

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
ISAAC FISBOIN AND KEREN REZNIK	:	ORDER AND OPINION 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, appearing pro se by Isaac Fisboin, made a motion to the Tax Appeals Tribunal to strike the brief in opposition filed by the Division of Taxation (Division) in response to petitioners' exception to the determination of the Administrative Law Judge filed in this matter. The Division appeared by Amanda Hiller, Esq. (Daniel Olik, Esq., of counsel).

ORDER AND OPINION

Petitioners seek to have the brief in opposition filed by the Division in response to petitioners' exception stricken from the record because petitioners allege that the brief was not timely filed or served upon them and because the Division is unable to provide proof of mailing. The Division opposes the motion, arguing that petitioners' failure to include a Notice of Motion and Affirmation in Support as required by 20 NYCRR 3000.5 renders the motion invalid; that the brief was timely filed with the Tribunal and timely served upon petitioners, and, if not timely filed, was confirmed received by petitioners within a reasonable time; and that the brief in opposition is not a document required to be filed within a specified time frame and therefore the Tribunal has discretion to determine whether the circumstances of the matter necessitate striking

such brief.

20 NYCRR 3000.5 [a] permits motions and provides that the Tribunal shall be guided but not bound by the CPLR in resolving motions made pursuant to this Part. The contents required in a notice of motion do not specify that a “Notice of Motion” be attached. The guiding rules provide only that a motion, referred to as a notice of motion, must be typewritten and specify the supporting papers (e.g., affidavits, admissions) upon which the motion is based and, in separate numbered paragraphs, the relief demanded and the grounds for such relief (20 NYCRR 3000.5 [c]). The Division cites *Matter of Silvestri*, Tax Appeals Tribunal, March 17, 2022, in asserting that the absence of a notice of motion renders the motion invalid.

The matter at hand is distinguishable from the *Matter of Silvestri* in that therein, the Division failed to provide a letter (Notice of Motion) substantiating and introducing the motion intended, with that record reflecting that only the required supporting documentation was provided. Here, petitioners timely filed a motion to strike the Division’s brief in opposition, and the contents of the motion fulfilled the requirements noted above. In addition, our regulations state that the notice of motion must specify the supporting papers (e.g., affidavits, admissions) upon which the motion is based (20 NYCRR 3000.5 [c]) and does not independently require an Affirmation in Support of the motion. Therefore, petitioners’ motion is properly before the Tribunal.

We next address the matter of timeliness of the Division’s brief in opposition. While our regulations are silent as to the mailing date of a document not required to be filed, 20 NYCRR 3000.22 [a] [1] provides that documents required to be filed under authority of any provision of article 40 of the Tax Law are deemed filed with the Tribunal as of the date of the United States postmark stamped on the envelope. The date the Division filed its brief in opposition with the

Tribunal is the operative date for purposes of reviewing the issue presented in this matter. The Division's brief in opposition was due on September 8, 2025. The brief was received by the Office of the Secretary to the Tax Appeals Tribunal on September 5, 2025. As the brief was sent by regular United States Postal Service mail, August 29, 2025 is deemed the date of receipt by the Tribunal. Therefore, the Division's brief in opposition was received within 30 days after petitioners' service of the brief in support.

Petitioners assert that the Division did not timely deliver to them its brief in opposition and the record reflects that the Division is unable to provide proof of mailing. However, the record also reflects that the Division provided, and petitioners confirmed receipt of the brief via email only four days after the due date. We have previously clarified that a reply brief is optional to the parties and is not a document required to be filed, therefore, the Tribunal has discretion to assess whether a reply brief was delivered within a reasonable amount of time (*see Matter of Laurino*, Tax Appeals Tribunal, November 5, 1992). Similarly, the submission of a brief in opposition is optional for the responding party and our regulations only provide that "[w]ithin 30 days after service of the brief in support, the other party *may* submit a brief in opposition and shall serve a copy thereof on the party taking exception" (20 NYCRR 3000.17 [b] [2]). In accordance with our order in *Matter of Laurino*, the Tribunal has discretion to similarly assess whether a brief in opposition was delivered within an unreasonable amount of time justifying its striking from the record. The Tribunal has also historically clarified that a document not required to be filed and that is received six days past its due date does not rise to the standard of unreasonableness justifying its striking from the record (*Matter of Williams*, Tax Appeals Tribunal, September 1, 1994). The same applies to the matter at hand and the receipt of a copy of the brief within four days of the due date is not an unreasonable delay justifying its

striking.

Accordingly, we deny petitioners' motion to strike the Division's brief in opposition to the exception.

ORDERED that the motion to strike filed by petitioners, Isaac Fisboin and Keren Reznik, is hereby denied.

DATED: Albany, New York
December 18, 2025

/s/ Jonathan S. Kaiman
Jonathan S. Kaiman
President

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

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