

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PAUL E. and MARY ANGELA DOHERTY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of **Personal** Income :
Taxes under Article ~~(X)~~ 22 of the :
Tax Law for the Year(s) ~~XXXX Period(s)~~ :
1966 and 1967

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of January , 1979 , ~~she~~ served the within
Notice of Decision by (certified) mail upon Paul E. and Mary
Angela Doherty (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Paul E. and Mary Angela Doherty
458 Navesink River Road
Red Bank, NJ 07701

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative~~
~~of the~~) petitioner herein and that the address set forth on said wrapper is the
last known address of the (~~representative of the~~) petitioner.

Sworn to before me this

24th day of January , 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PAUL E. and MARY ANGELA DOHERTY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (8) 22 of the :
Tax Law for the Year(s) ~~XXXXXXX~~ :
1966 and 1967

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of January , 1979 , he served the within
Notice of Decision by (certified) mail upon Martin Rubashkin
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Martin Rubashkin
c/o Whitman & Ransom
522 Fifth Avenue
New York, NY 10036
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative
of the) petitioner herein and that the address set forth on said wrapper is the
last known address of the (representative of the) petitioner.

Sworn to before me this

24th day of January , 1979.

Maurice J. Papineau

John Huhn



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

January 24, 1979

**Paul E. and Mary Angela Doherty
458 Navesink River Road
Rad Bank, NJ 07701**

Dear Mr. & Mrs. Doherty:

Please take notice of the **Notice of Decision**
of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section **(a) 690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **four months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Joseph Chyrywat
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions :
of :
PAUL E. and MARY ANGELA DOHERTY : DECISION
for Redetermination of Deficiencies or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1966 and 1967. :
:

Petitioners, Paul E. and Mary Angela Doherty, 458 Navesink River Road, Red Bank, New Jersey 07701, filed petitions for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the years 1966 (for Paul E. Doherty) and 1967 (for Paul E. and Mary Angela Doherty). (File No. 01067)

A small claims hearing was held before Joseph A. Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 24, 1977 at 10:45 A.M. Petitioners appeared by Martin Rubashkin, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner Paul E. Doherty, a resident of New Jersey, properly allocated his income to sources within and without New York State for 1966 and 1967.

FINDINGS OF FACT

1. New York State nonresident returns were filed by petitioner Paul E. Doherty for 1966 and by Paul E. and Mary Angela Doherty for 1967. On said returns, a portion of the partnership income reported for Federal purposes was reported as New York source income.

2. On October 28, 1968, the Income Tax Bureau issued a Notice of Deficiency to Paul E. Doherty for 1966. On July 27, 1970, it issued a Notice of Deficiency for 1967. Both notices were issued on the grounds that a partnership distribution made to Paul E. Doherty in each of the aforementioned years was income from New York State sources.

3. During 1966 and 1967, petitioner Paul E. Doherty, a resident of New Jersey, was a partner in the law firm of Lowenstein, Pitcher, Hotchkiss & Parr (hereinafter "the partnership"), which maintained its only office in New York, New York. He was the only member of the partnership who was licensed to practice law in New Jersey.

4. The partnership was not authorized to practice law in New Jersey during 1966 and 1967, nor was it authorized to maintain an office in said state. During said years, petitioner maintained an office in his own name in Jersey City, New Jersey. Said office was maintained at the expense of the partnership.

5. During 1966 and 1967, petitioner Paul E. Doherty earned fees through his New Jersey office. Said fees were exclusively earned by him from the practice of law in New Jersey.

6. The aforesaid fees were deposited by petitioner in his personal bank account and reported to the partnership. The partnership did not receive the fees; however, it included them in its gross receipts and reported them as part of the partnership distribution made to Paul E. Doherty for the years at issue.

7. The partnership reported all of its income as being derived from New York sources (including the fees in question) for 1966 and 1967, on its New York State partnership returns filed for said years.

8. Section 1:21-6(d)(1) of the Rules of Court of New Jersey precluded a distribution of fees earned by petitioner in New Jersey to his law partnership in New York.

9. Petitioner reported the fees he earned through his New Jersey office on his New York State income tax nonresident returns filed for the years 1966 and 1967, as being derived from sources without New York State.

CONCLUSIONS OF LAW

A. That the partnership distribution made to petitioner Paul E. Doherty by Lowenstein, Pitcher, Hotchkiss & Parr for 1966 and 1967 constitutes income from New York State sources, pursuant to section 637(a)(1) of the Tax Law; that petitioner Paul E. Doherty is required to report all income received from Lowenstein, Pitcher, Hotchkiss & Parr as New York source income, within the meaning and intent of 637(b)(2) of the Tax Law and 20 NYCRR 134.2.

B. That the petition of Paul E. Doherty for 1966 and the petition of Paul E. Doherty and Mary Angela Doherty for 1967 is denied and the notices of deficiency issued October 28, 1968 and July 27, 1970 are sustained.

DATED: Albany, New York
January 24, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER