

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :

of :

STRATIS GIANAKAKOS AND : **DECISION**
HELENI GIANAKAKOS :

for Redetermination of a Deficiency or for Refund
of New York State and City of New York Personal :
Income Taxes under Article 22 of the Tax Law and
Chapter 46, Title T of the Administrative Code of :
the City of New York for the Years 1981 and 1982.

Petitioners, Stratis Gianakakos and Heleni Gianakakos, 521 94th Street, Brooklyn, New York 11209, filed an exception to the determination of the Administrative Law Judge issued on September 3, 1987 with respect to their petition for redetermination of a deficiency of New York State and City of New York personal income taxes under Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the years 1981 and 1982 (File No. 804800). Petitioners appeared pro se on this exception. The Audit Division appeared by William F. Collins, Esq. (Kevin A. Cahill, Esq., of counsel).

The petitioners' request for oral argument was denied. Neither party submitted a brief on this exception.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

1. Whether, based upon a cash availability analysis, the Audit Division properly found that, for the years at issue, petitioners had additional funds subject to personal income tax
2. Whether penalties asserted against Stratis Gianakakos pursuant to section 685(b) of the Tax Law should be reduced or abated.

FINDINGS OF FACT

Petitioners expressed a general dissatisfaction with the determination of the Administrative Law Judge but did not challenge any specific finding of fact. Therefore, for the purposes of this decision, the facts are as stated in the Administrative Law Judge determination and such facts are incorporated herein by this reference.

To summarize these facts, the Division of Taxation performed an income tax field audit of petitioners. This audit determined that the books and records of the petitioners were incomplete, and that resort to an indirect audit methodology was necessary. A cash availability analysis was used, which determined that petitioners had unreported income for the years 1981 and 1982.

OPINION

The Administrative Law Judge found that the petitioners had not presented credible evidence to substantiate that the additional income determined by the income tax audit was in fact gifts from friends and relatives. Based on this finding of the Administrative Law Judge we conclude that the petitioners did not sustain their burden, under section 689(e) of the Tax Law and section T46-189.0(e) of the Administrative Code of the City of New York, to prove that the notices of deficiency issued to them were incorrect.

With respect to the penalties asserted against Stratis Gianakakos pursuant to section 685(b) of the Tax Law, the record indicates that the petitioners offered no evidence with respect to the reasons for the underpayment of the personal income taxes. Accordingly, we must also find that the petitioners failed to sustain their burden of proof pursuant to section 689(e) of the Tax Law with respect to this issue.

Therefore, the determination of the Administrative Law Judge is in all respects affirmed.

Accordingly, it is ORDERED, ADJUDGED AND DECREED that:

1. The exception of the petitioners, Stratis and Heleni Gianakakos, is in all respects denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Stratis and Heleni Gianakakos is denied and the notices of deficiency issued to petitioners on March 25, 1985 are sustained.

DATED: Albany, New York
MAR 03 1988

John P. Dugan
President

Francis R. Koenig
Commissioner