

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**PETER JAMES DOOHER** : DETERMINATION  
DTA NO. 822980  
for Redetermination of a Deficiency or for Refund of New :  
York State Personal Income Tax under Article 22 of the :  
Tax Law for the Year 1999. :

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Petitioner, Peter James Dooher, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the year 1999.

A hearing was held before Arthur S. Bray, Administrative Law Judge, at the offices of the Division of Tax Appeals, 1 Penn Plaza, New York, New York, on January 12, 2010, at 10:30 A.M., with all briefs to be submitted by May 26, 2010, which date began the six-month period for the issuance of this determination. By a letter dated November 17, 2010, this six-month period was extended for an additional three-months (Tax Law § 2010[3]). Petitioner appeared pro se. The Division of Taxation appeared by Daniel Smirlock, Esq. (Sarah Dasenbrock, Esq., of counsel at the hearing, and Christopher O'Brien, Esq., on the brief).

***ISSUE***

Whether petitioner is entitled to a credit against his New York State tax liability on the basis of taxes paid to another state.

***FINDINGS OF FACT***

1. Petitioner, Peter James Dooher, did not file a New York State personal income tax return for the year 1999.

2. The Division of Taxation (Division) conducted an audit of petitioner for the year in issue. In the course of the audit, the Division reviewed petitioner's federal tax information provided by the Internal Revenue Service. The Division determined that the amount of tax withheld from petitioner's wages was not sufficient to satisfy his personal income tax liability.

3. On April 12, 2007, the Division issued a Notice of Deficiency to petitioner, which asserted that tax was due in the amount of \$1,120.00 plus interest in the amount of \$698.36 and penalty in the amount of \$748.62 for a balance due of \$2,566.98. The Division relied upon the federal tax information obtained from the Internal Revenue Service to determine the amount of tax due.

4. At the hearing, petitioner did not question the assertion that he did not file an income tax return for New York State for 1999. However, he explained that during the year in issue he was employed by Anderson Consulting in New York. In addition to working in New York, he also worked in Maryland and New Jersey.

5. Petitioner's employer provided the assistance of an accounting firm for help in coordinating and filing the necessary tax forms with the various states. However, it was petitioner's obligation to actually mail the return.

***SUMMARY OF THE PARTIES' POSITIONS***

6. Petitioner asserts that for the year in issue, he filed income tax returns and paid income taxes to Maryland and New Jersey. Petitioner contends that he is entitled to a credit for the taxes paid to each of these states. However, petitioner has not been able to obtain a copy of the tax

form he believes he filed with the State of Maryland. In response, the Division acknowledged that petitioner provided documentation that substantiated that \$668.42 was paid to New Jersey. However, the Division maintains that he is not entitled to a credit for taxes paid to the State of Maryland without proof of payment of such tax.

### ***CONCLUSIONS OF LAW***

A. Tax Law § 6519(a) imposed an obligation on petitioner to file an income tax return. Petitioner has not challenged the Division's assertion that a New York return was not filed for the year in issue.

B. The only issue presented is whether petitioner is entitled to a credit for taxes paid to the State of Maryland. In accordance with Tax Law § 689(e), the burden of proof is on petitioner to show that he is entitled to a credit for such payment.

C. Tax Law § 620(a) provides, in pertinent part, that:

A resident shall be allowed a credit against the tax otherwise due under this article for any *income tax imposed* for the taxable year *by another state* of the United States . . . *upon income both derived therefrom and subject to tax under this article.* (Emphasis added.)

D. In ***Matter of Mallinkrodt*** (Tax Appeals Tribunal November 12, 1992) the Tribunal explained that in order to receive a credit for tax paid to another state, a taxpayer must prove, among other things, that another state of the United States imposed a tax on the subject income. Here, in the absence of any evidence to show a payment of tax to the State of Maryland, petitioner has not satisfied his burden of proof that he is entitled to the credit claimed (*see Matter of Mallinkrodt*).

E. The petition of Peter James Dooher is granted to the extent that the Notice of Deficiency is to be modified by giving petitioner credit for the taxes paid to the State of New Jersey

(Paragraph 6), the petition is in all other respects denied and, as modified, the Notice of Deficiency, dated April 12, 2007, is sustained together with such penalty and interest as is lawfully due.

DATED: Troy, New York  
December 16, 2010

/s/ Arthur S. Bray  
ADMINISTRATIVE LAW JUDGE