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COURT OF TAX APPEALS
QUEZON CITY

11/27/72

WILLIAM ALAIN MIAILHE,
Petitioner,

versus C.T.A. CASE NO. 1978

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - x

D E C I S I O N

This involves an appeal interposed by petitioner against the decision of respondent Commissioner of Internal Revenue holding him liable for the total amount of ₱12,248.25, representing deficiency income tax for the years 1959, 1960, 1961, 1962, 1963 and 1964, inclusive of 50% surcharge, 5% surcharge, ½% and 1% monthly interests and compromise penalties.

In petitioner's income tax returns for the years under review (1959-1964), he claimed that he is a resident alien of the Philippines and, thus, deducted from his net income the following sums allowed as personal exemptions under Section 23(a) & (b) of the Tax Code:

1959	₱1,800.00
1960	1,800.00
1961	1,800.00
1962	1,800.00

1963 . . . . ₱3,000.00
1964 . . . . 3,000.00

Since petitioner's income tax returns for the aforesaid years 1959 to 1964, inclusive, did not include his income from sources outside the Philippines, an investigation was conducted by Leopoldo J. Gonzales, then Revenue Attache to London and France. On the strength of the report of Gonzales finding petitioner to be a non-resident alien, respondent disallowed petitioner's claim for personal exemptions and assessed him the total amount of ₱10,573.08, as deficiency income tax for said years, inclusive of 50% surcharge, ½% monthly interest and compromise penalty for violation of Section 72 of the Tax Code. Subsequently, the deficiency assessment was increased by respondent to ₱12,248.25 by including therein the 5% surcharge, 1% monthly interest and compromise penalty for late payment.

The principal issues for resolution are:

1. Whether or not petitioner is a resident alien of the Philippines; and in the negative,

2. Whether or not the imposition of the 50% fraud penalty is proper.

Petitioner, like his father who died in 1959, is a French citizen, born in Bordeaux, France. The family of petitioner's mother lived in the Philippines as far back as 1847. His parents had always filed their income tax return as residents of the Philippines. For his part, petitioner filed income tax return as resident alien since 1947.

Petitioner's family had two residential houses in Manila before the war, one in San Miguel and another in Sta. Ana. Part of the Sta. Ana lot was donated by petitioner and his mother to the City of Manila in 1953. Petitioner and his mother are also part owners of the Burke Building at the Escolta, Manila, from which they derive rents. All in all, petitioner is part owner of nine pieces of real estate in Manila from which he derives income.

In 1947, petitioner's father organized Amibu Incorporated, a domestic corporation engaged in trading, mainly acting as agent of French companies dealing in heavy equipment and machinery. Petitioner succeeded his father as president of the corporation in 1960 after the death of the latter in 1959, and he is still president of the enterprise, aside from being majority stockholder thereof.

Petitioner and his parents alternately live in the Philippines and France but there is nothing that can show how long they live in each place in the aggregate. As for the petitioner, there is evidence that from 1959 to 1965 he passed three to four months in the Philippines, and the rest of the year, partly in Ireland and Spain, and mainly in France. When he is in Manila, usually twice a year, he stays in a suite in the Admiral Apartments, which he has maintained the year round since 1956 and which is also occupied by his mother, or members of his family whenever they are here.

Petitioner was Honorary Consul of the Philippines in Bordeaux, France from 1960 until 1969 when he was appointed as Consul General, also in an honorary capacity. As such, he attends to the interests of the Filipinos and the Philippines in Bordeaux without compensation either personally or through his Chancellor when he is not in France.

Petitioner is a member of good standing of the Homeowners Association of the Philippines since 1950; of the Casino Español of Manila since 1956; of the Harvard Club of the Philippines since 1956; of the French Chamber of Commerce of the Philippines since 1957; of the Alliance Francaise since 1957. He is with the Filipiniana Book Guild since 1960, being a founding member thereof. To this Guild he has provided valuable Philippine materials from France at his own expense. In 1960, he became a member of the Philippine Motor Association. He is also a member of the Philippine Association, Inc. since 1969.

Petitioner's passport issued by the French Embassy here on March 3, 1959 places his residence as Burke Building, Escolta, Manila. He adduced as evidence an immigrant certificate of residence and an alien certificate of registration. He also presented a Permit to Re-enter the Philippines with these entries:

Date of Extension or Reissuance	Expiry Date as Extended or Reissued
4/18/60	4/18/61
4/21/61	4/21/62
5/4/62	5/4/63
4/2/63	10/2/63
3/23/64	9/28/64
4/15/64	10/15/64
9/11/67	4-20-68
Illegible	5-15-68
Illegible	10-17-68

Section 5 of Revenue Regulation No. 2 provides as follows:

> An alien actually present in the Philippines who is not a mere transient or sojourner is a resident of the Philippines for purposes of the income tax. Whether he is a transient or not is determined by his intentions with regard to the length and nature of his stay. A mere floating intention indefinite as to time, to return to another country is not sufficient to constitute him a transient. If he lives in the Philippines and has no definite intention as to his stay, he is a resident. One who comes to the Philippines for a definite purpose which in its nature may be promptly accomplished is a transient, but if his purpose is of such a nature that an extended stay may be necessary for its accomplishment, and to that end the alien makes his home temporarily in the Philippines, he becomes a resident, though it may be his intention at all times to return to his domicile abroad when the purpose for which he came has been consummated or abandoned.

The concept of resident and non-resident aliens in our income tax law is patterned after that of the United States of America. Article 312 of the Regulation of the U. S. Treasury Department of 1919 from which the aforequoted regulation evolved reads as follows:

> "Art. 312. Who is a Nonresident Alien Individual.—'Nonresident alien individual' means an individual (a) whose residence is not within the United States and (b) who is not a citizen of the United States. Any alien living in the United States who is not a mere transient is a

> resident of the United States for purposes of the income tax. Whether he is a transient or not is determined by his intentions with regard to his stay. If he lives in the United States and has no definite intention as to his stay, he is a resident. The best evidence of his intention is afforded by the conduct, acts and declarations of the alien. The typical transient is one who stops for a short time in the course of a journey through the United States, sometimes performing labor, sometimes not, or one who enters the United States intending only to stop long enough to carry out some purpose, object or plan not involving an extended stay. A mere floating intention, indefinite as to time, to return to another country is not sufficient to constitute him a transient." (Bowering v. Bowers, 24 F/2d./ 918.)

We gather from the foregoing authorities that residence means something more than mere physical presence in a particular place. Physical presence for some substantial part of the time is necessary but a factor at least equally important is the state of mind of the subject of the inquiry to wit, his intention with regard to the length and nature of his stay. Thus, to ascertain his residence, his prior and subsequent life is more or less relevant (Carstairs v. United States, 75 F. Supp. 683). Upon this basis we think that petitioner was a resident of the Philippines during the period covered by the assessment in question for income tax purposes.

Petitioner is part owner of real estate here that are for rental purposes, and is president and majority stockholder of a domestic trading corporation organized in 1947. By their very nature these business interests are not transient. His active membership in civic, fraternal and cultural organizations of the Philippines shows non-business interest not typical to transients and sojourners. He maintains a place of residence here the year round. His French passport issued March 3, 1959 places his residence at Manila, and he has always filed his income tax return as a resident alien in the manner that his parents did. His very reentry permit is in effect a recognition by the government of his residence here, for under Section 212 of the Philippine Immigration Law of 1940, same is granted only if "the applicant has been lawfully admitted into the Philippines for permanent residence . . ." From all these, we can very well say that petitioner is not a mere transient or sojourner here, or "one who comes to the Philippines for a definite purpose which in its nature may be promptly accomplished."

The main anchor of respondent's assessment is petitioner's letter to Gonzales dated June 15, 1966 in answer to that of the latter asking him to make a return of his income from sources outside the Philippines since the returns he had filed shows that he is a resident alien. In said letter petitioner, among other things, stated:

> In reference to your letter of June 1st, 1966 please be informed that both Mrs. Mialhe, my mother, and myself have never spent more than three months of the year in the Philippines on average, and on that basis we could hardly qualify as permanent residents.

Respondent urges that with the foregoing statement petitioner is now estopped from claiming that he is a resident alien. It is obvious that said statement merely expresses petitioner's opinion on a point of law, that is, the nature of his residence in the Philippines in connection with our income tax law, an opinion that contradicts his returns. The determination of tax liabilities does not turn on self-serving opinions on a point of law made by the taxpayer to serve his interest at any given time but on the facts of the case.

Again respondent lays stress on the testimony of Gonzales to the effect that petitioner has income and property in France. Although the testimony of Gonzales on this point consists of bare assertions and generalizations unsupported by tangible evidence we cannot just entirely disregard it in the light of the record of this case. For one thing, petitioner admits that the office which is partly occupied by the Philippine consulate in Bordeaux belongs to his family. For another, in his letter of June 15, 1966 petitioner did not deny the existence of such an income but merely said that he could hardly be considered as having a "permanent residence" in the Philippines and then invoked reciprocity. This evasiveness hints of a tacit admission of income. However, the record does not give us the least idea of the amount of this income or the value of petitioner's foreign assets, or his activities in France, business or otherwise. As it is, we do not have sufficient data that can be intelligently used to counterbalance the factors in the Philippines in the determination of petitioner's residence.

Moreover, even granting that petitioner is a non-resident alien, under Section 23, paragraph (e) of the Revenue Code, a non-resident alien is entitled to a personal exemption in an amount equal to the exemptions allowed by the income tax law in the country of which he is a subject or citizen to citizens of the Philippines not residing in such country, but not to exceed the amount fixed in this section as exemption for citizens or residents of the Philippines. Respondent has not shown that under the law of France of which petitioner is a citizen, a Philippine citizen is not entitled to personal exemption under French law.

WHEREFORE, the decision appealed from is hereby reversed, without pronouncement as to costs.

SO ORDERED.

Quezon City, November 27, 1972.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge