

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
RIAD GHALI)

Appearances:

For Appellant: Charles F. Rosenthal
Attorney at Law

For Respondent: Peter S. Pierson
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Riad Ghali against a proposed assessment of additional personal income tax in the amount of \$6,456.57 for the year 1957.

The primary issue presented is whether appellant Riad Ghali was a California resident in 1957. If a resident, a further question is whether he incurred losses in Egypt which he may properly offset against taxable gain derived from the sale of oil and gas leases in Mexico.

In resolving this appeal it is necessary to review briefly certain surrounding circumstances occurring prior to appellant's entry into this state. While on a trip outside her native land with her daughter, Princess Fathia, in the late 1940's, Queen Mother Nazli of Egypt became seriously ill. Appellant, an Egyptian government official delegated to the service of the Queen Mother, accompanied her and her daughter to the United States in 1947. He entered the United States in nonimmigrant temporary status with a diplomatic passport issued by the Egyptian government. The purpose of the trip was

Appeal of Riad Ghali

to seek medical treatment for 'Queen Nazli. Some time was spent in the Mayo Clinic in Minnesota in 1947, 1948, and 1949 where surgical operations were performed. Thereafter they returned to San Francisco, California, where the Queen Mother had been medically treated previously and where treatment continued. Subsequently, the princess and appellant fell in love and became engaged. In 1949 when King Farouk, brother of Fathia and then the head of Egypt, learned of the engagement, he was displeased because appellant was a Christian while his sister was a Moslem. The King ordered the dismissal of appellant from the Egyptian diplomatic service and the United States was duly notified. Despite knowledge of the King's extreme displeasure, appellant and Fathia were married in a secret civil ceremony at a San Francisco residence in April of 1950. Two religious marriage ceremonies followed. Both prior and subsequent to these various ceremonies, appellant received threats from certain Egyptians warning him against marriage to Princess Fathia. In addition to passport cancellation, the United States had been asked to return appellant, his wife, and her mother to Egypt. -However, there was no actual deportation. Reports of hearings with the Immigration and Naturalization Service) United States Department of Justice, indicate that appellant was regarded as having no lawfully permanent status in the United States when his diplomatic status was removed and that he was subject to deportation proceedings. Because of adverse feelings toward him by the subsequent Nasser government, however, he was allowed to remain in this country. Then in 1965 he became eligible under newly enacted immigration laws to apply for adjustment of his status to that of a lawful, permanent United States resident. On May 31, 1966, appellant became such a lawful, permanent resident of the United States. It was also concluded by the Internal Revenue Service that appellant was a nonresident alien not subject to federal income tax on the out-of-country income determined taxable by respondent.

Prior to the change in appellant's federal status in 1966, he was not allowed to leave this country or state without consent of the federal Immigration Service. He did receive consent to travel to Italy in connection with the death of King Farouk in 1965 and to make a trip to New York. Appellant maintains that he was also not allowed to be employed or engage in business prior to the 1966 federal change.

Notwithstanding appellant's knowledge of the federal restrictions imposed upon him and the possible deportation, in the early 1950's he purchased a house in Beverly Hills, previously having rented property. Appellant

Appeal of Riad Ghali

and his family lived continuously in California through 1966, subject to the exceptions previously noted. Appellant and his wife had two children in the early 1950's, and these two sons attended school in this state. Appellant legally resisted any deportation and chose to remain in this state during this lengthy period, notwithstanding the federal restrictions imposed, rather than to return to Egypt because of fears for the safety of himself and family under King Farouk and under the Nasser government. These fears were heightened by the fact that his father was killed in Egypt in 1952 after the Nasser regime had assumed power.

Ex-King Farouk's property was attached in 1952 by the Nasser regime. In 1953 a list of family members whose property was confiscated was published. The listing included property belonging to appellant. Appellant alleges that the Nasser Egyptian government seized his real property as a result of various confiscation orders but that a substantial amount thereof was actually seized in 1957. He also indicated, however, that such confiscations occurred both before and subsequent to 1957. Specific reference was made to realty which was valued at approximately \$600,000. He also referred to a sizable Egyptian bank account in the approximate amount of \$100,000. Prior to 1957 he stopped receiving bank statements relative to this account. An emissary visited Egypt in 1956 or 1957 endeavoring to cash some checks against the account but was unsuccessful.

Appellant acquired interests in certain oil and gas leases in Mexico prior to his marriage. It is the gain from the sale of these interests in 1957 which respondent taxed, having concluded that appellant was a California resident and thereby subject to tax on all income regardless of source. Appellant filed state and federal nonresident returns until 1966. He did, however, file a California resident return in 1966. He has since become a resident of Hawaii. He does not choose to become a citizen of the United States and wishes to return to Egypt when a satisfactory political climate exists.

Appellant, in disputing the taxability of the out-of-state income, relies on the federal determination of appellant's status as a nonresident and further asserts that, irrespective of residence in 1957, there were 1957 out-of-state losses of more than \$600,000 offsetting any 1957 out-of-state capital gains. He further claims that he only had a 50 percent investment in that portion of

Appeal of Riad Ghali

the property in Mexico taxed to him and therefore makes the final alternative argument that he should be taxable on only one-half of the amount presently in dispute.

Section 17014 of the Revenue and Taxation Code provides :

“Resident” includes:

{a) Every individual who is in this State for other than a temporary or transitory purpose.

Section 17016 provides:

Every individual who spends in the aggregate more than nine months of the taxable year within this state shall be presumed to be a resident. The presumption may be overcome by satisfactory evidence that the individual is in the state for a temporary or transitory purpose..

Respondent 's regulations provide :

...an individual may be a resident although not domiciled in this state, and, conversely, may be domiciled in this State without being a resident. The purpose of this definition is to include in the category of individuals who are taxable upon their entire net income, regardless of whether derived from sources within or without the State, all individuals who are physically present in this State enjoying the benefit and protection of its laws and government, except individuals who are here temporarily, and to exclude from this category all individuals who, although domiciled in this State, are outside this State for other than temporary or transitory purposes, and, hence, do not obtain the benefits accorded by the laws and Government of this State.... (Cal. Admin. Code, tit. 18, reg. 17014-17016(a).)

Appeal of Riad Ghali

Whether or not the purpose for which an individual is in this State will be considered temporary or transitory in character will depend to a large extent upon the facts and circumstances of each particular case....

If, however, an individual is in this State to improve his health and his illness is of such a character as to require a relatively long or indefinite period to recuperate, or he is here for business purposes which will require a long or indefinite period to accomplish,...he is in the State for other than temporary or transitory purposes, and, accordingly, is a resident taxable upon his entire net income even though he may retain his domicile in some other state or country,

* * *

The underlying theory...is that the state with which a person has the closest connection during the taxable year is the state of his residence. (Cal. Admin. Code, tit. 18, reg. 17014-17016(b).)

For over 16 years, except for minimal absences, appellant continuously lived in California so the presumption of residence clearly applies. Appellant originally arrived in California accompanying the Queen Mother as she sought medical care to improve her health. Such purpose apparently required a long period to accomplish. In any event, appellant subsequently sought asylum in this state due to his estrangement with King Farouk and later with the Nasser government, and was allowed to remain here. It was in this state where he married in defiance of King Farouk realizing that this action would jeopardize his chances for an early return to Egypt. It was here that appellant was allowed to stay and thereby avoid possible reprisals in his country. It was in this state where he purchased a home, where his children were born, and where they attended schools. By 1957 appellant had lived in California for many years. He was allowed to continue to do so until enabling legislation opened the door to official United States residency. While his rights when living in California were restricted they were, nevertheless, considerable and he did enjoy the protection of this state.

Appeal of Riad Ghali

The concept of residency should not be confused with the concept of domicile. The former denotes any factual place of abode of some permanency; that is, more than a temporary sojourn. (Whittell v. Franchise Tax Board, 231 Cal. App. 2d 278, 284 [41 Cal. Rptr. 673].) The latter, on the other hand, has been defined as the place where an individual has his true, fixed, permanent home and to which place, whenever he is absent, he has the intention of returning. (Cal. Admin. Code, tit. 18, reg. 17014-17016(c).) Some of the authorities cited by appellant were concerned with the question of domicile rather than that of residence. Any floating intention to return some day to Egypt with the possible advent of a new regime did not make appellant a nonresident of this state. Nor do we believe that appellant's reliance upon Florica Constantinescu, 11 T.C. 37, is well founded. In that case the taxpayer was held to be a nonresident alien for federal income tax purposes. However, there the period of years in the United States was considerably less, the taxpayer was actually arrested and the taxpayer eventually left the United States pursuant to a deportation order. It is also noted that the federal regulations provide that an alien, by reason of his alienage, is presumed to be a nonresident alien and that an alien whose stay in the United States is limited to a definite period by the immigration laws is not a resident of the United States in the absence of exceptional circumstances. (Treas. Regs. 1.871-4-(b) and 1.871-2(b).)

We believe the facts clearly demonstrate that appellant was here for other than a temporary or transitory purpose. Accordingly, we conclude that respondent properly found that appellant was a resident of California in 1957.

Furthermore,, appellant has not proved any losses due to the confiscation of Egyptian property in 1957. In addition, no evidence was introduced to indicate that appellant's Mexican oil interests were community property and, therefore, that only one-half of the gain from the sale of property in Mexico would be attributable to him. To the contrary, it is noted that his investment in Mexico was made prior to his marriage.

