerning the enforcement of a promissory note which had been executed in France, but which lacked the requisite French revenue stamps. A New York court allowed recovery on the note, even though it had not been executed in accordance with the laws of France, saying that the courts of New York did not sit to enforce the revenue laws of another country.[5] The rule was first applied in this country to enforce a contract.

The rule, although previously mentioned in one decision,[6] was not the basis for a state's refusal to give extraterritorial enforcement to the tax claims of another state until the early twentieth century.[7] In *Maryland v. Turner*[8] an attempt by Maryland to collect a tax owed by the defendant was thwarted when the New York court held that revenue laws, like penal laws, belong to a class of laws that are never accorded extraterritorial enforcement.[9] While the *Turner* case was a clear application of the rule to prevent the collection of a state tax, the court in *Colorado v. Harbeck*[10]—a case often cited as supporting the rule—only mentioned it in dictum and based its refusal to enforce the tax claim of a foreign state on constitutional grounds.[11] That case involved an attempt to collect a transfer tax in New York on the estate of a former resident of Colorado. The rule was only mentioned to refute the taxing state's contention that its attorney general had the power to enforce the tax by common law action in another state, the court declaring that the contention conflicted with the settled principle of private international law which precludes one state from collecting the taxes of a sister state and from enforcing its penal and revenue laws.[12] In both the *Turner* and *Harbeck* cases the courts, in considering the rule, stated that the reasons for not enforcing the

4. 1 Johns. *94 (Sup. Ct. N.Y. 1806).

5. Id. at *96.

6. Henry v. Sargeant, 13 N.H. 321, 325 (1843).

7. Maryland v. Turner, 75 Misc. 9, 132 N.Y. Supp. 173 (Sup. Ct. 1911). The case of Holshauser v. Copper Co., 138 N.C. 248, 50 S.E. 650 (1905) deserves some mention. This case was the first instance in which a state court was asked to collect a tax due another state. The North Carolina Supreme Court allowed the state of New Jersey to present a claim against the defendant for back taxes when the defendant went into receivership. No mention was made of the rule against the extraterritorial enforcement of state taxes.

8. See note 7 supra.

9. 75 Misc. at 10-13, 132 N.Y. Supp. at 174-6.

10. 232 N.Y. 71, 133 N.E. 357 (1921).

11. Id. at 83, 133 N.E. at 359.

12. Id. at 85, 133 N.E. at 360. It is a well established principle of international law that the courts of one country will not execute the penal laws of another. The Antelope, 23 U.S. (10 Wheat.) 66, 123 (1825). The same principle is true between states. Goodrich, Conflict of Laws § 12 (3d ed. 1949).

revenue laws of another state were (a) precedent and (b) the penal nature of these laws. As previously stated, these decisions, rather than following precedent, were the first to apply the rule to prevent a sister state from collecting a tax. The suggestion that revenue laws are analogous to penal statutes is likewise subject to criticism.[13] Penal laws aim at punishing offenses against the state; revenue laws are based on the pecuniary obligation of the citizen to the state for services rendered.[14] Although it would be contrary to a theory of retributive justice for a state whose laws have not been violated to punish an individual, because tax laws are not attempts to punish, this theory has no validity when applied to revenue statutes.[15] Further, even state penal laws are accorded some degree of extraterritorial enforcement by the process of extradition, whereas no like process is available to aid states in the collection of taxes.[16] Perhaps, if the analogy of penal and revenue laws had gained impetus, the taxing state would have obtained a similar process. The courts, however, sought other reasons for applying the rule.

In *Moore v. Mitchell*[17] Judge Learned Hand, concurring in the application of the rule to defeat the taxing state's claim, reasoned that the rule was sound because it avoided delicate and embarrassing situations which might otherwise result if one state were to enforce and thereby pass on the validity of the revenue laws of another.[18] Three arguments have been asserted to rebut this reasoning.[19] First, it is probable that the revenue laws of the taxing state will have been previously interpreted by its own courts so that another forum would have little difficulty in their application. Moreover, the taxing state would not be likely to complain of the manner in which its revenue laws are applied, since it affirmatively seeks their application. And third, it is difficult to see how the taxing state's relationship with its citizens would be embarrassed, since the same defenses to the tax

13. See State ex rel. Oklahoma Tax Comm'n v. Rodgers, 238 Mo. App. 1115, 193 S.W.2d 919 (1946); Leflar, supra note 1, at 219-20; Note, 41 Ill. L. Rev. 439, 441 (1946); Note, 10 U. Pitt. L. Rev. 205, 206 (1948). For a case by case study of the analogy between penal and revenue laws see 15 U. Kan. City L. Rev. 52 (1946-47).

14. See Huntington v. Attril, 146 U.S. 657, 673-74 (1892); Freeze, supra note 1, at 328-30; Note, 18 Cornell L.Q. 581 (1933); Note, 10 U. Pitt. L. Rev. 205, 206 (1949).

15. State ex rel. Oklahoma Tax Comm'n v. Rodgers, 238 Mo. App. 1115, 1127, 193 S.W.2d 919, 926 (1946).

16. Leflar, supra note 1, at 200-01.

17. 30 F.2d 600 (2d Cir. 1929), aff'd on other grounds, 281 U.S. 18 (1930).

18. Id. at 604.

19. See Freeze, supra note 1, at 333; Note, 46 Colum. L. Rev. 1013, 1014-15 (1946); Note, 41 Ill. L. Rev. 439, 441-42 (1946); Note, 47 Mich. L. Rev. 796, 799-801 (1949).

claim could be asserted by the evader in the forum of trial as would be available to him in the taxing state. To Judge Hand's further suggestion that extraterritorial enforcement of state revenue laws might contravene the public policy of the enforcing state,[20] the answer has been given that there should be no general policy against state tax collection and that the enforcing state should realize that tax revenues are vital to the existence of governments.[21] Although it is realized that there could be situations in which one state should refuse to enforce the revenue laws of another, i.e., where the tax is confiscatory in nature or where the enforcement of another state's revenue laws would be detrimental to the enforcing state's collection of its own taxes, these situations seldom occur and cannot sustain a rule which refuses to give extraterritorial enforcement to *any* state revenue law.

A final reason advanced to support the rule is that, if one state were to enforce the revenue laws of another, a substantial burden would be placed on the enforcing state by adding to already crowded dockets.[22] With the possible exception of New York, this reasoning seems to have little basis in fact. Generally, substantial amounts of revenue have been involved when one state has sought the extraterritorial enforcement of its tax claims.[23] No doubt most instances of tax evasion which occur when the taxpayer crosses state lines involve trivial amounts that the taxing state would not attempt to collect in the courts of another state because the expense would exceed the anticipated revenue. The relatively small number of cases in which one state has sought extraterritorial enforcement of its tax claims indicates that no great burden on court dockets would result from a relaxation of the rule. Excepting possibly New York, the tax claims of one state should not be defeated on this basis.[24] Because many of its citizens own property in other states, special circumstances might be present in New York that would urge it not to enforce the tax claims of sister states. Probably, this is the reason why New York has been, and remains, the staunchest supporter of the rule, even though that has not been the reason given for its application.[25]

20. 30 F.2d at 604.

21. See authorities cited at note 19 supra.

22. Freeze, supra note 1, at 334; Note, 97 U. Pa. L. Rev. 435, n.12 (1949).

23. See, e.g., California ex rel. Houser v. St. Louis Union Trust Co., 260 S.W.2d 821 (Mo. App. 1953) ($4,349.75); City of Detroit v. Proctor, 44 Del. 193, 61 A.2d 412 (1948) ($3,420.75).

24. See Note, U. Pa. L. Rev. 435, 536 n.12 (1949).

25. Wayne County v. American Steel Export Co., 227 App. Div. 585, 101 N.Y.S.2d 522, (1st Dept. 1950); Wayne County v. Foster & Reynolds Co., 227 App. Div. 1105, 101 N.Y.S.2d 526, (1st Dept. 1950); In re Martin's Estate, 136 Misc. 51, 240 N.Y. Supp. 393 (Surr. Ct. 1930), aff'd on another ground, 255 N.Y. 359, 174 N.E. 753 (1931); In re Bliss' Estate, 121 Misc. 773, 202 N.Y. Supp. 185 (Surr. Ct. 1923).

Since the reasons generally given to support this rule are on close inspection insufficient to sustain its validity and continued application, it is not surprising that the states would seek some method of limiting the rule. New York, despite its opposition to the extraterritorial enforcement of revenue laws, was involved in the first case limiting the scope of this rule. In *New York v. Coe Mfg. Co.*[26] that state reduced a franchise tax claim to judgment and sought its enforcement in New Jersey. The New Jersey court enforced the judgment and held that the original character of the claim had merged in it.[27] This decision would probably not have received unanimous acceptance by the states[28] had not the United States Supreme Court held in *Milwaukee County v. M. E. White Co.*[29] that a judgment of the taxing state was enforceable in another state, and that it was not to be denied full faith and credit merely because the underlying claim was for taxes.[30] This decision firmly established the law with regard to the extraterritorial enforcement of tax claims which have been reduced to judgment,[31] but the Court expressly left open the question of whether full faith and credit had to be given the tax *claims* of another state.[32] Thus, the *Milwaukee County* case did not substantially impair the rule and, although several states have recently aided another state in the collection of its taxes, the basic problem of enforcing tax claims is present today when one state is unable within its own jurisdiction to enforce its revenue laws.

The first case expressly rejecting the rule was *State ex rel. Oklahoma Tax Comm'n v. Rodgers*[33] which concerned an action brought in Missouri to collect income taxes that had accrued against the defendant while he was a citizen of Oklahoma. The St. Louis Court of Appeals, after considering the historical development of the rule and the reasons that had been used to support it, reversed a decision dismissing the action and held that there was no valid reason for the courts of one state not to enforce the revenue laws of another, since the "simplest ideas of comity would seem to compel such a result, and modern conditions demand it."[34] The reasoning of the court was that

26. 112 N.J.L. 536, 172 Atl. 198 (Ct. Err. & App. 1934); see Note, 42 Yale L.J. 1131 (1933).

27. Id. at 538-40, 172 Atl. at 199-200.

28. See Wisconsin v. Pelican Ins. Co., 127 U.S. 265, 290 (1887) (dictum).

29. 296 U.S. 268 (1935).

30. Id. at 279.

31. See Goodrich, Conflict of Laws § 66 (3d ed. 1949).

32. 296 U.S. at 275.

33. 238 Mo. App. 1115, 193 S.W.2d 919 (1946). For discussion of this case see Note, 34 Calif. L. Rev. 754 (1946); Note, 46 Colum. L. Rev. 1013 (1946); Note, 41 Ill. L. Rev. 439 (1946); Note, 31 Minn. L. Rev. 93 (1946).

34. 238 Mo. App. at 1128, 193 S.W.2d at 927.

the principle of comity could prevent the taxpayer who enjoyed the benefits of government from avoiding his share of the expense by merely crossing state lines.[35] The rule that had developed out of commercial necessity was declared to have no place in a union of states. The *Rodgers* decision has since been cited with approval in Missouri,[36] found acceptance in the courts of Kentucky,[37] Arkansas,[38] and Illinois,[39] and received favorable mention in the Restatement of the Conflict of Laws.[40] It has not, however, been universally followed. In *City of Detroit v. Proctor*,[41] decided two years after the *Rodgers* case, the Delaware Supreme Court held that the principle that one state will not enforce the revenue laws of another state was too well settled to be overturned in the absence of clear legislative direction.[42] Other recent decisions attest that the rule precluding extraterritorial enforcement of tax claims has not been completely discarded.[43] Since it is felt that this rule is inappropriate in a union of states and that the *Rodgers* case enunciates a preferable position, a close appraisal of those decisions that have rejected the rule should be made in order to ascertain what prerequisites are required before one state will enforce the revenue laws of another.

The *Rodgers* case, being based on the principle of comity, may be somewhat misleading, for the term "comity" is subject to some confusion.[44] Used in a loose sense in connection with the rule, this term may have meant that Missouri enforced the Oklahoma revenue law out of mere courtesy, but the better view is that comity is dependent upon additional factors that were present in that decision.[45] It is submitted that these additional factors were the Oklahoma statutes which

35. Ibid.

36. California ex rel. Houser v. St. Louis Union Trust Co., 260 S.W.2d 821 (Mo. App. 1953), dismissed, 348 U.S. 932 (1955).

37. Ohio ex rel. Duffy v. Arnett, 314 Ky. 403, 234 S.W.2d 722 (1950).

38. State ex rel. Oklahoma Tax Comm'n v. Neely, 225 Ark. 230, 282 S.W.2d 150 (1955).

39. City of Detroit v. Gould, 12 Ill. 2d 297, 146 N.E.2d 61 (1957).

40. A caveat to Restatement, Conflict of Laws § 610, comment c (1934) said that, in recognition of the Rodgers case, the Institute would express no opinion whether an action could be maintained by a foreign state on a tax claim, but added that if a position were to be taken it would follow the Rodgers decision. Restatement of the Law 174 (Supp. 1948).

41. 44 Del. 193, 61 A.2d 412 (1948).

42. Id. at 203, 61 A.2d at 416.

43. In re Assignment of Film Classics to Kaufman, 152 N.Y.S.2d 565 (Sup. Ct. 1956); Wayne County v. American Steel Export Co., 227 App. Div. 585, 101 N.Y.S.2d 522 (1st Dept. 1950); Wayne County v. Foster & Reynolds Co., 227 App. Div. 1105, 101 N.Y.S.2d 526 (1st Dept. 1950).

44. See Goodrich, Conflict of Laws § 7 (3d ed. 1949).

45. Ibid.

provided that an action could be maintained for taxes in the same manner as for a personal debt,[46] and which guaranteed that the state would recognize and enforce liability for taxes lawfully imposed by other states which extended a like comity to Oklahoma.[47] With this guarantee of reciprocity, the court's use of the term "comity" in enforcing the tax claim of a sister state is given meaning beyond that of mere courtesy. In the Arkansas case that followed the *Rodgers* view the taxing state was again Oklahoma, whose statutes guaranteed a like comity.[48] The Kentucky Supreme Court in rejecting the traditional rule declared that it could find nothing to indicate that Ohio, the taxing state, would not enforce the tax claims of Kentucky should the occasion arise.[49] The importance of reciprocity to the Missouri view is pointed out by the case of *California ex rel. Houser v. St. Louis Union Trust Co.*[50] In that case the *Rodgers* court cited its former decision with approval, but refused to enforce a California inheritance tax claim. In recognition of its former opinion, the court said that it was soundly ruled and that there should be "no absolute bar to extra-territorial suits to collect any or every type of tax from former residents."[51] However, the court found that the California Revenue and Tax Code,[52] under which the tax was assessed, named one specific court as having jurisdiction over the collection of inheritance taxes and held that the cause of action was made intransitory by these statutes, stating that when a legislature so ties together a right and a remedy it is impossible for the courts of other states to exercise jurisdiction.[53] Other provisions of the California statutes that were in force when the tax was assessed empowered the attorney general to bring suits in other states for all tax claims generally and extended comity to states that allowed the action.[54] However, when this suit was brought, these provisions had been amended and expressly ex-

46. Okla. Stat. Ann. tit. 68, § 1464 (1941).

47. Okla. Stat. Ann. tit. 68, § 1483 (1941) provides: "The courts of this State shall recognize and enforce liability for taxes lawfully imposed by other States which extend a like comity to this State."

48. In State ex rel. Oklahoma Tax Comm'n v. Neely, 225 Ark. 230, 282 S.W.2d 150 (1955) the pertinent comity statute was Okla. Stat. Ann. tit. 68, § 1483 (1941).

49. Ohio ex rel. Duffy v. Arnett, 314 Ky. 403, 413, 234 S.W.2d 722, 727 (1950). The legislature of Kentucky has commanded the courts to enforce the tax claims of those states which extend Kentucky a like comity. See Ky. Rev. Stat. Ann. § 135.190 (1950).

50. 260 S.W.2d 821 (Mo. App. 1953).

51. Id. at 829.

52. Cal. Rev. & Tax Code Ann. § 14651 (Deering 1939).

53. 260 S.W.2d at 831.

54. Cal. Polit. Code § 3671(e) (Deering 1944).

cluded inheritance tax claims.[55] Thus, at the time California sought to enforce an inheritance tax claim, the California statutes provided that it would not enforce a similar claim of another state. It is submitted that this is what prompted the decision of the court in the *St. Louis Union Trust Co.* case. It is doubtful that the California legislature meant to limit the collection of these taxes to a specific court, since it expressly empowered the attorney general to maintain actions for all taxes in other states. Therefore, the holding that an intransitory cause of action was created by statute is questionable.[56] What was created was a situation in which Missouri was asked to enforce the revenue laws of another state when that state had expressly declared that Missouri would not be extended a like comity.

The influence of the Missouri view reached its peak recently in *City of Detroit v. Gould*,[57] which concerned an action brought in Illinois to collect a tax on personal property that had been assessed against the defendant while he was a resident of Detroit. In that case the Supreme Court of Illinois reversed a decision of the lower court which had dismissed the suit by application of the rule that one state will not enforce the revenue laws of another and held that there was "no reason of comity" upon which to deny the action or refuse to enforce the Michigan tax.[58] In reaching this decision the court declared that it was following the Missouri view.[59] It should be noted, however, that one important aspect of the Missouri view was absent in this decision. Unlike the situation in the *Rodgers* case and in the Arkansas decision that followed its lead,[60] the taxing state in the *Gould* case had no statute that would guarantee that Illinois would receive like treatment if the situation were reversed. Nor did the court seem concerned over the question of reciprocity.[61] There was nothing to indicate whether Michigan would or would not extend comity to Illinois in the extraterritorial enforcement of its tax claims. This is not to suggest that the failure to raise the question of reciprocity renders unsound the rejection of the traditional rule in the *Gould* case. As has been pointed out, that rule lacks the support of reason when applied to a union of states and should be rejected. It is merely to suggest that the Illinois Supreme Court seems to have given

55. Cal. Rev. & Tax Code Ann. § 31 (Deering Supp. 1957).

56. Comment, 1955 Wash. U.L.Q. 310.

57. 12 Ill. 2d 297, 146 N.E.2d 61 (1957).

58. Id. at 304, 146 N.E.2d at 64.

59. Id. at 303, 146 N.E.2d at 63.

60. State ex rel. Oklahoma Tax Comm'n v. Neely, 225 Ark. 230, 282 S.W.2d 150 (1955).

61. This was a definite concern of the court in Ohio ex rel. Duffy v. Arnett, 314 Ky. 403, 234 S.W.2d 722 (1950). See note 50 supra and text supported thereby.

further extension to the Missouri view as enunciated in the *Rodgers* case.

Except for the *Gould* case, a concern for reciprocity would appear to be an important factor to the enforcement of foreign revenue laws. In two of those cases in which the traditional rule was rejected, the state seeking to have its tax claims enforced guaranteed the enforcing state reciprocity by statute.[62] In the other decision the court found that there was no evidence to suggest that the taxing state would not so reciprocate should the occasion arise.[63] Where, however, the evidence clearly showed that the taxing state would not grant this reciprocity, as in the *St. Louis Union Trust Co.* case, the tax claim was not enforced. Therefore, it would seem that a comity provision is a wise, if not necessary, addition to the statutes of any state that seeks the extraterritorial enforcement of its revenue laws. However, the fact that the enforcing state has adopted a comity statute does not by itself mean that another state will enforce its revenue laws. The traditional rule has behind it the weight of authority and *City of Detroit v. Proctor*[64] clearly shows that some courts are reluctant to reject this rule without clear direction from their own legislatures. The rationale of the *Proctor* decision indicated that the Supreme Court of Delaware felt that, even if the taxing state had a comity statute, the enforcement of the revenue laws of another state should be left to the determination of the Delaware legislature.[65] The Delaware court also stated that it was the legislature, rather than the courts, that was best able to define the proper scope for enforcing the tax claims of another state.[66] For these reasons, it is submitted that the various state legislatures must take the lead if the traditional rule is to be completely rejected.

What legislation, then, is necessary to overcome the rule against extraterritorial enforcement of state tax claims?[67] From a reading of those cases which have rejected the rule and in which one state enforced the tax claims of another, it is submitted that the necessary statutory provisions would be as follows: (1) a provision making a lawfully assessed tax a debt due the state at the time of assessment and making it collectible in the same manner as a personal debt;[68] (2) a provision allowing state tax claims to be pursued in any court of competent jurisdiction; (3) a provision empowering a state official

62. Text refers to Rodgers and Neely cases.
63. Text refers to Arnett case.
64. 44 Del. 193, 61 A.2d 412 (1948).
65. Id. at 203, 61 A.2d at 416.
66. Ibid.
67. See generally, Legislation, 48 Harv. L. Rev. 828, 834 (1935).
68. See note 46 supra.

to maintain extraterritorial action on behalf of the state to enforce its tax claims;[69] (4) a provision guaranteeing reciprocity to any other state that will enforce its tax claims;[70] and (5) a provision detailing those taxes that are not included within these comity provisions or which will not be enforced by the state.[71] These provisions should overcome the objection that the remedy provided by the taxing state to enforce its tax claims is intransitory in nature and can only be pursued in the courts of that state, or that the person seeking to enforce the tax claim is without authority to do so. The last provision is a recognition of the fact that there may be situations in which the courts of one state will not enforce the revenue laws of another because to do so would contravene a valid state policy[72] and is an announcement of those situations.

Because there can be situations in which the enforcement of another state's tax claims would contravene some valid public policy, it is doubtful that the traditional rule will ever become completely extinct. For this same reason, it is also unlikely that Congress will ever enact legislation or the Supreme Court render an opinion that requires one state to enforce the revenue laws of another. If the states are desirous of having their tax claims given extraterritorial effect, it is the legislatures that must provide the lead, each placing the traditional rule in its proper setting; for it is the legislature that is primarily concerned with the collection of taxes owed the state.

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69. See Mich. Stat. Ann. §§ 211.13, 211.39-.40, 609.13 (1948).
70. See note 47 supra.
71. See note 55 supra.
72. See text supported by notes 20-21 supra.