

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
EDWARD J. WRIGHT, JR.	:	
D/B/A GAYHEAD MANOR	:	
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period January 1, 1976	:	
through August 31, 1978.	:	

DECISION

In the Matter of the Petition	:	
	:	
of	:	
	:	
GAYHEAD MANOR, INC. and	:	
EDWARD J. WRIGHT, JR., AS OFFICER	:	
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period June 1, 1978	:	
through August 31, 1980.	:	

Petitioners, Edward J. Wright, Jr. d/b/a Gayhead Manor, Gayhead Manor, Inc. and Edward J. Wright, Jr., as officer, RD #2, Box 816, Sherwood Lane, Stormville, New York 12582, filed petitions for revision of determinations or for refunds of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods January 1, 1976 through August 31, 1978 and June 1, 1978 through August 31, 1980 (File Nos. 39996, 39997 and 45473).

A hearing was held before Brian L. Friedman, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Office Campus, Albany, New York, on April 24, 1985 at 1:15 P.M., with additional evidence to be submitted by May 22, 1985. Petitioners appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Thomas A. Sacca, Esq., of counsel).

ISSUES

I. Whether petitioner, Edward J. Wright, Jr., operated a hotel as a sole proprietorship during the period January 1, 1976 through August 31, 1978.

II. Whether the Audit Division properly determined petitioners' additional sales taxes due.

FINDINGS OF FACT

1. On August 20, 1982, as the result of a field audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner Gayhead Manor, Inc. ("the corporation") in the amount of \$20,713.80, plus interest of \$6,139.97, for a total due of \$26,853.77 for the period July 1, 1978 through August 31, 1980. On the same date, the Audit Division issued an identical notice against petitioner Edward J. Wright, Jr., as officer of Gayhead Manor, Inc.

2. On April 20, 1983, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner Edward J. Wright, Jr. d/b/a Gayhead Manor ("the proprietorship") in the amount of \$23,194.20, plus penalty of \$5,798.52 and interest of \$16,667.92, for a total due of \$45,660.64 for the period January 1, 1976 through August 31, 1978.

3. Upon audit of the corporation, the auditor discovered that it was in receivership and that Mr. Wright had no records of any kind. Mr. Wright advised the auditor to contact the receiver to obtain whatever records were available. The only records supplied by the receiver were a U.S. Small Business Corporation Income Tax Return (Form 1120S) for the tax year July 1, 1978 through April 30, 1979 and two Federal Schedule C's, Profit or (Loss) From Business or Profession, for the years 1976 and 1977. The returns indicated that Mr. Wright operated a hotel under the name Gayhead Manor as a sole proprietorship

during 1976, 1977 and for the first six months of 1978. On May 17, 1978, the corporation was formed and it began operating the hotel on July 1, 1978. Neither the proprietorship nor the corporation was registered as a sales tax vendor and neither filed any sales tax returns during the periods in issue.

4. With respect to the proprietorship, the auditor used the gross receipts figures on the Schedule C's and divided them among the sales tax quarters for 1976 and 1977. He projected the 1977 monthly figures into the first half of 1978. Since petitioner offered no substantiation to the contrary, the auditor considered all gross receipts to be taxable sales and derived the proprietorship's sales tax due from such sales figures.

5. Similarly, with respect to the corporation, the auditor took the gross receipts figure from the Federal Form 1120S and divided that amount among the sales tax quarters through April, 1979. For the period May 1, 1979 through August 31, 1980, the auditor increased the 1978-1979 figures by 10 percent and projected them over the balance of the period in issue.

6. At a pre-hearing conference, Mr. Wright supplied limited records of receipts applicable to the period during which the corporation was operating the hotel. The auditor took an agreed upon three-month period and eliminated all receipts for customers registered under a business name and for customers who appeared in the receipts for 90 days or more. Such customers were deemed to be permanent residents and these receipts were not subject to tax. Using this method, the auditor determined that 42.532 percent of the corporation's business was taxable. Based on this percentage, the Audit Division reduced the sales tax due for the period July 1, 1978 through August 31, 1980 to \$8,809.90 plus minimum interest. There were no receipt records available for the period when

the hotel was being operated by the proprietorship and, as a result, no adjustments were made for that period.

7. Mr. Wright maintains that he never operated the hotel as a sole proprietorship and that he was not involved with the business until the corporation was created. Petitioner argues that the property had been owned by another corporation and leased as an office building to IBM during the period when the proprietorship was supposed to have operated the hotel. Moreover, Mr. Wright claims that he never filed any Federal Schedule C's as a sole proprietor of the hotel. Petitioners, however, offered no documentary proof to substantiate any of their allegations either during or after the hearing.

CONCLUSIONS OF LAW

A. That section 1138(a) of the Tax Law provides that:

"If a return... when filed is incorrect or insufficient, the amount of tax due shall be determined by the tax commission from such information as may be available. If necessary, the tax may be estimated on the basis of external indices, such as stock on hand, purchases, rental paid, number of rooms, location, scale of rents or charges, comparable rents or charges, type of accommodations and service, number of employees or other factors."

B. That inasmuch as petitioners had virtually no records available for audit other than a limited number of tax returns, the auditor properly determined petitioners' sales tax liability by using the figures from those returns and projecting them over the entire audit period. Additionally, petitioners did not produce sufficient evidence to refute the audit findings or to show that the proprietorship did not operate the hotel during the period January 1, 1976 through August 31, 1978; thus, they have not met their burden of proving that the audit was erroneous.


C. That the petitions of Edward J. Wright, Jr. d/b/a Gayhead Manor, Gayhead Manor, Inc. and Edward J. Wright, Jr., as officer, are granted to the extent indicated in Finding of Fact "6" and except as so granted the


notices of determination and demands for payment of sales and use taxes due issued August 20, 1982 and April 20, 1983 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 07 1985


PRESIDENT


COMMISSIONER


COMMISSIONER