

**New York State Department of Taxation and Finance**  
**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-A-98(27)C  
Corporation Tax  
December 30, 1998

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C981007A

On October 7, 1998, a Petition for Advisory Opinion was received from Chatham International Enterprises, Inc., 343 Almeria Avenue, Coral Gables, Florida 33134.

The issue raised by Petitioner, Chatham International Enterprises, Inc., is whether it is subject to franchise tax under Article 9-A of the Tax Law when it has not issued any shares of stock nor engaged in any type of business.

Petitioner submits the following facts as the basis for this Advisory Opinion.

In December 1996, Petitioner's representative submitted for filing, the incorporation of Petitioner as a New York corporation, with the New York State Department of State, Division of Corporations and State Records. Pursuant to section 104-A(d) of the Business Corporation Law, the incorporator paid \$125.00 to file a Certificate of Incorporation with the Secretary of State and paid an organizational tax based on the shares of stock authorized to be issued, as set forth in section 180 of the Tax Law. Upon these payments and the filing with the Secretary of State, Petitioner was incorporated as a New York corporation on December 30, 1996.

Other than being incorporated, no further action has been taken with Petitioner. The incorporator has not issued any stock, the incorporator has not transferred ownership to anyone and absolutely no business has been conducted by Petitioner. Petitioner has not exercised any rights related to the corporate franchise.

**Discussion**

Section 209.1 of the Tax Law imposes, annually, a franchise tax on every corporation for the privilege of exercising its franchise, or of doing business, or of employing capital, or of owning or leasing property in New York State in a corporate or organized capacity, or of maintaining an office in New York State for all or any part of each of its fiscal or calendar years.

Section 2-3.1 of the Business Corporation Franchise Tax Regulations provides that every domestic corporation is required to pay a tax measured by entire net income (or other applicable basis) up to the date on which it ceases to possess a franchise.

The United States Supreme Court has held that the franchise tax imposed by New York State is simply for the conferral of the right to be a corporation, not for the actual exercise of the right

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(People v. Jersawit, 263 US 493; see, generally, 100 NY Jur 2d, Taxation and Assessment, §1266, p 280). This right is granted to a corporation when the Secretary of State accepts the certificate of incorporation and files such certificate. A New York corporation is not relieved from liability for annual franchise taxation when it is not dissolved (see, People ex rel Claire Belle Dresses v State Tax Commn, 221 App Div 471; affd 248 NY 568).

Accordingly, Petitioner is subject to the annual franchise tax imposed under section 209.1 of Article 9-A of the Tax Law for every taxable year from the date of its incorporation on December 30, 1996 until it is dissolved, regardless of whether any shares of stock are ever issued or whether it conducts any business. Since Petitioner is not conducting business and has no capital, it will be subject to the fixed dollar minimum tax for each taxable year as described in section 210.1(d) of the Tax Law.

DATED: December 30, 1998

/s/  
John W. Bartlett  
Deputy Director  
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.