RECOGNIZING FOREIGN TAX JUDGMENTS: AN ARGUMENT FOR THE REVOCATION OF THE REVENUE RULE

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I. INTRODUCTION

Litigants who have obtained a judgment from a foreign court, for the most part, have little trouble convincing courts in the United States to recognize and enforce that judgment.[1]

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1. Recognition refers to the reliance of a U.S. court "upon a foreign judicial ruling to preclude litigation of a particular claim, or issue, on the ground that it has been previously litigated abroad." GARY B. BORN,

While the United States is not a member of an international convention mandating the recognition of foreign judgments,[2] such judgments are usually recognized under the doctrine of international comity.[3] Under either the applicable state statute[4] or common law,[5] foreign judgments are presumptively valid and enforceable.[6] It is the burden of the party opposing enforcement to show an acceptable reason for not recognizing or enforcing a judgment.[7]

The case is completely different when the party seeking enforcement is a foreign nation,[8] and the judgment one of tax

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INTERNATIONAL CIVIL LITIGATION IN UNITED STATES COURTS 936 (3d ed. 1996) (citing RESTATEMENT (SECOND) CONFLICT OF LAWS, ch. 5, Topic 2, Introductory Note & §§ 93–98 (1971) [hereinafter RESTATEMENT CONFLICT]; RESTATEMENT (THIRD) FOREIGN RELATIONS LAW § 481 & cmts. a & b (1987) [hereinafter RESTATEMENT FOREIGN RELATIONS]). Enforcement, by contrast, refers to the situation where the U.S. courts actually use their powers to collect payment on a foreign judgment. *See id.*

2. *See* BORN, *supra* note 1, at 938.

3. *See* Hilton v. Guyot, 159 U.S. 113, 163–64 (1895).

4. *See* BORN, *supra* note 1, at 939. "Comity . . . is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation." *Hilton*, 159 U.S. at 164. Twenty-eight states have adopted the UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT. 13 U.L.A. 265 (1962 & Supp. 1999) [hereinafter UNIFORM FOREIGN MONEY].

5. Twenty-five states base their common law on the principles of *Hilton v. Guyot*. *See* BORN, *supra* note 1, at 939.

6. *Hilton* states:

> [W]here there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect, the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh, as on a new trial or an appeal, upon the mere assertion of the party that the judgment was erroneous in law or in fact.

159 U.S. at 202–03. *See also* UNIFORM FOREIGN MONEY, *supra* note 4, § 3.

7. Grounds for non-recognition include: (1) partiality of the tribunal; (2) lack of personal jurisdiction; and (3) lack of subject matter jurisdiction. *See* UNIFORM FOREIGN MONEY, *supra* note 4, § 4(a). A foreign judgment need not be recognized if (1) there was lack of sufficient notice; (2) there was fraud in obtaining the judgment; (3) the foreign judgment is "repugnant" to public policy; (4) it conflicts with other judgments; (5) the parties agreed to a different proceeding than that before the foreign court; or (6) the forum court was "seriously inconvenient." *Id.* § 4(b).

8. The word "state" has a different meaning within U.S. domestic law contexts and international law contexts. For the sake of simplicity, the word "nation" will be used to describe a state in the international law context.

obligations. Under the "revenue rule," the courts of the United States are under no obligation to recognize or enforce a foreign tax judgment.[9] This rule is derived from Eighteenth Century cases wherein Lord Mansfield stated that no nation recognizes the revenue laws of another.[10]

The revenue rule, however, is an archaic vestige of English common law.[11] The original reasoning upon which the rule is based is flawed because Lord Mansfield's statement had no bearing on the facts presented by the cases.[12] Indeed, the abolition of the revenue rule would be consistent with fundamental principles of American law and government.[13] Further, such an abolition would aid U.S. tax officials in collecting revenue from delinquent tax payers who flee overseas to escape U.S. jurisdiction.[14]

This Article examines the revenue rule in American jurisprudence. Part I traces the development of the revenue rule in the United States. Part II examines the origins of the revenue rule in English common law and demonstrates the flaws in its inception. Part III shows the defects in the rationale behind the revenue rule. Part IV argues that the abolition of the revenue rule would be consistent with the principle that governmental authority derives from the consent of the governed. Part V explains how the United States could benefit from the abolition of the revenue rule.

II. THE REVENUE RULE IN AMERICAN JURISPRUDENCE

The doctrine that foreign tax judgments should not be recognized was injected into American jurisprudence by *Her Majesty the Queen ex rel. British Columbia v. Gilbertson.*[15] There, citizens of Oregon performed logging operations in British Columbia, a province of Western Canada.[16] The defendants were assessed tax on their income from logging

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9. *See* Her Majesty the Queen *ex rel.* B.C. v. Gilbertson, 597 F.2d 1161, 1163 (9th Cir. 1979); *see also* RESTATEMENT FOREIGN RELATIONS, *supra* note 1, § 483.

10. *See* Holman v. Johnson, 98 Eng. Rep. 1120, 1121 (1975); Planche v. Fletcher, 99 Eng. Rep. 164, 165 (1779).

11. *See* Barbara A. Silver, *Modernizing the Revenue Rule: The Enforcement of Foreign Tax Judgments*, 22 GA. J. INT'L & COMP. L. 609, 613 (1992).

12. *See* discussion *infra* Part II.A and accompanying notes.

13. *See* discussion *infra* Part IV and accompanying notes.

14. *See* discussion infra Part V.A and accompanying notes.

15. 597 F.2d 1161 (9th Cir. 1979).

16. *See id.* at 1162.

by the government of British Columbia.[17] The government filed a certificate of assessment with the Supreme Court of British Columbia, giving the assessment the same effect as a judgment.[18] British Columbia then filed suit in the federal courts in Oregon for the recognition and enforcement of the judgment.[19] The U.S. District Court declined enforcement, citing the revenue rule.[20]

The U.S. Court of Appeals for the Ninth Circuit affirmed the ruling of the District Court.[21] First, the court traced the origin of the revenue rule to two Eighteenth Century English cases decided by Lord Mansfield.[22] In *Holman v. Johnson*, Mansfield stated, "[N]o country ever takes notice of the revenue laws of another."[23] Lord Mansfield reiterated this pronouncement in *Planche v. Fletcher*, stating, "One nation does not take notice of the revenue laws of another."[24] While admitting that these statements amounted to nothing more than dictum in the cases cited, the Ninth Circuit nonetheless stated that the doctrine had become well recognized.[25]

In support of the revenue rule, the Ninth Circuit quoted the concurring opinion of Judge Learned Hand in *Moore v. Mitchell*:[26]

> "While the origin of the exception in the case of penal liabilities does not appear in the books, a sound basis for it exists, in my judgment, which includes liabilities for taxes as well. Even in the case of ordinary municipal liabilities, a court will not recognize those arising in a foreign state, if they run counter to the 'settled public policy' of its own. Thus

17. *See id.*
18. *See id.*
19. *See id.*
20. *See id.* at 1162–63.
21. *See id.* at 1166.
22. *See id.* (citing Holman v. Johnson, 98 Eng. Rep. 1120, 1121 (1775); Planche v. Fletcher, 99 Eng. Rep. 164, 165 (1779)).
23. *Holman*, 98 Eng. Rep. at 1121.
24. *Planche,* 99 Eng. Rep. at 165.
25. *See* Her Majesty the Queen *ex rel.* B.C. v. Gilbertson, 597 F.2d 1161, 1164 (9th Cir. 1979).
26. 30 F.2d 600 (2d Cir. 1929), *aff'd on other grounds*, 281 U.S. 18 (1930). *Moore* involved the collection of a tax assessed by Grant County, Indiana in the state of New York. *See id.* at 601. Initially, a tax assessed by one state in the United States could not be enforced in another state in the United States. *See id.* at 602. This rule, however, has been changed, because under the Full Faith and Credit Clause, a tax judgment from one state must be recognized by another state. *See* Milwaukee County v. M.E. White Co., 296 U.S. 268, 276–77 (1935). *See also Gilbertson*, 597 F.2d at 1165 n.8.

> a scrutiny of the liability is necessarily always in reserve, and the possibility that it will be found not to accord with the policy of the domestic state. This is not a troublesome or delicate inquiry when the question arises between private persons, but it takes on quite another face when it concerns the relations between the foreign state and its own citizens or even those who may be temporarily within its borders. To pass upon the provisions for the public order of another state is, or at any rate should be, beyond the powers of a court; it involves the relations between the states themselves, with which courts are incompetent to deal, and which are intrusted to other authorities. It may commit the domestic state to a position which would seriously embarrass its neighbor."[27]

Thus, the Ninth Circuit supported the imposition of the revenue rule, claiming the recognition of foreign tax judgments would force the courts of the United States to enforce the interests of a foreign government.[28] Further, the court, noting the lack of reciprocity, observed that the courts of British Columbia would not recognize a tax judgment rendered by courts in the United States. While noting that reciprocity was not a requirement for recognition, the court stated that it was a factor to be considered.[29]

The revenue rule was stated differently when the American Law Institute revised its *Restatement of Foreign Relations* in 1987. "Courts in the United States *are not required* to recognize or enforce judgments for the collection of taxes, fines, or penalties rendered by the courts of other states."[30] Thus, according to the *Restatement*, nonrecognition is not mandatory.[31] Indeed, the Reporter's notes stated that the revenue rule was obsolete.[32]

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27. *Gilbertson*, 597 F.2d at 1164 (quoting Moore v. Mitchell, 30 F.2d 600, 604 (2d Cir. 1929)).

28. *See id.* at 1165 (citing Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 448 (1964) (White, J., dissenting)).

29. *See id.* at 1165–66 (declining to follow Somportex Ltd. v. Philadelphia Chewing Gum Corp., 318 F. Supp. 161 (E.D. Pa. 1970), *aff'd*, 453 F.2d 435 (3d Cir. 1971); Toronto-Dominion Bank v. Hall, 367 F. Supp. 1009 (E.D. Ark. 1973)).

30. RESTATEMENT FOREIGN RELATIONS, *supra* note 1, § 483 (emphasis added).

31. *See id.* cmt. a.

32. *See id.* reporter's note 2.

The revenue rule has also found its way into the criminal law of the United States. In *United States v. Boots*, two defendants entered into a plot to smuggle tobacco into Canada and avoid paying Canadian taxes and excise duties.[33] The defendants were convicted of conspiracy.[34] The U.S. Court of Appeals for the First Circuit reversed, stating that under the revenue rule, "[C]ourts generally will not enforce foreign tax judgments . . . ."[35] The court found that a conviction was the functional equivalent of a "penal enforcement of Canadian customs and tax laws."[36] A conviction, therefore, could not be based on a violation of foreign tax law.

A contrary conclusion was reached by the U.S. Court of Appeals for the Second Circuit in *United States v. Trapilo*.[37] Four defendants were charged with conspiracy to defraud the Canadian government of taxes on liquor.[38] The district court, relying on *Boots*, dismissed the charges.[39] The Second Circuit reversed, stating that, "At the heart of this indictment is the misuse of the wires in furtherance of a scheme to defraud the Canadian government of tax revenue, not the validity of a foreign sovereign's revenue laws."[40] The *Trapilo* court, therefore, did not question the rationale behind the revenue rule, but merely found it inapplicable because there was no obligation to assess the validity of Canadian revenue laws.[41]

Courts in the United States, then, differ on the application of the revenue rule. The Ninth Circuit discussed the rule merely in the context of the nonrecognition of foreign tax judgments.[42] Under the First Circuit's view, a criminal conviction cannot involve proof of a violation of a foreign tax law.[43] This view is not constrained solely to the nonrecognition of foreign tax judgments, but extends to the nonrecognition of all foreign tax laws.[44] The Second Circuit, however, limits the application of the revenue rule solely to

33. 80 F.3d 580, 583 (1st Cir. 1996).
34. *See id.* at 583.
35. *Id.* at 587.
36. *Id.*
37. 130 F.3d 547 (2d Cir. 1997).
38. *See id.* at 549.
39. *See id.* at 550–51.
40. *Id.* at 552.
41. *See id.* at 553.
42. *See Gilbertson*, 597 F.2d at 1164–65.
43. *See* United States v. Boots, 80 F.3d 580, 587 (1st Cir. 1996).
44. *See id.*

those instances where a court in the United States must actually assess the validity of a foreign tax law.[45]

III. ORIGINS OF THE REVENUE RULE

In support of the revenue rule, the *Gilbertson* court cited two English cases.[46] An examination of those cases is necessary to determine the strength of the authority upon which the revenue rule is based.

A. English Precedents

In *Holman v. Johnson*, Holman, a resident of Dunkirk, France, sought payment for tea sold to Johnson.[47] The entire transaction took place in Dunkirk.[48] Johnson, however, bought the tea in order to smuggle it into England and avoid customs duties.[49] Johnson argued that Holman knew that his purpose in buying the tea was to smuggle it.[50] Because this was a contract in furtherance of an illegal aim, Johnson claimed it was void and that Holman was not entitled to payment for the tea.[51] The court was faced with the issue of whether a contract for the sale of goods, which is facially valid, can be voided due to the known illegal intentions of the buyer.[52] Lord Mansfield first determined which law would apply:

> There can be no doubt, but that every action tried here must be tried by the law of England; but the law of England says, that in a variety of circumstances, with regard to contracts legally made abroad, the laws of the country where the cause of action arose shall govern.—There are a great many cases which every country says shall be determined by the laws of foreign countries where they arise. But I do not see how the principles on which that doctrine obtains are applicable to the present case. For no country ever takes notice of the *revenue* laws of another.[53]

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45. *See* United States v. Trapilo, 130 F.3d 547, 553 (2d Cir. 1997).
46. *See* 597 F.2d at 1164 (quoting Holman v. Johnson, 98 Eng. Rep. 1120, 1121 (1775); Planche v. Fletcher, 99 Eng. Rep. 164, 165 (1779)).
47. *See Holman*, 98 Eng. Rep. at 1120.
48. *See id.*
49. *See id.*
50. *See id.*
51. *See id.*
52. *See id.* at 1121.
53. *Id.* (emphasis in original).

It is in this context that the statement that came to be known as the revenue rule was first enunciated. Lord Mansfield next discussed whether Holman had engaged in an illegal act:

> This is an action brought merely for goods sold and delivered at Dunkirk. Where then, or in what respect is the plaintiff guilty of any crime? Is there any law of England transgressed by a person making a complete sale of a parcel of goods at Dunkirk, and giving credit for them? The contract is complete, and nothing is left to be done.[54]

The crux of Lord Mansfield's decision was that the sale of goods in Dunkirk for delivery in Dunkirk was not itself an illegal act.[55] The illegal purpose of Johnson had no bearing on Holman's right to be paid.[56]

In the second case, *Planche v. Fletcher*, the plaintiff insured cargo aboard a ship ultimately bound for France.[57] The cargo was destroyed, and Planche sued the insurance company for payment. The trial court rendered a verdict in favor of Planche.[58] The insurance company appealed.[59]

The insurance company challenged the verdict claiming the policy had been obtained by fraud.[60] The plaintiff represented that the ship was to travel from London to Ostend, Belgium, then to Nantz, France.[61] This route was chosen because the French duties on imports from Belgium were less than the duties imposed on English goods.[62] In reality, however, the ship was to travel directly from London to Nantz.[63] The ship's captain drew up false papers to make it appear as though the ship originated in Ostend, in order to avoid the additional duties.[64]

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54. *Id.*
55. *See id.*
56. *See id.*
57. 99 Eng. Rep. 164 (1779).
58. *See id.*
59. *See id.* at 164–65.
60. *See id.* at 164. The insurance company also challenged the verdict on the ground that it was not responsible for paying Planche because France and England declared war against each other just prior to the voyage of the ship carrying the cargo. *See id.* at 165. On this issue, Lord Mansfield held that the insurance company assumed the risk that the cargo could be captured after a declaration of war. *See id.* at 166.
61. *See id.* at 164.
62. *See id.* 164–65.
63. *See id.* 164.
64. *See id.*

Lord Mansfield found that this did not constitute fraud, because it was the common practice of the shipping industry to falsify shipping papers when taking this route.[65] The English shipping industry routinely made it appear as though goods bound for Nantz originated in Ostend in order to avoid the higher French duties on English goods.[66] "What had been practiced in this case was proved to be constant course of trade, and notoriously so to every body."[67] After finding no fraud due, Lord Mansfield added, "But, at any rate, this was no fraud in this country. One nation does not take notice of the revenue laws of another."[68]

B. Problems in Relying on Holman and Planche

Both *Holman* and *Planche* are weak precedents for the basis of the revenue rule because Lord Mansfield's discussion of the revenue rule was not necessary for the resolution of the cases.[69] "The legal principle to be drawn from the opinion (decision) of the court" is the court's holding.[70] Dictum, by contrast, has been defined by Judge Richard Posner as "'a statement not addressed to the question before the court or necessary for its decision.'"[71] Dictum is not a controlling statement of the law.[72] The issue is not properly before the

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65. *See id.* at 165.

66. *See id.*

67. *Id.*

68. *Id.*

69. *See* Her Majesty the Queen *ex rel.* B.C. v. Gilbertson, 597 F.2d 1161 (1979). "Although the rule may have only been dicta to these cases, since its inception it has become so well recognized that this appears to be the first time that a foreign nation has sought to enforce a tax judgment in the courts of the United States." *Id.* at 1164 (discussing *Holman* and *Planche*).

70. BLACK'S LAW DICTIONARY 731 (6th ed. 1990) [hereinafter DICTIONARY].

71. United States v. Crawley, 837 F.2d 291, 292 (7th Cir. 1988) (quoting American Family Mut. Ins. Co. v. Shannon, 356 N.W.2d 175, 178 (Wis. 1984)). Black's Law Dictionary defines dictum as encompassing "[s]tatements and comments in an opinion concerning some rule of law or legal proposition not necessarily involved nor essential to determination of the case in hand . . . ." DICTIONARY, *supra* note 70, at 454 (citing Wheeler v. Wilkin, 58 P.2d 1223, 1226 (Colo. 1936)). *But see* Cross v. Harris, 418 F.2d 1095 (D.C. Cir. 1969). The U.S. Court of Appeals for the District of Columbia Circuit stated:

> The distinction between holding and dictum is not whether the point in question had to be decided in order that the court's mandate could issue. The distinction turns on whether the court, in stating its opinion on the point, believed it necessary to decide the question or was simply using it by way of illustration of the case at hand.

Id. at 1105 n.64.

72. *See* Noel v. Olds, 138 F.2d 581, 586 (D.C. Cir. 1943).

court unless "refined by the fires of adversary presentation."[73] As the court in *Gilbertson* recognized, the statement that no nation recognizes the revenue laws of another nation is dictum.[74]

In *Holman*, the issue was whether the contract was void due to illegality.[75] In analyzing this issue, Lord Mansfield constrained himself to the nature of the performance for which the contract called. In essence, the contract was one for the sale of tea.[76] Lord Mansfield held that the act of selling tea was itself innocent.[77] The fact that Holman knew of Johnson's illegal purpose did not render the contract unenforceable.[78]

Under Lord Mansfield's view, for a contract to be void due to illegality, the actual performance for which the contract called must be illegal.[79] It was immaterial whether Johnson's purpose in buying the goods was illegal.[80] Indeed, Lord Mansfield's statement, concerning whether a nation would

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73. *Crawley*, 837 F.2d at 293.

74. *See Gilbertson*, 597 F.2d at 1164.

75. *See* Holman v. Johnson, 98 Eng. Rep. 1120, 1121 (1775).

76. *See id.* at 1120.

77. *See id.* at 1121.

78. *See id.*

79. Under modern contract law, a contract may be deemed unenforceable for three reasons. First, consistent with the view of Lord Mansfield, the performance for which the contract calls may itself be illegal. 6A CORBIN ON CONTRACTS § 1373 (1962). This would be the case when the performance constitutes a crime or a tort. *See id.* "A promise to commit a tort or to induce the commission of a tort is unenforceable on grounds of public policy." RESTATEMENT (SECOND) OF CONTRACTS § 192 (1981) [hereinafter RESTATEMENT CONTRACTS]. Second, a contract may be deemed illegal "because the actual agreement violates public policy and thus is unenforceable even though the consideration, either given or promised, is completely legal in and of itself." Juliet P. Kostritsky, *Illegal Contracts and Efficient Deterrence: A Study in Modern Contract Theory*, 74 IOWA L. REV. 115, 117 n.4 (1988). *See also* RESTATEMENT CONTRACTS, *supra*, § 178(1) (stating that contracts may be unenforceable when legislation specifically provides for their unenforceability). Examples of this second type are contracts involving wagering, *see id.* § 178, and usury, *see, e.g.,* Hartman v. Luber, 133 F.2d 44, 45 (D.C. Cir. 1942) (discussing application of the "Loan Shark Law" of the District of Columbia to void a contract). Finally, a contract may be (but is not always) deemed unenforceable due to an illegal purpose. When the first party has knowledge of the second party's illegal purpose, the contract will be unenforceable if: (1) the first party actually does something in furtherance of the second party's illegal purpose, or (2) the purpose involves grave social consequences. *See* RESTATEMENT CONTRACTS, *supra*, § 182; *see also* Potomac Leasing Co. v. Vitality Ctrs., Inc., 718 S.W.2d 928, 930 (Ark. 1986). Under this third view the possible illegality of Johnson's purpose would be relevant. Lord Mansfield, however, did not address the issue of illegal purpose, and constrained himself solely to the nature of the performance.

80. *See Holman*, 98 Eng. Rep. at 1122.

recognize the revenue laws of another nation, was made in the context of his decision on the choice of law.[81] It was not directed to the merits of the case; it was not necessary to decide the case, and was therefore dictum.[82]

Similarly, in *Planche* the case was decided on a "notorious" custom of the industry.[83] The insurance company could not claim a fraud because it knew of this custom when it issued the policy.[84] Whether the purpose behind the custom was to avoid customs duties was not necessary to decide the issue in the case. Once again, Lord Mansfield's statement of the revenue rule was dictum, and thus not controlling legal authority on the issue.[85]

Reliance on *Holman* and *Planche* for the revenue rule runs contrary to the principles of the common law system. It has been observed that "read[ing] judicial opinions . . . not for their holdings but for their language, snatching away rule-like statements to be applied like statutory texts" is an improper method of determining the law in the common law system.[86] Rather, the proper method is to "extract" rules and reasoning from precedents, weighing the policy they promote, and applying them to the facts at hand.[87] With respect to the revenue rule, the courts citing to *Holman* and *Planche* are

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81. *See id.* at 1121.

82. *See* Her Majesty the Queen *ex rel.* B.C. v. Gilbertson, 597 F.2d 1161, 1164 (9th Cir. 1979).

83. *See* Planche v. Fletcher, 99 Eng. Rep. 164, 165 (1779).

84. *See id.* Under modern law, generally, the party claiming fraud must not have known that the representation was false. *See* RESTATEMENT (SECOND) OF TORTS § 541 (1977). "The recipient of a fraudulent misrepresentation is not justified in relying upon its truth if he knows that it is false or its falsity is obvious to him." *Id. See also* 37 AM. JUR. 2D *Fraud and Deceit* § 237 (1968) (stating that a party has no right to rely on a misrepresentation "where he is aware of the falsity of the representations or has reason to doubt the truth thereof") (footnote omitted). "Clearly it cannot be said that the plaintiff relied upon a misrepresentation which he knew to be false." C.C. Marvel, Annotation, *Misrepresentations as to Financial Condition or Credit of Third Person as Actionable by One Extending Credit in Reliance Thereon*, 32 A.L.R.2d 184, 219 (1953). *But see In re* Turner, 12 B.R. 497 (Bankr. N.D. Ga. 1981). There, a woman lent a man $31,300 in return for a promise to marry despite knowing the man was already married. The man filed for bankruptcy and sought a discharge of this debt. *See id.* The court first observed, "Fraud has historically been a basis for nondischargeability of debts in bankruptcy." *Id.* at 498. The court further stated, "As a matter of law, a breach of promise to marry made by a party, who is already married at the time of the promise, may be the basis of actual fraud in the context of § 523 (a)(2)(A) of the Bankruptcy Code." *Id.* at 501.

85. *See Gilbertson*, 597 F.2d at 1164.

86. Richard B. Cappalli, *At the Point of Decision: The Common Law's Advantage Over the Civil Law*, 12 TEMP. INT'L & COMP. L.J. 87, 98 (1998).

87. *See id.* at 92–93.

merely selecting language from the cases and applying them as though they were statutes. These courts fail to examine the reasoning behind those two cases, and treat Lord Mansfield as if he were a legislature in and of himself.

IV. RATIONALE BEHIND THE REVENUE RULE

The justification for the revenue rule, as stated by Judge Learned Hand, is to avoid the examination of the revenue laws and policies of other nations by U.S. courts.[88] Courts generally can refuse the recognition and enforcement of foreign judgments on the basis of public policy.[89] Where a litigant is a foreign nation attempting to collect revenue, such a review of foreign tax policy might cause serious embarrassment to the foreign nation.[90] A closer examination of Judge Hand's rationale, however, shows that it is inadequate to support the continued existence of the revenue rule.

A. Safeguards in Applying the Public Policy Exception

First, the application of the public policy exception would not necessarily lead to an embarrassment of the foreign nation involved. A court may refuse to recognize or enforce a foreign judgment because the judgment offends the public policy of the state in which the court asked to enforce the judgment is located.[91] Despite this broad power, there exist safeguards within the law to limit the number of foreign judgments rejected under this exception.

In order for a court to decline the recognition of a foreign judgment due to public policy, the foreign judgment must be "repugnant to the fundamental notions of what is decent and just in the State where enforcement is sought."[92] The foreign judgment must clearly tend "to undermine the public interest, the public confidence in the administration of the law, or security for individual rights of personal liberty or of

88. *See* Moore v. Mitchell, 30 F.2d 600, 604 (2d Cir. 1929) (Hand, J., concurring) (dealing with collection of Indiana tax in New York, where estate was being administered by New York executors).

89. *See id.*

90. *See id.*

91. *See* UNIFORM FOREIGN MONEY, *supra* note 4, § 4(b)(3). "[N]o nation will suffer the laws of another to interfere with her own to the injury of her citizens . . . ." Hilton v. Guyot, 159 U.S. 113, 164 (1895).

92. Tahan v. Hodgson, 662 F.2d 862, 864 (D.C. Cir. 1981) (quoting RESTATEMENT CONFLICT, *supra* note 1, § 117, cmt. c.).

private property."[93] It is not enough that the law of the foreign nation is different from the law of the state in which enforcement is sought.[94] As one court noted, "The standard is high and infrequently met."[95]

B. Isolating Tax Judgments

Second, there is no reason why the fact that the party seeking enforcement of the foreign judgment is the foreign nation itself should cause the potential for more embarrassment. Whenever *any* foreign judgment is challenged as counter to public policy, the enforcing court will examine the foreign nation's law and the policy that supports the judgment. Thus, policies established by the governmental authorities of the foreign nation are called into question, and examined under the forum state's own values.

In *Bachchan v. India Abroad Publications, Inc.*, for example, a New York state court examined whether an English libel judgment could be enforced.[96] The court analyzed English libel law, and determined that the judgment would violate First Amendment principles.[97] Therefore, the court declined to enforce the judgment in New York.[98]

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93. Ackermann v. Levine, 788 F.2d 830, 841 (2d Cir. 1986) (citing Somportex Ltd. v. Philadelphia Chewing Gum Corp., 453 F.2d 435, 443 (3d Cir. 1971) (quoting Goodyear v. Brown, 26 A. 665, 666 (Pa. 1893)); Loucks v. Standard Oil Co., 120 N.E. 198 (N.Y. 1918) (Cardozo, J.)).

94. *See, e.g., Somportex*, 453 F.2d at 443. English law concerning breach of contract allowed a plaintiff to recover "items reflecting loss of good will and costs, including attorneys' fees," while Pennsylvania law did not. *Id.* However, the court found that this difference did not "'injure the public health, the public morals, the public confidence in the purity of the administration of the law, or to undermine that sense of security for individual rights, whether of personal liberty or of private property, which any citizen ought to feel, is against public policy.'" *Id.* (quoting *Goodyear*, 26 A. at 666). *See also* McCord v. Jet Spray Int'l Corp., 874 F. Supp. 436 (D. Mass. 1994). "The fact that Massachusetts and Belgium law differ with respect to employment contracts does not make Belgium's law contrary to Massachusetts' public policy." *Id.* at 439. Further, despite the fact that a New York statute abolished causes based on seduction and criminal conversation (such causes being against public policy of the state) a New York court recognized a Canadian judgment based on those same torts. *See* Neporany v. Kir, 173 N.Y.S.2d 146, 147 (N.Y. App. Div. 1958).

95. *Ackermann*, 788 F.2d at 841.

96. *See* Bachchan v. India Abroad Publications Inc., 585 N.Y.S.2d 661, 661 (N.Y. Sup. Ct. 1992).

97. *See id.* at 664. Because the publication in question was a matter of public concern, the court found that placing the burden of proof on the defendants to show the truth of the publication would deter free speech, thereby violating the First Amendment. *See id.*

98. *See id.*

Similarly, in *Overseas Inns S.A. P.A v. United States*, the U.S. Court of Appeals for the Fifth Circuit declined to enforce a Luxembourg court's bankruptcy reorganization plan.[99] The Luxembourg plan failed to give the Internal Revenue Service priority.[100] Finding a strong public policy in favor "of lawfully owed federal income taxes," the court held that the Luxembourg plan violated U.S. public policy.[101]

Certainly, whenever a court that is asked to enforce a foreign judgment rejects that judgment under the public policy exception, that process causes embarrassment to the foreign nation that issued the judgment. The foreign nation finds its policy choices rejected by a court in another nation. Because this exception has existed with respect to most foreign judgments, the application of the public policy exception to tax judgments would cause no more embarrassment to the foreign nation seeking enforcement than is already created.

Despite the potential for this embarrassment, that a nation may reject a foreign judgment because it violates that nation's public policy is widely accepted. The public policy exception is one accepted by numerous foreign nations as a valid reason to deny the recognition and enforcement of foreign judgments.[102] Further, it is an exception embodied in international conventions addressing the recognition of foreign judgments.[103] Thus, the ability of a court to examine the policy behind a foreign judgment, and reject it as contrary to public policy, has gained widespread acceptance across the globe.

V. GOVERNMENT BASED ON THE CONSENT OF THE GOVERNED

In some circumstances, recognition of foreign tax judgment would actually be consistent with the fundamental principles of American government. Those who created the documents upon which our political system was founded

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99. *See* Overseas Inns S.A. P.A. v. United States, 911 F.2d 1146, 1147 (5th Cir. 1990).

100. *See id.*

101. *Id.* at 1149 (quoting Overseas Inns S.A. P.A v. United States, 685 F. Supp. 968, 972 (N.D. Tex. 1988)).

102. *See* Richard E. Smith, Note, *The Nonrecognition of Foreign Tax Judgments: International Tax Evasion,* 1981 U. ILL. L. REV. 241, 263–67. *See, e.g.*, Italy: Law Reforming the Italian System of Private International Law, 35 I.L.M. 760, 779–780 (1996).

103. *See, e.g.,* Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, Sept. 16, 1988, art. 27(1), 1988 O.J. (L 319) 9, 15, *reprinted in* 28 I.L.M. 620 (1989).

were greatly influenced by the political philosophy of John Locke.[104] Locke theorized that the authority of government rested on the consent of the governed.[105] In the state of nature, all humans were free and autonomous.[106] Such complete autonomy, however, proved inconvenient.[107] All humans had equal rights to preserve their life, liberty and property against any transgressor.[108] This also meant that each individual human had the right to decide for himself what punishment, including death, to inflict upon such transgressors.[109] This, of course, led to inconsistencies.[110] Humans, therefore, ceded their autonomy to a central authority in return for the benefits of civil society,[111] such as a "common established law,"[112] the preservation of property, and security.[113]

The consent to be governed, however, need not be expressly given. Rather, consent could be found whenever a person enjoys the benefits of government:

> And to this I say, that every man that hath any possession or enjoyment of any part of the dominions of any government doth hereby give his tacit consent, and is as far forth obliged to obedience to the laws of that government, during such enjoyment, as any one under it, whether this his possession be of land to him and his heirs for ever, or a lodging only for a week; or whether it be barely travelling freely on the highway; and, in effect, it reaches as far as the very being of any one within the territories of that government.[114]

At the heart of Locke's philosophy lies a notion of reciprocity.[115] By giving up autonomy, humans received

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104. *See* CLINTON ROSSITER, 1787: THE GRAND CONVENTION 60 (1967).

105. JOHN LOCKE, SECOND TREATISE ON CIVIL GOVERNMENT 54–55 (Prometheus Books 1986).

106. *See id.* at 8–9.

107. *See id.* at 56.

108. *See id.* at 48–49.

109. *See id.*

110. *See id.* at 49–50 (stating that in the state of nature there is no authority to which to appeal in cases of injury and redress).

111. *See id.* at 54.

112. *Id.* at 49.

113. *See id.* at 54.

114. *Id.* at 67.

115. *See* Richard B. Cappalli, *Locke as the Key: A Unifying and Coherent Theory of In Personam Jurisdiction*, 43 CASE W. RES. L. Rev. 97, 102 (1992).

something in return.[116] Those were the benefits of "ordered society."[117]

This notion of reciprocity can be found in cases defining the proper exercise of personal jurisdiction.[118] As defined by Locke, one function of civil government is to adjudicate controversies that may arise among its members.[119] Before a government can exercise its judicial power over an individual, the court must have some basis for exercising its power over that individual. This basis of power is articulated in *International Shoe Co. v. Washington*:[120]

> [D]ue process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."[121]

One instance in which the courts may properly exercise jurisdiction is when "the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."[122]

This concept should apply with equal force in the context of enforcing a foreign tax judgment. When a person receives income from a foreign jurisdiction, that person has received the benefits of the ordered society that the government of the foreign jurisdiction provides. An exporter, for example, realizes the benefits of road and port maintenance performed in the nation to which its products are being shipped. Security is provided by that nation's police force. The exporter may also realize benefits from a state of peace, which typically insures a steady flow of goods. Such are concrete benefits provided by the government. As an exporter's income is made possible, in part, by the benefits conferred by the foreign government, it is only fair that the

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116. *See id.*

117. *Id.*

118. *See id.*

119. *See* LOCKE, *supra* note 105, at 49. *See also* U.S. CONST. art. III, § 2, cl. 1.

120. 326 U.S. 310 (1945).

121. *Id.* at 316 (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940) (citing McDonald v. Mabee, 243 U.S. 90, 91 (1917) (Holmes, J.))).

122. Hanson v. Denckla, 357 U.S. 235, 253 (1958) (citing *International Shoe*, 326 U.S. at 319).

exporter contribute to the operation of that government.[123] By recognizing this concept, U.S. courts would stay true to the notion of reciprocity and consent inherent in the social contract.

Similar logic was used in *Overseas Inns*.[124] One reason that the court used in denying enforcement of the Luxembourg bankruptcy plan was that it deprived the United States of tax revenue from individuals who had conducted business in the United States:

> Moreover, not only is the Luxembourg judgment inconsistent with United States laws and policies; but also, because Overseas' predecessor availed itself of the benefits of the United States business climate, it should not now be allowed to escape the corresponding tax burden. Luxembourg's law is dissimilar and prejudicial. The district court held properly that comity should not be accorded.[125]

United States courts can only act consistently with this concept by enforcing foreign tax judgments. The United States should not allow itself to be used as a haven for those who have rightfully incurred a tax liability in another nation and wish to evade that liability.

VI. ABOLISHING THE REVENUE RULE AND TAX ENFORCEMENT BENEFITS

A. Expatriation for Tax Purposes

The United States taxes all of its citizens on worldwide income, regardless of whether the citizen is a U.S. resident, or the location of the source[126] of the income.[127] In this

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123. *See, e.g.*, Overseas Inns S.A. P.A. v. United States, 911 F.2d 1146, 1150 (5th Cir. 1990).

124. *See id.*

125. *Id.*

126. The source of income is governed by very complex rules in the Internal Revenue Code and Treasury Regulations. Generally, the source of income from performing a service is the location where the service was performed. *See* I.R.C. § 861(a)(3) (West Supp. 1999). The source of interest income is the location of the debtor. *See id.* § 861(a)(1). The source of dividend income is the country of incorporation. *See id.* § 862(a)(2).

127. *See* Treas. Reg. 1.1-1(b) (as amended in 1974). There are several provisions of the U.S. Internal Revenue Code that are meant to alleviate the problem of double taxation (the taxation of the same income by two different sovereigns) which U.S. taxation policy has on nonresident U.S. citizens. For example, a U.S. citizen who lives and works abroad may exclude up to $70,000 annually from his or her taxable income. *See* I.R.C. § 911(a) & (b)(2)(A). Also,

regard, the United States is unique.[128] Non-resident aliens, by contrast, are taxed by the United States solely on their domestic income.[129] Given this disparate tax treatment between U.S. citizens and non-resident aliens, there is some incentive to renounce one's U.S. citizenship[130] in order to realize a tax benefit.[131]

Recently, many wealthy U.S. citizens have taken advantage of this situation by renouncing their U.S. citizenship.[132] To combat this loophole, the United States has enacted various provisions of the Internal Revenue Code (IRC).[133] For example, under section 877 of the IRC, a person who renounces U.S. citizenship solely for taxation purposes will continue to be taxed as a U.S. citizen for ten years following the renunciation.[134]

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under I.R.C. §§ 901–07, a U.S. citizen can apply a credit against U.S. income tax for qualifying foreign income taxes paid.

128. *See* Emmanuelle Lee, Comment, *Will the Renunciation of U.S. Citizenship Still be Worth Some Tax Savings? An Analysis of the Recent Reform on the Taxation of Expatriates*, 37 SANTA CLARA L. REV. 1063, 1067 (1997). "Other nations generally tax the worldwide income of their citizens and residents, but only the domestic source income of their nonresidents." *Id.* (footnote omitted).

129. *See id.* at 1065–66 (footnotes omitted).

130. This is known as expatriation. *See* AMERICAN HERITAGE DICTIONARY 297 (3d ed. 1994).

131. *See* Lee, *supra* note 128, at 1072–73.

132. *See* Robert Lenzner, *And Don't Come Back*, FORBES, Nov. 18, 1996, at 44; Karen de Witt, *Some of Rich Find a Passport Lost is a Fortune Gained*, N.Y. TIMES, Apr. 12, 1995, at A1; Carl M. Cannon, *Stop Those Billionaires at the Border*, BALTIMORE SUN, Apr. 8, 1995, at 2A.

133. See Alice G. Abreu, *Taxing Exits*, 29 U.C. DAVIS L. REV. 1087 (1996) for a discussion and critique of various proposals to combat the problem of expatriation for taxation purposes.

134. *See* I.R.C. § 877 (West Supp. 1999). In *Kronenberg v. Commissioner*, 64 T.C. 428 (1975), the Tax Court examined the renunciation of a Swiss-born businessman, who became a naturalized U.S. citizen. *See id.* at 429. Kronenberg returned to Switzerland and renounced his U.S. citizenship. *See id.* at 435. Because of the suspicious timing of liquidation of assets, the Tax Court found Kronenberg's renunciation and financial activities "too perfect to be unplanned." *Id.* at 434–35. Thus, the Tax Court found that Kronenberg had renounced his citizenship for tax purposes, and applied § 877. *See id.* at 435. By contrast, in *Furstenberg v. Commissioner*, 83 T.C. 755 (1984), the Tax Court found that Furstenberg's renunciation of her U.S. citizenship was not motivated by avoidance of U.S. taxes. *See id.* at 782. Furstenberg lived mostly abroad, and married an Austrian Prince. *See id.* at 760. This was not a case where the Tax Court found a "flurry of activity," as it did with Kronenberg. *See id.* at 779. Therefore, the Tax Court concluded that Furstenberg renounced her U.S. citizenship due to "both her commitment to marry Furstenberg and the ultimate culmination of her life-long ties to Europe." *Id.* at 776.

The problem with such an approach is enforcement.[135] Under the revenue rule, no nation would recognize U.S. tax laws, or enforce U.S. tax judgments.[136] As a result, the United States cannot collect taxes from those living abroad who owe taxes, unless they come within U.S. territorial jurisdiction, or have assets in the United States.[137]

The worldwide abolition of the revenue rule would solve this problem. When a person renounces U.S. citizenship for tax purposes and leaves the United States, if the nation to which that person flees were to recognize U.S. tax judgments, there could be no escape from the enforcement of Section 877. The abolition of the revenue rule would therefore allow the United States to collect more revenue and thwart the renunciation of U.S. citizenship for tax purposes.

B. Setting the Example

In order for the United States to realize the benefits of the abolition of the revenue rule, other countries would have to eliminate the rule as well. By acting unilaterally, the United States can serve as an example and promote similar changes by foreign governments.

The United States has, in other contexts, unilaterally established a practice, contrary to the practice of most nations, in an effort to persuade other states to follow suit. One example can be found in discovery procedures.[138] Under U.S. federal rules, discovery procedures are liberal.[139] First,

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135. *See* Smith, *supra* note 102, at 241–43. "In the absence of aid by the foreign nation, the taxing nation is limited in the enforcement of its revenue laws to its own jurisdiction." *Id.* at 241–42 (citing Alan R. Johnson, *Systems for Tax Enforcement Treaties: The Choice Between Administrative Assessment and Court Judgments*, 10 HARV. INT'L L.J. 263 (1969); 2 G. HACKWORTH, DIGEST OF INTERNATIONAL LAW 215 (1941)).

136. *See* Smith, *supra* note 102, at 242 & n.11.

137. *See id.* at 241–42. Smith argues that the revenue rule only acts to encourage tax evasion. *See id.* at 267.

138. *See, e.g.,* 28 U.S.C.A. § 1782(a) (West Supp. 1999). The U.S. Court of Appeals for the Second Circuit stated that one aim of this statutory provision is to set an example for other nations. *See In re* Malev Hungarian Airlines, 964 F.2d 97, 99–100 (2d Cir. 1992).

139. *See* BORN, *supra* note 1, at 843–44 (discussing parties' "broad powers" to conduct discovery under the Federal Rules of Civil Procedure). The Supreme Court has stated that modern discovery rules "make a trial less a game of blindman's b[l]uff and more a fair contest with the basic issues and the facts disclosed to the fullest practicable extent." United States v. Proctor & Gamble Co., 356 U.S. 677, 682 (1958).

discovery is driven by the litigants.[140] Second discoverable material includes not only admissible evidence, but any information that could reasonably lead to admissible evidence.[141]

In contrast, foreign rules regarding discovery are more strict. In civil law nations, the gathering of evidence is seen as a purely judicial function, not one to be driven by the litigants.[142] Thus, "many nations do not permit 'private' evidence-taking, in connection with either domestic or foreign judicial proceedings."[143] Further, other nations place restrictions on what information is discoverable.[144] These rules work to the disadvantage of U.S. litigants suing foreign parties.

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140. *See* FED. R. CIV. P. 26(b) (defining scope of discovery available to the parties). *See also* BORN, *supra* note 1, at 847 (noting the "party-controlled character of U.S. pretrial discovery").

141. *See* FED. R. CIV. P. 26(b)(1).

142. *See* BORN, *supra* note 1, at 847 (citing Andreas F. Lowenfeld, *Some Reflections on Transnational Discovery*, 8 J. COMP. BUS. & CAP. MARKET L. 419, 422–23 (1986); John H. Langbein, *The German Advantage in Civil Procedure*, 52 U. CHI. L. REV. 823, 826 (1985); Jacques Borel & Stephen M. Boyd, *Opportunities for and Obstacles to Obtaining Evidence in France for Use in Litigation in the United States*, 13 INT'L LAW. 35, 36 (1979)).

143. BORN, *supra* note 1, at 847.

144. *See id.* at 847–48 (citing David J. Gerber, *Extraterritorial Discovery and the Conflict of Procedural Systems: Germany and the United States*, 34 AM. J. COMP. L. 745 (1986); Benjamin Kaplan et al., *Phases of German Civil Procedure I*, 71 HARV. L. REV. 1193 (1958); Langbein, *supra* note 142; Borel & Boyd, *supra* note 142; Brigitte Ecolivet Herzog, *The 1980 French Law on Documents and Information*, 75 AM. J. INT'L L. 382 (1981); Bate C. Toms III, *The French Response to the Extraterritorial Application of United States Antitrust Laws*, 15 INT'L LAW. 585 (1981); P. MATTHEWS & H. MALEK, DISCOVERY 89–109 (1992); Lawrence Collins, *Opportunities for and Obstacles to Obtaining Evidence in England for Use in Litigation in the United States*, 13 INT'L LAW. 27 (1979); Marc G. Corrado, Comment, *The Supreme Court's Impact on Swiss Banking Secrecy: Société Nationale Industrielle Aérospatiale v. United States District Court*, 37 AM. U. L. REV. 827 (1988)). Under the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, Mar 18, 1970, 23 U.S.T. 2555, T.I.A.S. No. 7444 (ratified by the United States Oct. 7, 1972), a multilateral treaty meant to facilitate the taking of evidence in foreign nations, a signatory nation may refuse to allow "pretrial discovery of documents as known in Common Law countries" upon declaration. BORN, *supra* note 1, at 898. Out of twenty-one signatory nations, only three, Czechoslovakia, Israel, and the United States, have not entered into such a declaration. *See id.* The Supreme Court, however, does not view the Hague Convention as a mandatory mechanism for obtaining evidence abroad. *See* Société Nationale Industrielle Aérospatiale v. United States Dist. Court, 482 U.S. 522, 529 (1987). Rather, when a U.S. court has personal jurisdiction over a party, and that party has control over documents or information located abroad, the U.S. court may order the production of such documents or information. *See In re* Uranium Antitrust Litig., 480 F. Supp. 1138, 1145 (N.D. Ill. 1979).

Despite the overwhelming foreign practice to the contrary, the United States will allow those litigating in foreign tribunals to avail themselves of broad discovery when their opponent possesses some information in the United States. Under 28 U.S.C. § 1782:

> The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal. The order may be made pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal or upon the application of any interested person . . . .[145]

United States courts will use this provision despite the fact that litigants have not exhausted the procedures of the foreign tribunal.[146] Indeed, the information sought need not be discoverable in the foreign nation where the tribunal sits.[147] "[O]nly authoritative proof that a foreign tribunal would reject evidence obtained with the aid of § 1782" should be considered by the courts.[148]

By allowing foreign litigants to obtain materials in the United States, the U.S. hopes to encourage other nations to loosen their discovery rules, and allow U.S. litigants broader discovery.[149] A similar tactic can be pursued with respect to the revenue rule. The United States could unilaterally eliminate the rule, and serve as an example for foreign nations to do the same.

VII. CONCLUSION

The revenue rule is an anachronism in American law. It is derived from isolated statements in Eighteenth Century English precedents that had very little to do with the legal principles upon which those cases were decided. The rationale behind the revenue rule, to avoid embarrassing other nations by not subjecting their tax laws to the scrutiny of American courts, is suspect. Indeed, courts routinely

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145. *See* 28 U.S.C.A. § 1782(a) (West Supp. 1999). "[A] letter rogatory is a formal request by the court of one nation to the courts of another country for assistance in performing judicial acts." BORN, *supra* note 1, at 893.

146. *See* Euromepa, S.A. v. R. Esmerian, Inc., 51 F.3d 1095, 1098 (2d Cir. 1995), *aff'd*, 154 F.3d 24 (2d Cir. 1998).

147. *See id.* at 1099.

148. *Id.* at 1100.

149. *See In re* Malev Hungarian Airlines, 964 F.2d 97, 99–100 (2d Cir. 1992) (quoting S. REP. No. 1580 (1964), *reprinted in* 1964 U.S.C.C.A.N. 3782).

examine foreign judgments other than those for tax liability to determine if enforcement would violate the public policy of the state being asked to enforce the judgments. These procedures already open the governmental policies of other nations to rejection by courts in the United States. Isolating judgments based on tax liabilities does little to avoid such embarrassment.

The United States should take the lead and abolish the revenue rule. To do so would be to stay true to the notion that a government's authority is derived from the consent of the governed. Those who have earned income in a foreign nation, thereby receiving the benefits of the laws of that nation, should not be allowed to shirk their responsibilities merely by leaving the territory of that nation. Currently, the only policy that the revenue rule serves is the promotion of tax evasion. The sensible alternative would be to promote international cooperation by recognizing and enforcing the tax judgments of foreign nations.