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STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

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George Xikis
22-52 Crescent St.
Astoria, NY 11104



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DATE

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NOTICE

11-23

11-28

11-28

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

November 7, 1985

George Xikis
22-52 Crescent St.
Astoria, NY 11104

Dear Mr. Xikis:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 & 1312 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Ira J. Glick
1841 Broadway, Rm. 1100
New York, NY 10023
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

ANDREAS CAB CORPORATION

for Redetermination of a Deficiency or for
Refund of Corporation Franchise Tax under
Article 9-A of the Tax Law for the Fiscal Years
Ended May 31, 1978 through May 31, 1980.

In the Matter of the Petition

of

DENNIS XIKIS

for Redetermination of a Deficiency or for
Refund of New York State Personal Income Tax
under Article 22 of the Tax Law and New York
City Personal Income Tax under Chapter 46,
Title T of the Administrative Code of the City
of New York for the Years 1978 through 1980.

DECISION

In the Matter of the Petition

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GEORGE XIKIS

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Refund of New York State Personal Income Tax
under Article 22 of the Tax Law and New York
City Personal Income Tax under Chapter 46,
Title T of the Administrative Code of the City
of New York for the Years 1978 through 1980.

Petitioner, Andreas Cab Corporation, c/o George Xikis, 22-52 Crescent
Street, Astoria, New York 11104, filed a petition for redetermination of a
deficiency or for refund of corporation franchise tax under Article 9-A of the

Tax Law for the fiscal years ended May 31, 1978 through May 31, 1980 (File No. 44028).

Petitioners, Dennis Xikis and George Xikis, 22-52 Crescent Street, Astoria, New York 11104, filed petitions for redetermination of deficiencies or for refunds of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the years 1978 through 1980 (File Nos. 43651 and 43652).

A consolidated hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 3, 1985 at 1:15 P.M. Petitioners appeared by Ira J. Glick, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Lawrence A. Newman, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined petitioners' corporation franchise and personal income taxes for the years in issue.

FINDINGS OF FACT

1. On February 2, 1983, the Audit Division issued four notices of deficiency against petitioners, Dennis Xikis and George Xikis, for personal income tax due as follows:

<u>Petitioner</u>	<u>Year</u>	<u>Tax</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u>
Dennis	1978	\$ 8,317.32	\$4,244.63	\$3,303.56	\$15,865.51
Dennis	1979-1980	\$10,829.46	\$4,743.90	\$3,192.76	\$18,766.12
George	1978	\$ 8,317.32	\$4,494.09	\$3,301.72	\$16,113.13
George	1979-1980	\$10,677.77	\$4,998.09	\$3,146.03	\$18,821.89

2. On March 7, 1983, the Audit Division issued three notices of deficiency against petitioner Andreas Cab Corporation ("the corporation") for corporation franchise tax due as follows:

<u>Period Ended</u>	<u>Tax</u>	<u>Interest</u>	<u>Additional Charge</u>	<u>Total</u>
May 31, 1978	\$10,766.70	\$5,683.96	\$538.34	\$16,989.00
May 31, 1979	\$11,567.70	\$5,123.68	\$578.39	\$17,269.77
May 31, 1980	\$12,053.00	\$4,314.13	\$602.65	\$16,969.78

3. The Audit Division commenced a personal income tax audit of Dennis Xikis and his brother, George Xikis, neither of whom had filed New York State or City returns for the years in issue. Initially, the auditor was unable to obtain any records from petitioners; however, they eventually hired a new accountant who supplied the auditor with checking and savings account statements and cancelled checks for Dennis and the corporation. The auditor also obtained information on taxi medallion purchases from the New York City Taxi and Limousine Commission.

4. The corporation operated a taxicab and Dennis Xikis was listed as president and George Xikis as secretary on the corporation's franchise tax returns. The audit of the available books and records disclosed that Dennis had deposits to his personal checking and savings accounts totalling \$75,817.00 for the years in issue. Dennis also had loan accounts at two banks and the loan repayments for the years in issue totalled \$14,045.00. The information from the Taxi and Limousine Commission disclosed that two medallions numbered 2J81 and 2J82 were purchased by the corporation for \$47,000.00. A car was also purchased for \$12,169.44. The purchase was financed by loans of \$15,000.00 each to Dennis and George from the Progressive Credit Union. The auditor assumed the remaining \$29,169.44 to also have been obtained by loans and she estimated that Dennis and George each made additional loan payments of \$6,000.00 for each year in issue. The auditor determined the following adjustment to income for Dennis for the years in issue:

	<u>1978</u>	<u>1979</u>	<u>1980</u>
Deposits to personal checking	\$13,877.00	\$20,738.00	\$28,306.00
Deposits to savings	6,590.00	6,306.00	-0-
Loan repayments: Progressive	8,480.00	1,900.00	-0-
Melrose	-0-	1,980.00	1,685.00
Cash for personal living expenses	20,000.00	22,000.00	24,200.00
Estimated additional loan repayments	<u>6,000.00</u>	<u>6,000.00</u>	<u>6,000.00</u>
Total	\$54,947.00	\$58,924.00	\$60,191.00

The cash living expenses were estimated to be \$20,000.00 for 1978 and increased by 10 percent for each additional year. The estimates were not based on any facts discerned during the audit, nor were they itemized to show where such amounts were spent.

5. The auditor did not do a detailed audit of George's available records or of the corporation's books and records. She took the total adjustments for Dennis, assumed that George had the same income and applied the same adjustments to George with the exception of a small amount of unreported interest income applied to Dennis. With respect to the corporation, the auditor assumed that all income to Dennis and George was derived from the corporation and she applied the total adjustments for Dennis and George to the corporation.

6. At the hearing, petitioners produced various corporate documents indicating that, although Dennis and George Xikis were listed as president and secretary, respectively, of the corporation, the true owner of the corporation was Andreas Kaliabakos, the brother-in-law of George and Dennis. An agreement between Dennis and Mr. Kaliabakos, dated August 5, 1976, stated that all obligations of the corporation would be the responsibility of Mr. Kaliabakos; that, notwithstanding any instruments filed with the Taxi and Limousine Commission, Mr. Kaliabakos was the sole officer, director and shareholder of the corporation; and that the reason Dennis Xikis was designated an officer and stockholder of

the corporation was for the purpose of procuring a loan through Progressive Credit Union. Additionally, a corporate resolution, dated November, 1976, designated Andreas Kaliabakos as the sole signatory on corporate checks.

7. Dennis Xikis was a full-time student during the years in issue, lived at home with his parents, and did no work for the corporation. George Xikis likewise did no work for the corporation; his income was derived primarily from social security disability payments. Neither brother received any income from the corporation. The primary reason for Dennis and George being listed as officers of the corporation was to allow Mr. Kaliabakos to obtain fleet medallions for his taxicab operation. An individual could only hold an individual medallion and not a fleet medallion. Mr. Kaliabakos already owned an individual medallion and could not, therefore, own a fleet medallion in his corporate capacity. In order to obtain a fleet medallion for the corporation, Mr. Kaliabakos asked Dennis and George to list themselves as the officers of the corporation. The loans taken out by Dennis and George to purchase the fleet medallions and car were repaid by the corporation with corporate checks signed by Mr. Kaliabakos. The additional \$29,169.44 used to purchase the medallions was supplied by Mr. Kaliabakos and was not obtained by Dennis and George in the form of loans.

8. Dennis was also involved in the business of a third brother, Gus Xikis, who also operated a taxicab business. All income from the company owned by Gus went into the personal checking and savings accounts held by Dennis, who paid the company expenses from these accounts. Dennis performed these activities as a favor to his brother and received no money from Gus for the services he performed. George Xikis apparently had no involvement with the operation owned by Gus

Xikis. An Internal Revenue Service audit of Gus Xikis resulted in all income flowing into the accounts held by Dennis being attributed to Gus.

CONCLUSIONS OF LAW

A. That inasmuch as Andreas Kaliabakos was the true officer and shareholder of the corporation, the loan repayments attributed as income to Dennis Xikis (see Finding of Fact "3") were not properly includible as income to Dennis. Likewise, the estimated loan payments of \$6,000.00 per year which were considered to be in payment of a loan for the additional \$29,169.44 used to purchase the corporation's medallions and car were not properly included as income since said amount was supplied by Mr. Kaliabakos and not obtained from a loan. The deposits to the checking and savings accounts of Dennis Xikis were also not properly included as income inasmuch as said accounts were merely used as conduits in the operation of the taxicab company owned by Gus Xikis and did not represent income to Dennis Xikis.

B. That inasmuch as neither Dennis nor George Xikis received any income from the corporation and were not the actual owners of the corporation, there was no basis for attributing their combined incomes to the corporate income of Andreas Cab Corporation.

C. That the cash living expenses determined for Dennis Xikis and George Xikis are excessive in light of the facts that Dennis was a full-time student and George received social security disability benefits, and neither held a paying job for the corporation or their brother Gus. Moreover, the amount determined was, admittedly, an estimate which was not based on any facts known about the brothers nor on any cost of living schedules or charts for persons in similar circumstances. At the same time, petitioners have not met their burden of proving that they had no cash living expenses for the years in issue;

therefore, the cash shortage for Dennis and George is reduced to \$5,000.00 for each petitioner for each year in issue.


D. That the petition of Andreas Cab Corporation is granted and the notices of deficiency issued March 7, 1983 are cancelled.

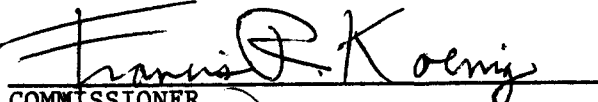
E. That the petitions of Dennis Xikis and George Xikis are granted to the extent indicated in Conclusions of Law "A" and "C"; that the Audit Division is directed to modify the notices of deficiency issued February 2, 1983 accordingly; and that, except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York

NOV 07 1985

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

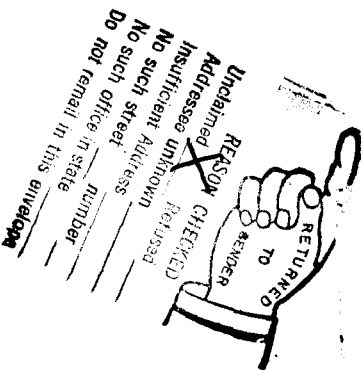
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

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MAIL

Andreas Cab Corp.
c/o George Xikis
22-52 Crescent
Astoria, NY 11104



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STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

November 7, 1985

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cc: Petitioner's Representative
Ira J. Glick
1841 Broadway, Rm. 1100
New York, NY 10023
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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B. That inasmuch as neither Dennis nor George Xikis received any income from the corporation and were not the actual owners of the corporation, there was no basis for attributing their combined incomes to the corporate income of Andreas Cab Corporation.

C. That the cash living expenses determined for Dennis Xikis and George Xikis are excessive in light of the facts that Dennis was a full-time student and George received social security disability benefits, and neither held a paying job for the corporation or their brother Gus. Moreover, the amount determined was, admittedly, an estimate which was not based on any facts known about the brothers nor on any cost of living schedules or charts for persons in similar circumstances. At the same time, petitioners have not met their burden of proving that they had no cash living expenses for the years in issue;

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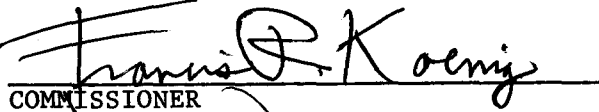
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DATED: Albany, New York

STATE TAX COMMISSION

NOV 07 1985


PRESIDENT


COMMISSIONER


COMMISSIONER