

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
ISAAC FISBOIN AND KEREN REZNIK	:	DECISION DTA NO. 850350
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 2016.	:	

Petitioners, Isaac Fisboin and Keren Reznik, filed an exception to the determination the Administrative Law Judge issued on June 26, 2025. Petitioners appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Daniel Oliko, Esq., of counsel).

Petitioners filed a brief in support of the exception. The Division of Taxation filed a letter brief in opposition.¹ Petitioners filed a brief in reply. Oral argument was heard via Webex on February 26, 2026, which date began the six-month period for the issuance of this decision.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether petitioners have met their burden of proving that they are entitled to a refund of personal income tax for the year 2016.

¹ Petitioners filed a notice of motion with this Tribunal to strike or disregard the Division of Taxation's letter brief in opposition. The parties were given an opportunity to submit responses to the notice of motion. On December 18, 2025, the Tribunal denied petitioners' motion.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

1. The Division of Taxation (Division) performed a review of its records regarding petitioners' personal income tax filings for the tax year 2016 and determined that petitioners, Isaac Fisboin and Keren Reznik, did not file a personal income tax return for that year with New York State.

2. The Division issued correspondence to petitioners, dated November 20, 2020, stating that its records indicated that petitioners earned income taxable to New York in 2016 and they may be required to file a New York State income tax return for that year (form AU-222). Form AU-222 further states that the Division had no record that petitioners filed a New York income tax return for 2016.

3. Petitioners subsequently filed a joint New York State nonresident and part-year resident income tax return, form IT-203, for tax year 2016 (2016 return). On their 2016 return, petitioners reported New York State tax in the amount of \$5,229.00, total payments of \$9,133.00, consisting of New York State and New York City tax withheld in the amount of \$5,896.00 and \$3,237.00, respectively, and claimed a refund in the amount of \$3,904.00.

4. The Division issued an account adjustment notice, dated March 9, 2021, denying petitioners' claim for refund in the amount of \$3,904.00, on the basis that the refund claim was not timely filed. The account adjustment notice indicated that petitioners' refund claim for 2016 was filed on December 30, 2020.

5. The Division issued a notice of disallowance, dated November 3, 2021, to petitioners, denying their claim for refund for tax year 2016 in the amount of \$3,904.00.

6. Petitioners filed a request for conciliation conference with the Division's Bureau of Conciliation and Mediation Services (BCMS) protesting the notice of disallowance. By order, dated November 4, 2022 (CMS No. 000334128), the conciliation conferee sustained the statutory notice.

7. On December 1, 2022, petitioners filed a timely petition with the Division of Tax Appeals protesting the BCMS order.

8. The Division introduced an affidavit of Oscar Boomer, Taxpayer Service Specialist 2, sworn to on August 29, 2024, into the record. According to the affidavit, petitioners' 2016 return was filed on December 2, 2020.

9. The Division introduced into the record certifications from the Office of Budget and Management Analysis, Disclosure and Government Exchange, which states that it conducted a search of the Division's records on June 12, 2024 and certifies that no personal income tax returns or extensions were filed by petitioners for tax year 2016 prior to December 2, 2020.

10. During the hearing, petitioners offered the testimony of Mr. Fisboin. He testified that petitioners' tax preparer, Alan Dubrow, prepared their 2016 return on September 7, 2017. Mr. Fisboin further testified that the Division notified him by letter in late 2020 that petitioners had not filed their 2016 return. He testified that he contacted the Division in response to the letter and, subsequently, provided the Division with the 2016 return. According to Mr. Fisboin, the 2016 return was originally "mailed in 2017," but he did not testify as to a specific date when the 2016 return was filed. He stated that historically he filed his federal and state returns in a timely manner. During cross-examination, Mr. Fisboin testified that he "usually aim[s] to submit [their state tax returns] by the April deadline, unless there's a need for an extension." He testified that he did not believe they requested an extension for the filing of their 2016 return.

11. Petitioners also offered the testimony of Alan Dubrow. Mr. Dubrow was petitioners' tax preparer for 2016. Mr. Dubrow testified that petitioners provided him with documents to prepare their federal and state income tax returns for 2016 in a timely manner and he prepared the returns. Mr. Dubrow electronically filed petitioners' 2016 federal income tax return and it was accepted by the Internal Revenue Service on September 19, 2017. Mr. Dubrow testified that he prepared petitioners' New York State 2016 return on September 7, 2017. He further testified that he attempted to electronically file petitioners' New York State 2016 return, but it was rejected and petitioners were required to file manually by mailing their return. The record is unclear as to when Mr. Dubrow attempted to electronically file petitioners' 2016 return for New York State. Mr. Dubrow testified that if an electronic return is rejected, it is his office's procedure to immediately call the client, prepare and sign the return and mail it to the client for the client to sign, and he includes a stamped envelope for the client to mail the return. According to Mr. Dubrow, when he calls clients to let them know a return is coming, he instructs them to call him if they do not receive it. When questioned on cross-examination whether he knew whether petitioners signed and mailed the return, he responded, "I can only assume, yes. I would not have been at his house when he received it and sent it." Mr. Dubrow did not state what date he mailed the return to petitioners for their signature.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge noted that the limitation period for claiming a credit or refund of personal income tax is three years from the date the return was filed or two years from the date the tax was paid, whichever is later (Tax Law § 687 [a]). The Administrative Law Judge further noted that Tax Law § 687 (a) limits the refund allowed to the amount of taxes paid within the three-year period preceding the filing of the refund claim, plus the period for any extension

of time for filing the return. The Administrative Law Judge noted that under Tax Law § 687 (i), any tax paid by a taxpayer, income tax withheld from a taxpayer, and any amount paid by a taxpayer as estimated income tax for a taxable year is deemed to have been paid on the fifteenth day of the fourth month following the close of the taxable year with respect to which such amount constitutes a credit or payment.

The Administrative Law Judge determined that in order for petitioners to be entitled to the refund of the excess withholding deemed paid in April 2017, petitioners must prove with clear and convincing evidence that the refund claim was filed by April 2020 and that petitioners failed to meet this burden.

ARGUMENTS ON EXCEPTION

Petitioners contend that they proved the timeliness of their 2016 personal income tax refund claim. Petitioners argue that they mailed their 2016 return and refund claim in 2017, well before the April 2020 deadline for entitlement to the refund claimed. The evidence of such presented by petitioners is that their tax preparer was unable to electronically file the tax return and therefore mailed their return to their Florida residence to be signed and mailed to the Division by petitioners.

In response, the Division argues that petitioners were unable to specify the date they mailed the 2016 tax return containing the refund claim to the Division, as neither the testimony of the tax preparer nor the testimony of petitioner, Isaac Fisboin, offered an affirmative date of filing.

The Division notes that neither evidence of postage nor mailing of the return was provided for 2017 and that the evidence in the record reflects that the filing was postmarked on

December 2, 2020, and therefore asserts that petitioners have not met their burden of proving that the refund denial notice was erroneous.

OPINION

Petitioners bear the burden of proof to establish by clear and convincing evidence that the Division's disallowance of the claimed refund is erroneous (Tax Law § 689 [e]; ***Matter of Suburban Restoration Co. v Tax Appeals Trib. of State of N.Y.***, 299 AD2d 751, 752 [3d Dept 2002]). Tax Law § 687 (a) provides that a claim for refund of an overpayment of personal income tax must be filed by the taxpayer within three years from the time the return was filed or within two years from the time the tax was paid, whichever period expires the latest.

Petitioners' income tax refund was requested with their 2016 tax return. The record reflects that petitioners' 2016 personal income tax return was postmarked on December 2, 2020, and that no personal income tax returns or extensions were filed by petitioners for tax year 2016 prior to December 2, 2020 (*see* findings of fact 8 and 9). Petitioner, Isaac Fisboin, asserts that the 2016 return was originally "mailed in 2017," but was unable to provide a specific date of mailing or proof of certified or registered mail (*see* finding of fact 10). Petitioner, Isaac Fisboin, further testified before the Administrative Law Judge that he did not believe they requested an extension for the filing of their 2016 return (*id.*).

The record lacks any proof of mailing of the 2016 return by registered or certified mail prior to December 2, 2020. Therefore, petitioners' 2016 income tax return was deemed filed on December 2, 2020, and the refund requested on that return was timely made within three years from the time the return was filed.

However, Tax Law § 687 (a) limits the ***amount*** of the refund to the amount of taxes paid within the three years immediately preceding the filing of the refund claim, plus the period for

any extension of time for filing the return. Therefore, petitioners' refund amount is limited to taxes paid during the three years immediately preceding the December 2, 2020 filing date. The amount that petitioners sought as an overpayment was based on excess withholding, which is deemed to have been paid on the 15th day of the fourth month following the close of the taxable year (i.e. April 15, 2017) (*see* Tax Law § 687 [i]). Petitioners did not have an extension for the filing of their 2016 return and there is no evidence in the record that petitioners paid any tax for the 2016 tax year within the three years preceding the December 2, 2020 filing of their 2016 return.

We have clarified that Tax Law § 687 (a) restricts the allowable amount of a refund to the amount of tax paid for the year in issue (in this case, 2016) within three years preceding the date of the filing of the refund claim (*Matter of Durkin*, Tax Appeals Tribunal, October 25, 2001). Here, as the over-withheld tax was deemed paid April 15, 2017, it was not paid within the three years immediately preceding the December 2, 2020 filing, and petitioners' claim for refund was therefore properly denied.

Petitioners have failed to meet their burden of proof of establishing with clear and convincing evidence that the notice of disallowance denying the claim for refund was erroneous and the notice is therefore sustained.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Isaac Fisboin and Keren Reznik is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Isaac Fisboin and Keren Reznik is denied; and
4. The notice of disallowance dated November 3, 2021 is sustained.

DATED: Albany, New York
June 25, 2026

/s/ Cynthia M. Monaco
Cynthia M. Monaco
Commissioner

/s/ Kevin A. Cahill
Kevin A. Cahill
Commissioner