

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition :  
of :  
**MICHAEL AND SHIRLEY R. ANSOORIAN** : DECISION  
for Redetermination of a Deficiency or for Refund of :  
Personal Income Tax under Article 22 of the Tax Law :  
for the Year 1984. :

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Petitioners, Michael and Shirley R. Ansoorian, 18 Helena Avenue, Larchmont, New York 10538, filed an exception to the determination of the Administrative Law Judge issued on October 12, 1989 with respect to their petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1984 (File No. 804825). Petitioners appeared by Michael Ansoorian. The Division of Taxation appeared by William F. Collins, Esq. (Angelo A. Scopellito, Esq., of counsel).

Petitioners did not file a brief on exception. The Division submitted a letter in lieu of a brief. Request for oral argument was denied.

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

***ISSUE***

Whether petitioners are liable for a penalty under Tax Law § 685(c) for underestimation of New York State personal income tax.

***FINDINGS OF FACT***

We find the facts as determined by the Administrative Law Judge and such facts are stated below.

Petitioners, Michael and Shirley R. Ansoorian, filed a joint New York State Resident Income Tax Return and a City of Yonkers Nonresident Earnings Tax Return for the year 1984. Petitioners reported \$41,680.80 in wage and salary income and \$13,835.16 in interest income.

The total of New York State personal income tax and City of Yonkers nonresident earnings tax was \$5,222.09 with \$3,144.48 having been withheld from wages, leaving a balance due of \$2,077.61. Petitioners' Form IT-250, Maximum Tax on Personal Service Income, for the year 1984 was attached to the income tax return. No amount was included on the form for employee business expenses. Instead, an asterisk was placed in the space left for that amount, with a handwritten notation referring to it stating: "Blacklist expenses being deferred to an appropriate time."

Attached to petitioners' income tax return was a wage and tax statement for the year 1984 issued to petitioner Michael Ansoorian by Loral Corporation, Electronics Division, 999 Central Park Avenue, Yonkers, New York. The statement showed wage and salary income of \$41,680.80 with State income tax withheld of \$3,144.48.

On April 1, 1987, the Division of Taxation issued a Notice and Demand for Payment of Income Tax Due for the year 1984 to petitioners, asserting a penalty of \$57.66 under Tax Law § 685(c) for underestimation of State income tax. The Division of Taxation's answer to the petition alleged that the penalty was based on petitioners' failure to file and pay estimated tax on their 1984 interest income.

Petitioners timely protested the notice and demand. However, the petition did not refer to the interest income issue but instead alleged that certain deductions for employee business expenses for the year 1984 should be allowed for the purpose of redetermining petitioners' tax liability. These expenses did not appear on the income tax return. Petitioners asserted, in both the petition and at the hearing, that these expenses had been incurred because of actions which had been intentionally orchestrated by the employer and the Federal government in order to punish Mr. Ansoorian for his alleged "whistle blowing" activities with respect to waste in the defense industry. Petitioners claim that the employee business expenses consist of unspecified automobile expenses resulting from Mr. Ansoorian's transfer from Loral's Yonkers plant to its Bronx plant. Petitioners argue that the Federal government "blacklisted" Mr. Ansoorian and that

the transfer was effected solely for the purpose of harassing and financially incapacitating Mr. Ansoorian.

***OPINION***

In the determination below the Administrative Law Judge held that the penalty for understatement of taxes under Tax Law § 685(c) was properly assessed to petitioners and that petitioners failed to carry their burden of proving their entitlement to any of the exceptions under Tax Law § 685(d).

On exception, petitioners dispute the determination that there was an underpayment of taxes for 1984 and claim that they deferred travel expenses from that year for which they were never allowed to file an amended form. Petitioners argue that they should be entitled to file an amended tax form because the statute of limitations for the particular type of travel expenses petitioner Michael Ansoorian incurred has not run. Specifically, petitioners refer to these travel expenses as "blacklisting" expenses which petitioner Michael Ansoorian was forced to incur at the hands of his former employer and the federal government in retaliation for his past "whistleblowing" activities. As such, petitioners believe that the statute of limitations for amending their tax form has not run because "governmental cover-up is concerned". Additionally, petitioners claim that the finding of the Administrative Law Judge that petitioners clearly understated income tax for 1984 is without foundation because at the hearing petitioner Michael Ansoorian presented arguments and written evidence pertaining to his being blacklisted which caused him to defer the actual expenses related to the blacklisting to another year.

We affirm the determination of the Administrative Law Judge.

Tax Law § 685(c) provides a penalty for underpayment of estimated New York State personal income tax. Exceptions to this penalty can be found under subdivision (d) of Tax Law § 685. Tax Law § 689 puts the burden of proving entitlement to a Tax Law § 685(d) exception upon the taxpayer.

Petitioners maintain that the finding of the Administrative Law Judge that there is a clear underpayment of tax is without foundation. We disagree. A review of petitioners' IT-201 tax

form for 1984 (Exhibit B) verifies the fact that petitioners underestimated the tax to be paid because the amount withheld was less than 90% of the tax due (Tax Law § 685[c][3]).

Petitioners have not argued or proved entitlement to any of the specific exceptions in Tax Law § 685(d). Rather, petitioners have argued for the right to amend their tax forms claiming overpayment due to their deferring these ostensible blacklisting expenses. This argument is not only irrelevant, but inaccurate. Tax Law § 687 allows for a claim for credit for overpayment of an income tax. This claim must be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever of such period expires later, or if no return was filed, within two years from the time the tax was paid. There is no record of petitioners filing such a claim nor do petitioners assert that such a claim has been filed. Finally, the Tax Law does not provide for an extension of the statute of limitations for "government cover-up", even if petitioners' claim of such could be verified.

In summary, nothing contained in the record or in petitioners' exception could justify cancellation of the penalty.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of petitioners, Michael and Shirley R. Ansoorian is in all respects denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition is in all respects, denied; and

4. The notice and demand dated April 1, 1987 is sustained.

DATED: Troy, New York  
May 24, 1990

/s/John P. Dugan  
John P. Dugan  
President

/s/Francis R. Koenig  
Francis R. Koenig  
Commissioner

/s/Maria T. Jones  
Maria T. Jones  
Commissioner