

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of  
TUTTLE PRILLING SYSTEMS

for Redetermination of a Deficiency or for  
Refund of Unincorporated Business Tax under  
Article 23 of the Tax Law for the Years 1974  
through 1980.

In the Matter of the Petition  
of  
MALCOLM H. TUTTLE

DECISION

for Redetermination of a Deficiency or for  
Refund of Unincorporated Business Tax under  
Article 23 of the Tax Law for the Year 1973.

In the Matter of the Petition  
of

DONALD M. SNYDER and KATHERINE SNYDER

for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article 22  
of the Tax Law for the Years 1976 through 1981. :

Petitioner Tuttle Prilling Systems, 56 Avon Road, New Rochelle, New York  
10804, filed a petition for redetermination of a deficiency or for refund of  
unincorporated business tax under Article 23 of the Tax Law for the years 1974  
through 1980 (File No. 48611).

Petitioner Malcolm H. Tuttle, 56 Avon Road, New Rochelle, New York 10804  
filed a petition for redetermination of a deficiency or for refund of unincor-  
porated business tax under Article 23 of the Tax Law for the years 1974 through 1980 (File No. 48611).

Petitioners Donald M. Snyder and Katherine Snyder, 5817 South High Drive, Evergreen, Colorado 80439, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1976 through 1981 (File No. 48609).

A consolidated hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 9, 1985 at 1:15 P.M. Petitioners appeared by Marshall, Granger & Co. (Stanley A. Ross, Esq.). The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

### ISSUES

I. Whether the notices of deficiency issued to petitioner Tuttle Prilling Systems for the years 1974 through 1979 were barred by the time limitations on assessment set forth in section 683 of the Tax Law.

11. Whether 80 percent of petitioner Tuttle Prilling Systems' unincorporated business gross income for the years 1974 through 1980 were derived from personal services actually rendered by its member partners as professional engineers, thereby qualifying said petitioner for exemption from unincorporated business tax under section 703(c) of the Tax Law.

111. Whether the Audit Division properly asserted against petitioner Tuttle Prilling Systems penalties pursuant to sections 685(a)(1), 685(a)(2) and 685(b) of the Tax Law.

IV. Whether 80 percent of petitioner Malcolm H. Tuttle's unincorporated business gross income for the year 1973 was derived from his personal services, as a professional engineer, thereby qualifying him for exemption from unincorporated business tax under section 703(c) of the Tax Law.

V. Whether the Audit Division properly asserted against petitioner Malcolm H. Tuttle penalties pursuant to sections 685(a)(1), 685(a)(2) and 685(b) of the Tax Law.

VI. Whether the Audit Division properly asserted against petitioners Donald M. Snyder and Katherine Snyder penalties pursuant to sections 685(a)(1), 685(a)(2) and 685(b) of the Tax Law.

#### FINDINGS OF FACT

1. Petitioner Tuttle Prilling Systems (hereinafter "the partnership") timely filed New York State partnership returns for the years 1974 through 1980, reporting thereon the income derived from its "professional engineering" activities. All relevant sections of the partnership returns were properly completed and each partnership return also contained additional explanatory schedules and/or copies of portions of the Federal partnership return. Each of the partnership returns at issue contained, on page 1, "Schedule U-D -- Unincorporated Business Tax and Payments". For all years at issue, the partnership reported its net income on Schedule U-D; however, it also claimed an exemption for each year equal in amount to its reported net income, and accordingly, business taxable income was reported as "zero". On Schedule U-D, for all years in dispute, the partnership also inserted the following explanation:

"Over 80% of business income was derived from professional engineering services of Malcolm H. Tuttle -- N.Y. License No. 18004."

2. Petitioner Malcolm H. Tuttle filed a 1973 New York State Personal Income Tax Return reporting thereon business income of \$11,248.00 derived from his professional engineering activities. Mr. Tuttle did not file an unincorporated business tax return for 1973.

3. Petitioners, Donald M. Snyder and Katherine Snyder, both nonresidents of New York State, did not file New York State personal income tax returns for the years 1976 through 1981.

4. On April 15, 1983, the Audit Division issued a Statement of Audit Changes to Tuttle Prilling Systems for the years 1974 through 1980 wherein it asserted that:

"Your partnership income for 1974-1980 from the design and manufacture of the Prilling bucket is subject to the Unincorporated Business Tax,"

The Audit Division also adjusted the partnership's allocation percentage to New York State; however, at the hearing held herein the accuracy of this adjustment was conceded. Based on the Statement of Audit Changes, the Audit Division, on September 16, 1983, issued two notices of deficiency to the partnership. One notice was for the years 1974 through 1977 and asserted additional unincorporated business tax due of \$10,815.48, plus penalty' of \$5,948.53 and interest of \$7,029.16, for a total allegedly due of \$23,793.17. The second notice encompassed the years 1978 through 1980 and asserted additional unincorporated business tax due of \$7,036.57, plus penalty' of \$3,390.72 and interest of \$2,640.00, for a total allegedly due of \$13,067.29.

5. On April 15, 1983, the Audit Division also issued a Statement of Audit Changes to Malcolm H. Tuttle for the 1973 tax year, wherein it asserted that

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1 Penalties were imposed pursuant to section 685(a)(1) of the Tax Law for failure to timely file returns, section 685(a)(2) of the Tax Law for failure to pay the tax due and section 685(b) of the Tax Law for negligence .

"Your schedule C income **is** subject to Unincorporated Business Tax". Based on the aforementioned Statement, petitioner Malcolm H. Tuttle was issued a Notice of Deficiency dated September 16, 1983 for the years 1973 and 1981.<sup>2</sup>

Additional unincorporated business tax allegedly due for 1973, as determined in the Notice of Deficiency, amounted to \$219.91. Penalties<sup>1</sup> were also asserted in said Notice of Deficiency in the sum of \$120.96.

6. A Statement of Audit Changes was also issued to Donald M. Snyder and Katherine Snyder for the years 1976 through 1981 wherein petitioners were provided with the following explanation:

"As a result of an audit on Tuttle Prilling Systems it has been determined that you failed to report your share of partnership income.

Your share of partnership income has been allocated to New York State at 71% (see IT-202A attached)."

Based on the Statement of Audit Changes, the Audit Division, on October 5, 1983, issued two notices of deficiency to petitioners Donald M. Snyder and Katherine Snyder. One notice was for the years 1976 through 1979 and asserted additional personal income tax due of \$12,636.05, plus penalty' of \$6,530.70 and interest of \$6,618.54, for a total allegedly due of \$25,785.29. The other notice encompassed the years 1980 and 1981 and asserted personal income tax due of \$6,904.77, plus penalty' of \$2,685.45 and interest of \$1,515.80, for a total allegedly due of \$11,106.02.

7. Tuttle Prilling Systems was formed in July of 1973 for the purpose of providing the engineering services required for the construction of prilling

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2 The year 1981 is not at issue, petitioner Malcolm H. Tuttle having signed a consent to the assessment and collection of \$201.11 of personal income

systems in conjunction with urea and ammonium nitrate chemical plants. There are two partners: Malcolm H. Tuttle, who holds a degree in engineering and a Professional Engineers license in the State of New York, and Donald M. Snyder, who holds a degree in engineering and a Professional Engineers license in the State of Colorado. The partnership provides engineering for the design and construction of complete prilling systems.

8. Prilling refers to the formation of generally spherical particles from a molten material. Prills are formed in a prilling tower, which is generally cylindrical in form, by expelling a molten material from a distributor through a series of holes to form drops of desired size. The drops, which should be uniformly distributed across the area of the tower, fall through a current of air that cools and solidifies them and the solidified drops are then collected at the bottom of the tower in the form of generally spherical prills. United States Patent Number 3,461,489 granted to Malcolm H. Tuttle, makes the following claim as to what comprises a prilling system:

"1. Prilling apparatus comprising: a cylindrical tower, a perpendicular centrifugal distributor..., a means for delivering a molten substance to said distributor, and a means for causing a current of air to flow upwardly through said tower."

9. The centrifugal distributor, often referred to as a "prilling bucket", is one element of an overall prilling system and is the only item manufactured by Tuttle Prilling Systems. The elements of manufacturing activity involved in the fabrication of a prilling bucket include: layout, machining of various parts and assembly. Layout work consists of drafting working drawings for use by a machinist and the formulation of a drilling schedule based on design parameters, for use in drilling the "skin" of the bucket. Layout time is approximately 3 man-hours. Tuttle Prilling Systems subcontract the

of various bucket parts with the exception of the "skin" or outside surface containing the holes. The steps in fabrication for a "skin" include setup, drilling, cleaning and fitting the "skin" to a frame. Maximum time spent by Tuttle Prilling Systems on these steps **is** approximately 7 man-hours. The final assembly of the prilling bucket **is** also subcontracted and upon its completion another man-hour is spent cleaning and engraving identifying marks. The total time spent by Tuttle Prilling Systems in manufacturing is eleven (11) man-hours per prilling bucket. The cost per prilling bucket for complete fabrication is broken down as follows:

Materials	\$195.00
Machining	135.00
Welding	<u>150.00</u>
Total cost	<u><u>\$480.00</u></u>

10. The major portion of payments received for any job contracted with Tuttle Prilling Systems represents charges for time given to solving the engineering problems related to construction of a complete prilling system. The partnership **is** confronted with a number of engineering problems every time it takes on a job. These include the new design, or in some cases the redesign of cooling towers, feed pipe configurations, drive support systems, recommendations in regard to prill **size** specification and the overall coordination of all elements of the system.

The prilling bucket discharges molten prills into the cooling tower. The tower must be proportioned accurately in diameter to accommodate horizontal travel of prills and in height to accommodate the crystallization process. More importantly, the cooling tower must supply a continuous flow of air counter-current to the travel of the prills for crystallization to occur. This is achieved utilizing cooling towers properly proportioned of either natural draft

supplied by Tuttle Prilling Systems directly to its clients or the engineering consultants in charge of a project require many hours of study and a careful analysis of heat balance computations carried out by Tuttle Prilling Systems' engineers.

This analysis takes into account many different variables and is different for all plants since it reflects the conditions present at a specific location (i.e. plant site). These include annual ranges of temperature and humidity, desired product specifications and local pollution requirements.

Delivering the molten chemical to the prilling bucket and providing adequate drive support systems are two more problems which Tuttle Prilling Systems provides solutions for. Piping configurations and specification of material, motor sizing, speed requirements and drive shaft designs are all calculated, designed and drafted with the results supplied to its clients. Again, this involves a great deal of time and is unique for most every plant.

Prill size specifications are governed mainly by the design of the prilling bucket. The bucket discharges molten material through sets of orifices drilled through the outer surface on spaced horizontal planes and along lines related to the tangent, at the point of discharge, to the circle described by the bucket as it rotates. The magnitude of the angles increases progressively from top to bottom of the bucket so that the discharge of molten material from each successive horizontal plane starting from the top and moving down, will have a lower resultant velocity and therefore will travel a shorter distance (horizontally). This avoids collisions between drops of molten material and allows for complete utilization of the cross-sectional area of the cooling tower.



While the size of the prills formed is directly related to the prilling bucket design, it is not limited to the bucket alone. This is another point where considerable engineering knowledge and judgement must be exercised. The design of the cooling tower, as well as local environmental conditions, i.e. temperature, humidity and pollution standards, play a major role in formulating a recommendation as to the possible prill size specifications which can be achieved. **If** the prill is made too large for existing conditions, crystallization will occur too slowly or not at all and decomposition of the original chemical may take place. On the other hand, if the prill is made too small, the flow of cooling air through the tower will draw the particles along with it and discharge them into the local environment.

Tuttle Prilling Systems has consulted on systems from Alaska to Saudi Arabia and the conditions present at each site vary tremendously, thereby making each and every design unique.

11. On a typical job, Tuttle Prilling Systems provides the client with three prilling buckets, drafted designs and specifications for support and drive systems, engineering recommendations regarding the above, as well as the cooling tower and consulting services for the overall coordination of the system.

For the above, the partnership's typical fee would be approximately \$18,000.00, plus a once paid royalty of \$2,000.00 for the use of the prilling process (which is covered by patent), plus \$5.00 per ton of designed 24-hour plant capacity. The royalty payment is based on patent claims which include a cylindrical tower, the prilling bucket, a means of delivering the molten material to the bucket, a means of rotating the bucket and a means for causing the flow of cooling air upward through it.

Included in the \$18,000.00 typical fee is the sum of \$1,440.00, said amount representing the cost to manufacture three prilling buckets (\$480.00 x 3). Total time invested by the partnership in the development of a complete prilling system exceeds 200 man-hours. Approximately 8 percent of the fee charged by the partnership is applicable to the manufacture of the prilling buckets, while the balance (92 percent) pertains to engineering services.

12. Prior to the formation of the partnership, petitioner Malcolm H. Tuttle provided, as a sole proprietor, professional engineering services to his clients. Business income of \$11,248.00 reported by Mr. Tuttle on his 1973 tax return represented fees received for services rendered which were identical in nature to those performed by the partnership in subsequent years and described in detail in Findings of Fact "7" through "11", supra.

13. Petitioners, Donald M. Snyder and Katherine Snyder, were nonresidents of New York State for the years 1976 through 1981. Mr. and Mrs. Snyder, during the years at issue, resided in Evergreen, Colorado and all services provided by Mr. Snyder on behalf of Tuttle Prilling Systems were performed outside of New York State. Mr. and Mrs. Snyder filed Federal income tax returns for the years 1976 through 1981 and they also filed tax returns with the State of Colorado for these same years, reporting thereon Mr. Snyder's entire distributive share of partnership income received from Tuttle Prilling Systems.

The Audit Division's examination of the books and records of all three petitioners involved herein did not disclose the existence of unreported income nor were any claimed expenses disallowed as unsubstantiated or nondeductible.

#### CONCLUSIONS OF LAW

A. That, in general, Tax Law section 683, subdivision (a) (made applicable to Article 23 by section 722) prescribes a three year period for the assessment of taxes.

within which an unincorporated business tax deficiency may be imposed; this period is inapplicable, however, where no return is filed. Section 683(c)(1)(A). The returns filed by Tuttle Prilling Systems for the years 1974 through 1979 fully disclosed the nature and amount of income derived by the partnership and sufficiently detailed the nature of the partnership's activities so as to commence the running of the period of limitation. Matter of Arbesfeld, Goldstein v. State Tax Comm., 62 A.D.2d 627. Consequently, the deficiencies for the years 1974 through 1979 are cancelled as untimely rendered. The proposed deficiency issued to the partnership for 1980, said Notice of Deficiency being dated September 16, 1983, was issued within the required three year statute of limitations for assessment.

B. That section 703(c) of the Tax Law provides, in pertinent part, that the practice of any "other" profession :

"...in which capital is not a material income producing factor and in which more than eighty per centum of the unincorporated business gross income for the taxable year is derived from personal services actually rendered by the individual or the members of the partnership...shall not be deemed an unincorporated business".

C. That pursuant to **20 NYCRR 203.11(b)(1)(ii)(f)** professional engineering is recognized as an "other" profession. Furthermore, it is undisputed that capital is not a material income producing factor. Accordingly, the only issue remaining for consideration, with respect to Tuttle Prilling Systems (for 1980) and Malcolm H. Tuttle (for 1973), is whether 80 percent of unincorporated business gross income was derived from personal services actually rendered. It is clear from the evidence presented that no more than 8 percent of unincorporated business gross income generated by both the partnership and Malcolm H. Tuttle was derived from the manufacture of prilling buckets and that the remainder 92 percent

Malcolm H. Tuttle both qualify as an "other" profession within the meaning and intent of Tax Law §703(c).

D. That both the partnership (for 1980) and Malcolm H. Tuttle (for 1973) generated gross income from the practice of a recognized "other" profession (engineering) and also from the conduct of a taxable unincorporated business (manufacture and sale of prilling buckets). The net income generated by petitioners from the practice of the recognized "other" profession **is** exempt from unincorporated business tax. Furthermore, although petitioners had gross income from the conduct of a taxable unincorporated business, there existed no net income from said taxable unincorporated business since the prilling buckets were sold at cost. Accordingly, no unincorporated business tax is due for 1973 and 1980.

E. That Issues III and V are rendered moot in light of Conclusions of Law "A", C" and "D", supra.

F. That the failure of Donald M. Snyder and Katherine Snyder to file returns and pay New York State personal income tax for the years 1976 through 1981 was due to reasonable cause and not willful neglect. Accordingly, the penalties asserted against petitioners pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law are cancelled. Furthermore, petitioners have shown that the deficiency in tax for each year at issue was not due to negligence or intentional disregard of the Tax Law. Accordingly, the penalties asserted under section 685(b) of the Tax Law are also cancelled.

G. That the petition of Tuttle Prilling Systems for the years 1974 through 1980 is granted and the two notices of deficiency issued to said partnership dated September 16, 1983 are hereby cancelled.

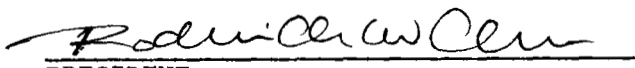
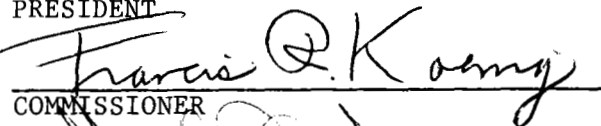

That the petition of Malcolm H. Tuttle for the year 1973 is granted and that portion of the Notice of Deficiency dated September 16, 1983 asserting unincorporated business tax due of \$219.91, plus penalty of \$120.96 and interest, is also cancelled.

That the petition of Donald M. Snyder and Katherine Snyder is granted to the extent indicated in Conclusion of Law "F", supra; and that, except as so granted, their petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

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