

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

TSB-H-80 (12) C  
Corporation Tax  
July 9, 1980

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C800407A

On April 1, 1980, a Petition for Advisory Opinion was received from The Gates Rubber Company, 999 South Broadway, P. O. Box 5887, Denver, Colorado 80217.

The issue raised in the petition is whether or not the Tax Commission has the statutory authority under section 211.4 of article 9-A of the Tax Law and related regulation sections 62.2 through 6-2.5 to require The Gates Rubber Company, and its subsidiaries, National Tires, Inc., Gates Export Corporation, and Overseas Export, Inc. (a DISC) to file combined returns.

Data contained in the petition and in a memorandum from the Audit Division indicates that in the years involved, sales by the parent to National Tires, Inc. were approximately 5.6% of the parent's sales. Such purchases constitute approximately 85% of inventory purchased for resale by National Tires, Inc. Sales by the parent to Gates Export Corporation were approximately 296 of the parent's sales. Such purchases constitute 100% of inventory purchased by Gates Export Corporation. Overseas Export, Inc. (a DISC) has no purchases from the parent, but follows I.R.C. Section 994(a)(2) inter-company pricing rules (the 50-50 combined taxable income method). Activities of The Gates Rubber Company subject it to tax under jurisdictional standards of section 209.1 of article 9-A of the Tax Law. Activities of National Tires, Inc., Gates Export Corporation, and Overseas Export, Inc. (a DISC) do not subject them to tax under section 209.1 of article 9-A of the Tax Law.

Section 211.4 states in part:

"4. In the discretion of the tax commission, any taxpayer, which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations, or substantially all the capital stock of which is owned or controlled either directly or indirectly by one or more other corporations or by interests which own or control either directly or indirectly substantially all the capital stock of one or more other corporations, may be required or permitted to make a report on a combined basis covering any such other corporations and setting forth such information as the tax commission may require; provided, however, that any corporation which owns or controls either directly or indirectly substantially all the capital stock of a DISC not exempt from tax under paragraph (i) of subdivision nine of section two hundred eight of this article shall be allowed, at the election of such corporation, to make a report on a combined basis covering such DISC, but the failure of such corporation to make such election shall not prohibit the tax commission from requiring a combined report covering such corporation and such DISC; provided, further, that no combined report covering any corporation not a taxpayer shall be required unless the tax commission deems such a report necessary, because of inter-company transactions or some agreement, understanding, arrangement or transaction referred to in subdivision five of this section, in order properly to reflect the tax liability under this article .... "

JAMES H. TULLY., COMMISSIONER

LOUIS M. JACOBSON, DEPUTY COMMISSIONER

FRANK J. PUCCIA, DIRECTOR

Regulation section 6-2.1(a) states:

"The reporting requirements of article 9-A contemplate that each corporation is a separate taxable entity and shall file its own report. However, the Tax Commission, in its discretion, may require a group of corporations to file a combined report or may grant permission to a group of corporations to file a combined report where the requirements of stock ownership or control are met. In addition, in deciding whether it will require or permit combined reporting, the Tax Commission will consider whether the group of corporations is engaged in a unitary business and whether there are substantial inter-corporate transactions among the corporations."

Regulation section 6-2.3 states in part:

"(a) . . . In deciding whether to permit or require combined reports the following two broad factors must be met:

- (1) the corporations are in substance parts of a unitary business conducted by the entire group of corporations, and
- (2) there are substantial intercorporate transactions among the corporations.

(b) In deciding whether each corporation is a part of a unitary business, the Tax Commission will consider whether the activities in which the corporation engages are related to the activities of the other corporations in the group, such as:

- (1) manufacturing or acquiring goods or property for other corporations in the group; or
  - (2) selling goods acquired from other corporations in the group; or
- . . .

(c) In determining whether the substantial intercorporate transaction requirement is met, the Tax Commission will consider only transactions directly connected with the business conducted by the Taxpayer, such as described in paragraph (1), (2), or (3) of subdivision (b) of this section. Service functions, such as accounting, legal, and personnel will not be considered. The substantial intercorporate transaction requirement may be met where as little as 50 percent of a corporation's receipts are from any qualified activities. It is not necessary that there be substantial intercorporate transactions between any one member with every other member of the group. It is, however, essential that there be substantial intercorporate transactions among all members of the combined group."

Section 211.4 authorizes the Tax Commission to require the filing of a combined report of a taxpayer and a corporation not otherwise subject to tax, in order to properly reflect the tax liability of the corporations, when stock ownership requirements are met and the Tax Commission deems combination necessary because of transactions which were not at arms length. Regulation section 6-2.3(a)(1) and (2) outline the primary factors in determining whether combination will be required or permitted; namely, that the corporations are in substance parts of a unitary business with substantial inter-company transactions. Since National Tires, Inc. and Gates Export Corporation are primarily in the business of selling goods and they obtain the goods which they sell from The Gates Rubber Company 85% and 100%, respectively, both of the primary factors are met and inclusion of such subsidiaries in a combined report with The Gates Rubber Company is proper.

TSB-H-80(12)C  
Corporation Tax  
July 9, 1980

Section 211.4 permits a taxpayer to elect to file a combined report with a DISC, provided that the stock ownership requirements are met. It provides the Tax Commission with discretionary authority to require a taxpayer to combine with a DISC where stock ownership requirements are met. To prevent distortion of the allocation factors, a DISC which has property or employees should be combined with its parent corporation. Since Overseas Export, Inc. has neither property nor employees the DISC need not be included in the combined report of The Gates Rubber Company.

Dated: June 30, 1980

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau