

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition

of

STRATIS GIANAKAKOS AND HELENI GIANAKAKOS

DETERMINATION

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 Adminis- :  
trative Code of the City of New York for the :  
Years 1981 and 1982.

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Petitioners, Stratis Gianakakos and Heleni Gianakakos, 521 94th Street, Brooklyn, New York 11209, filed a petition 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 (File No. 62107).

A hearing was held before Brian L. Friedman, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April **30**, 1987 at 1:15 P.M., with additional evidence to be submitted by June **1**, 1987. Petitioners appeared by Allen Klein, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Kevin A. Cahill, Esq., of counsel).

#### ISSUES

I. 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.

11. Whether penalties asserted against petitioners should be reduced or abated.

FINDINGS OF FACT

1. For the years 1981 and 1982, Stratis Gianakakos and Heleni Gianakakos (hereinafter "petitioners") timely filed New York State and City of New York resident income tax returns under the filing status "married filing separately on one return",

2. On October 17, 1984, the Audit Division issued to petitioners a Statement of Personal Income Tax Audit Changes which explained that, pursuant to an audit, additional income had been determined in the amount of \$19,490.00 for 1981 and \$19,072.00 for 1982 for both petitioners. As a result of this determination, New York State and City of New York personal income tax was asserted to be due from Stratis Gianakakos in the amounts of \$1,982.00 for 1981 and \$1,751.00 for 1982, plus penalty pursuant to section 685(b) of the Tax Law and interest. New York State and City of New York personal income tax was asserted to be due from Heleni Gianakakos in the amounts of \$98.00 for 1981 and \$108.00 for 1982, plus interest. Accordingly, on March 25, 1985, the Audit Division issued to petitioners four notices of deficiency as follows:

<u>Period</u>	<u>Tax Due</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u>
1981	\$1,982.00	\$ 99.00	\$ 701.98	\$2,782.98
1981	98.00	-0-	34.58	132.58
1982	1,751.00	88.00	356.72	2,195.72
1982	108.00	-0-	22.49	130.49

3. For the years at issue, petitioners received wage income from G&S Sportswear Corporation and Meli Sportswear Corporation, interest income from bank accounts and unemployment compensation. The Audit Division requested that petitioners provide Federal and State income tax returns, supporting schedules, savings and checking account statements and all books and records pertinent to the preparation of their returns. A detailed field audit was performed in

which these records were analyzed to substantiate expenditures and to determine the sources of funds being deposited into checking and savings accounts. From an examination of petitioners' books and records, the auditor determined that they were incomplete and were inadequate to properly account for all of the expenses and receipts. The auditor resorted, therefore, to an indirect audit method of income reconstruction, a cash availability analysis wherein the sources and applications of funds were analyzed. The result of this analysis was as follows:

	<u>1981</u>	<u>1982</u>
Sources of Funds	\$10,952	\$14,058
Applications of Funds	<u>33,543</u>	<u>37,273</u>
Excess of Applications Over Sources	\$22,591	\$23,215

4. At a conference held prior to the hearing, the Audit Division conceded that petitioner had, for the years at issue, additional sources as follows:

	<u>1981</u>	<u>1982</u>
IRS Refund	\$ 996	-0-
Unemployment compensation	1,220	1,840
Loans from Meli Sportswear Corp.	-0-	1,760
Cash living reductions:		
Auto	1,000	1,000
Food	<u>1,000</u>	<u>1,000</u>
	\$4,216	\$5,600

These additional sources thereby reduced the excess of applications over sources to \$18,375.00 for 1981 and \$17,615.00 for 1982. These amounts were used by the Audit Division in the computations which formed the basis for the issuance of the Statement of Personal Income Tax Audit Changes and the notices of deficiency as indicated in Finding of Fact "2", supra.

5. Petitioners contend that, for the years at issue, certain family members and friends gave them monetary gifts which were used by them to pay living expenses and should, therefore, increase sources of funds for said

years. Other than a \$10,000.00 loan on January 31, 1982 from petitioner Stratis Gianakakos' sister, Trianthe Y. Dakolias, which the Audit Division verified and, therefore, accepted, petitioners were unable to substantiate by evidence which was satisfactory to the Audit Division that such gifts were, in fact, made to petitioners. At the hearing held herein, petitioners offered testimony of one such family member and an affidavit from another.

CONCLUSIONS OF LAW

A. That, pursuant to the provisions of section 689(e) of the Tax Law and section T46-189.0(e) of the Administrative Code of the City of New York, petitioners bear the burden of proving the inaccuracy of the personal income tax deficiencies asserted herein. In the absence of additional evidence such as cancelled checks, bank account withdrawals, gift tax returns, etc., petitioners' allegations that they received monetary gifts from relatives and friends which were used for living expenses were not supported by credible evidence. Petitioners have not, therefore, sustained their burden of proving that the Audit Division erred in its computations for purposes of the cash availability analysis performed herein.

B. That petitioners failed to offer any evidence to indicate that the deficiencies asserted herein, or any part thereof, were not due to negligence or the intentional disregard of the provisions of Article 22 of the Tax Law or the regulations promulgated thereunder. Penalties asserted pursuant to section 685(b) of the Tax Law should not, therefore, be reduced or abated.

C. That the petition of Stratis Gianakakos and Heleni Gianakakos is denied and the notices of deficiency issued March 25, 1985 are hereby sustained.

DATED: Albany, New York

SEP 03 1987

  
ADMINISTRATIVE LAW JUDGE