

STATE OF NEW YORK  
TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>JOHN A. AND DEBORAH D. LAURINO</b>	:	ORDER AND OPINION
	:	DTA No. 807912
for Redetermination of a Deficiency or for Refund of	:	
Personal Income Tax under Article 22 of the Tax Law	:	
for the Year 1988.	:	

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On April 2, 1992, petitioners John A. and Deborah D. Laurino, 8 River Lane, Westport, Connecticut 06880, appearing pro se, made a motion to the Tax Appeals Tribunal to strike the reply brief filed by the Division of Taxation with regard to its exception to the determination of the Administrative Law Judge filed in this matter. The Division of Taxation appeared by William F. Collins, Esq. (Paul Lefebvre, Esq., of counsel).

***ORDER***

Upon reading the Notice of Motion dated the 30th day of March 1992, the Memorandum of Law filed therewith, and the letter of the Division of Taxation dated the 20th day of April 1992, in opposition thereto, and due deliberation having been had thereon,

NOW, upon the motion of John A. and Deborah D. Laurino, petitioners, it is

ORDERED that said motion be and the same is hereby denied.

***OPINION***

Petitioners seek to have the reply brief of the Division of Taxation (hereinafter the "Division"), filed in support of its exception to the determination of the Administrative Law Judge in this matter, stricken from the record because: (1) there is no provision in the Rules of Practice and Procedure of the Tax Appeals Tribunal (hereinafter the "Tribunal") for the filing of reply briefs; (2) the Division waived its rights to submit further arguments on exception at the time of submission of its brief in support of its exception; and (3) the Division has consistently caused delays in these proceedings. The Division opposes the motion, arguing that: (1) the

Tribunal has never stricken a reply brief even though there is no provision in its regulations providing for such briefs; (2) reply briefs are provided for in both hearings before administrative law judges and in Article 78 proceedings concerning Tribunal decisions; and (3) accepting this reply brief is consistent with the Tribunal's preference for information as expressed in Matter of Standard Mfg. Co. (Tax Appeals Tribunal, July 11, 1991).

The issue of whether reply briefs are appropriate in cases before the Tribunal in that they are not provided for in the Rules of Practice and Procedure has not been formally addressed in an order or decision of the Tribunal prior to this motion. However, as noted by the Division, the Tribunal has consistently accepted reply briefs and, in appropriate cases, granted relief to the other party by allowing a response to be filed. While we agree with what appears to be one of petitioners' primary arguments, that a reply brief should not be utilized as a vehicle for obtaining an extension to file what is actually a brief in support of an exception, we are guided by our previously expressed preference for not unnecessarily limiting the amount of information provided to us by the parties concerning their case (Matter of Standard Mfg. Co., *supra*).

Looking at the circumstances of this case, it appears that the brief was filed in a reasonable amount of time. Petitioners' brief in opposition to the Division's exception was received by the office of the Secretary to the Tribunal on January 21, 1992. The Division's reply brief was received on February 21, 1992. The Division, knowing that there is no regulatory provision for reply briefs, should have notified the Secretary to the Tribunal of its intention to file such a brief. However, the submission of a reply brief within one month after petitioners' brief was filed, cannot be considered to be unreasonable to the extent that it would require striking the brief (*cf.*, Feldman v. New York City Tr. Auth., 171 AD2d 473, 567 NYS2d 228; Stanley v. City of New York, 157 AD2d 466, 549 NYS2d 395, appeal dismissed 75 NY2d 947, 555 NYS2d 694 [cases involved unreasonable delays in following a specific court rule which set forth a time limit to settle an order and provided that the court could excuse non-compliance only on a showing of good cause]). Therefore, the Division's reply brief will be accepted.

Petitioners also argue that the reply brief of the Division should be stricken because the Division has caused other delays during these proceedings. A motion to strike a reply brief is not the context in which the Tribunal can review a complaint of a petitioner that the Division has filed a late answer (see, 20 NYCRR 3000.4).

Accordingly, we deny petitioners' motion to strike the reply brief of the Division and provide that petitioners be allowed until December 10, 1992 to submit their response to the reply brief. In that oral argument has not been requested by the parties in this matter, a decision will be issued by the Tribunal based upon the documents that have been submitted prior to this order and the above-mentioned response of petitioners.

DATED: Troy, New York  
November 5, 1992

/s/John P. Dugan  
John P. Dugan  
President

/s/Francis R. Koenig  
Francis R. Koenig  
Commissioner

/s/Maria T. Jones  
Maria T. Jones  
Commissioner