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**DEPARTMENT OF TAXATION AND FINANCE**  
**CORPORATION TAX BUREAU**  
**REPORT ON PRELIMINARY HEARING**

In the Matter of the Application

of

GAYLORD-GREER, INC.

for revision or refund of franchise tax  
for the fiscal year ended October 31,  
1964 and redetermination of deficiency  
or refund of franchise tax for the  
fiscal years ended October 31, 1965,  
October 31, 1966, October 31, 1967 and  
period November 1, 1967 to December 31,  
1967.

Application  
No. 6662

The desk audit unit disallowed taxpayer's claim to a business allocation for the fiscal year ended October 31, 1964 and issued a notice of assessment on May 10, 1968 as follows:

10/31/64

Entire net income	\$103,199.56
Tax at 5½%	5,675.98
Tax reported	2,547.76
Added tax	\$ 3,128.22

On examination of the subsequent years returns, the desk audit unit disallowed taxpayer's claim to a permanent or continuous place of business outside New York and allowed a regular place of business. Notices of deficiency were issued on May 5, 1969, as follows:

	<u>10/31/65</u>	<u>10/31/66</u>	<u>10/31/67</u>	<u>11/1/67 to 12/31/67</u>
Entire net income	\$155,120.68	\$100,634.00	\$57,873.00	\$5,881.00
Business Allocation %	59.1976	60.83	60.41	58.23
New York base	91,827.72	61,215.66	34,961.08	3,424.50
Tax at 5½%	5,050.52	3,366.86	1,922.86	188.35
Tax reported	1,216.46	882.00	459.00	40.00
Deficiency	3,834.06	2,484.86	1,463.86	148.35

A timely application for revision or refund for the fiscal year ended October 31, 1964 was filed on December 2, 1968. Letter of Ernst and Ernst, Accountants, dated March 19, 1969, protested the disallowance of the permanent or continuous places of business for later years. Since the preliminary hearing was scheduled for June 25, 1969, well within the 90-day period after the mailing of the notices of deficiency on May 5, 1969, it was the intention of the hearing officer to have taxpayer sign a petition form (CT-92) before the commencement of the preliminary hearing. However, through an oversight, such signing was overlooked. On the basis of the court decision in the Meridale Dairies Corp. case, we were on ample notice that the taxpayer was protesting our position, and therefore absence of a formal petition on CT-92 is not controlling. Furthermore, under Article 27, the taxpayer could pay the deficiencies and then file a claim for refund within two years of such date, so the issue would still have to be resolved.

The preliminary hearing was held in New York City on June 25, 1969 before J. J. Genevich. The taxpayer was represented by Irving Greenfield,

president of the taxpayer, Werner Moritz, head of textiles of Castleton Industries, Inc., parent of the taxpayer, and W. Grayson Quarles, CPA, of Ernst and Ernst, Accountants.

In letter of June 10, 1970, Ernst and Ernst withdrew its application for revision or refund of tax for the fiscal year ended October 31, 1964 because of the difficulty in retrieving information for that year and the amount of tax involved.

The data on file for the fiscal years ended October 31, 1965, 1966, 1967 and period November 1, 1967 to December 31, 1967 discloses that the taxpayer paid annual rent of \$6,000 to its parent corporation for the lease of the entire third floor (roughly 40,000 square feet) of a three-story building located in Charlotte, North Carolina. Taxpayer is engaged in the manufacturing and wholesaling of linens and household textiles, mainly in the form of towels. The goods were processed at the Charlotte site and shipped from there to customers. It was brought out that the personnel on the third floor site worked exclusively for Gaylord-Greer, Inc. and were under the control and direction of Robert Krumholz, plant supervisor for Gaylord-Greer. The taxpayer's personnel were reported on the Federal payroll returns of Hydro Prints, Inc., another subsidiary of the parent. Taxpayer claims this was done solely for convenience purposes because the payroll was prepared by means of IBM facilities which were leased by Hydro Prints, Inc. The latter charged Gaylord Greer for the salaries paid to its personnel, plus 10% for record keeping and payroll taxes.

Since the personnel on the premises of Gaylord-Greer worked exclusively for that company, and were under the direction and control of the Gaylord-Greer plant supervisor, it is believed that the salaries paid to such personnel qualify as wages pursuant to Section 4.26 of the Article 9-A Ruling of 3/14/62. Accordingly, it is recommended that the wage factor be adjusted to include such amounts, after elimination of the 10% surcharge mentioned above for record keeping and payroll taxes. The third floor should therefore be recognized as a permanent or continuous place of business of the taxpayer and the receipts factor adjusted accordingly.

Based on the foregoing, it is recommended that the notices of deficiency be reduced as follows:

	<u>10/31/65</u>	<u>10/31/66</u>	<u>10/31/67</u>	<u>11/1/67 to 12/31/67</u>
Entire net income	\$155,120.68	\$100,634.00	\$57,873.00	\$5,881.00
Business allocation %	14.6803	16.35	14.75	12.65
New York base	22,772.18	16,453.66	8,536.26	743.95
Tax at 5½%	1,252.47	904.95	469.49	40.92
Tax per return	1,216.46	882.00	459.00	40.00
Revised deficiency	36.01	22.95	10.49	0.92
Previous deficiency	3,834.06	2,484.86	1,463.86	148.35
Reduction	3,798.05	2,461.91	1,453.37	147.43

No revised deficiency should be issued for the period 11/1/67 to 12/31/67 since the amount involved is too small, namely 92 cents. The previous deficiency of \$148.35 for that period should therefore be cancelled in full. No refund will be issued to the taxpayer for the reductions because the previous deficiencies had not been paid.

/s/ J. J. Genevich

**J. J. Genevich**  
Hearing Officer

JJG:MB  
8/3/70

Approved: E. A. Doran  
/s/ Milton Koerner - 8/11/70  
/s/ A. B. Manley - 8/13/70  
/s/ N. Galiman - 8/25/70