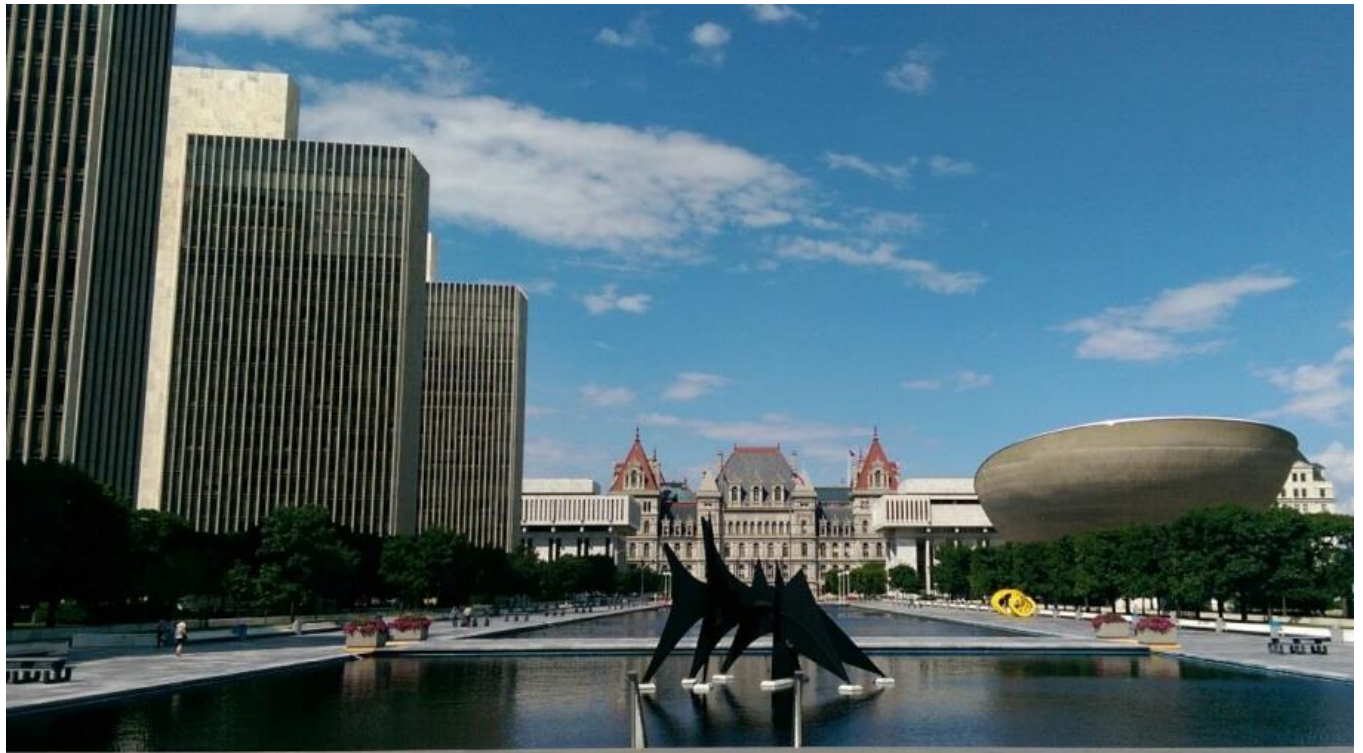




# Tax Appeals



# ANNUAL REPORT

FISCAL YEAR 2016-2017

**ANDREW M. CUOMO, GOVERNOR**

**ROBERTA MOSELEY NERO, PRESIDENT AND COMMISSIONER**

**JAMES H. TULLY, JR. COMMISSIONER**

**DIERDRE K. SCOZZAFAVA, COMMISSIONER**





**Roberta Moseley Nero**

President and Commissioner

**New York State Tax Appeals Tribunal**

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October 17, 2017

The Honorable Andrew M. Cuomo  
Governor of the State of New York

The Honorable John J. Flanagan  
Temporary President of the Senate

The Honorable Carl E. Heastie  
Speaker of the Assembly

Dear Governor Cuomo, Senator Flanagan and Speaker Heastie:

Pursuant to Tax Law Section 2006 (13), I am pleased to submit the Annual Report of the Tax Appeals Tribunal/Division of Tax Appeals ("Tax Appeals") for the fiscal year 2016-2017. Together with the statutorily required statistics regarding operations, the report contains general information regarding Tax Appeals, including its mission, functions and operations.

Tax Law Section 2000 imposes upon Tax Appeals the responsibility of "providing the public with a just system of resolving controversies with [the Division of Taxation of the] department of taxation and finance and to ensure that the elements of due process are present with regard to such resolution." We take great pride in striving to meet that goal by providing a fair, efficient and productive process.

I hope that you will find the report informative and useful. I am always available to respond to any questions or observations you may have concerning the Annual Report or the operations of Tax Appeals in general.

Respectfully submitted,

A handwritten signature in black ink that reads "Roberta Moseley Nero". The signature is written in a cursive, flowing style.

Roberta Moseley Nero  
President and Commissioner

ENCLOSURE



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## MISSION

It is the mission of the New York State Tax Appeals Tribunal (Tribunal)/Division of Tax Appeals (collectively Tax Appeals) “to provide the public with a clear, uniform, rapid, inexpensive and just system of resolving controversies with the Division of Taxation of the New York State Department of Taxation and Finance” (20 NYCRR 3000.0) (Taxation). In accomplishing our mission, we continuously strive to provide the procedural framework “necessary to facilitate the rapid resolution of controversies, while at the same time avoiding undue formality and complexity” (20 NYCRR 3000.0).

## ORGANIZATION

### HISTORY

The establishment of Tax Appeals on September 1, 1987 separated the administration of taxes from the adjudication of disputes between taxpayers and Taxation. Under prior law, disputes between taxpayers and Taxation were resolved by a three-member Tax Commission, the President of which was also the Commissioner of the Department of Taxation and Finance (at the time, the equivalent of Taxation). As Taxation was always one of the parties before the Tax Commission, critics of the system noted that there was, at the least, a perception of bias.

In addition, the regulations that were at issue in many of the cases were promulgated by the Tax Commission itself. Again, the criticism was that the body that had adopted the regulations at issue could not fairly and objectively review their validity or application in an adjudicatory proceeding. Finally, under the former system, the hearing function was performed by a hearing officer who heard the case and recommended a decision to the Tax Commission, which then rendered the decision. Critics argued that the person who had the opportunity to weigh the evidence and evaluate the credibility of the witnesses

at the hearing should be the person to make the decision.

Under the current system, the Commissioner of the Department of Taxation and Finance is not a member of the Tribunal, and the members of the Tribunal and the Division of Tax Appeals are fully independent from Taxation. The Tribunal can review the validity and application of the regulations of Taxation at issue in the cases before it. However, the Tribunal only has authority to adopt rules and regulations relating to the exercise of its duties, including rules of practice and procedure, and the duties of the Administrative Law Judges to hear and determine the cases before them.

### THE TRIBUNAL

The Division of Tax Appeals is headed by the Tribunal, which consists of three commissioners nominated by the Governor and confirmed by the New York State Senate. The commissioners are appointed for nine-year terms. One of these commissioners is designated as the President of the Tribunal by the Governor and is solely responsible for the administration of Tax Appeals as a whole.

At least two of the commissioners must be attorneys admitted to practice in New York State for a period of at least ten years and be knowledgeable on the subject of taxation and one member need not be an attorney, but must also be knowledgeable on the subject of taxation (Tax Law § 2004).

During fiscal year 2016-2017, the Tribunal consisted of President and Commissioner Roberta Moseley Nero, and Commissioners James H. Tully, Jr. and Dierdre K. Scozzafava. (Note: Commissioner Tully retired in April of 2017. In June 2017, Anthony Giardina was appointed Commissioner.)

The Tribunal is responsible for the administration of Tax Appeals and the appellate portion of the process of resolving

controversies. It is assisted in its duties by the offices of the Secretary to the Tribunal and the Counsel to the Tribunal.

The Secretary to the Tribunal assists the President in administering the judicial functions of the Division and handles all procedural matters with regard to the cases before the Tribunal.

The Counsel to the Tribunal assists the Tribunal in the preparation of decisions on cases before it, as well as preparing the agency's regulatory and legislative proposals, and advises the Tribunal on legal issues as they arise.

### **THE DIVISION OF TAX APPEALS**

The Supervising Administrative Law Judge is responsible for the hearing, or trial, level of the process of resolving controversies. This includes the day-to-day administration of both formal hearings before Administrative Law Judges and small claims hearings before Presiding Officers. During fiscal year 2016-2017, the hearing staff of the Division of Tax Appeals was comprised of seven Administrative Law Judges and one Presiding Officer, who left state service in August 2016. The position remains vacant.

The remaining principal staff operations are handled by the Hearing Operations Section, consisting of Petition Intake, Pre-Hearing Support, and Determination Publishing.

## **ADJUDICATORY PROCESS**

### **INTRODUCTION**

A taxpayer can protest any written notice issued by Taxation that has advised the taxpayer of a tax deficiency, a determination of tax due, a denial of a refund or credit application; a denial, cancelation, revocation or suspension of a license, permit or registration; or any other notice that gives a

person the right to a hearing in the Division of Tax Appeals by filing a petition for a hearing (Tax Law § 2008). Unless protested by the taxpayer affected by such action, the action asserted by Taxation will stand.

Of the cases filed with Tax Appeals this fiscal year, 63% involved the assertion by Taxation that the taxpayer owed additional taxes. The remaining cases involved situations where taxpayers claimed refunds of taxes paid (29%) and controversies involving various licenses and registrations (8%).

### **FORMAL HEARINGS**

Formal hearings are held before an Administrative Law Judge. Hearings are currently held in Albany, New York City and Rochester. The Administrative Law Judge hears the testimony, evaluates the evidence and prepares and issues a written determination within six months after the completion of the hearing or submission of briefs of the parties, whichever is later (Tax Law § 2010 [3]). The determination of the Administrative Law Judge sets forth the issues in the case, the relevant facts established by the parties, the necessary legal analysis and the conclusions of law relevant to the issues. The determination is binding on both the taxpayer and Taxation unless one or both of the parties request a review of the determination by the Tribunal by filing an exception with the Secretary to the Tribunal within 30 days of the issuance of the determination (Tax Law §§ 2006 [7], 2010 [4]).

### **SMALL CLAIMS HEARINGS**

As an alternative to a formal hearing, taxpayers have the right to elect a small claims proceeding if the amount in dispute is within certain dollar limits as prescribed by regulations adopted by the Tribunal (Tax Law § 2012). Currently, the limits are \$20,000 (not including penalty and interest) for any 12-month period for personal income and



corporate franchise tax and \$40,000 for sales and compensating use taxes (20 NYCRR 3000.13 [b]). Small claims hearings are held in Albany, New York City, Rochester, Buffalo, Syracuse, Utica and Binghamton. A small claims hearing is conducted informally by a Presiding Officer, whose determination is final for both parties. However, at any time before the conclusion of the small claims hearing, a taxpayer may discontinue the proceeding and request that a formal hearing be held before an Administrative Law Judge (Tax Law § 2012).

### **TRIBUNAL REVIEW OF ADMINISTRATIVE LAW JUDGE DETERMINATIONS**

After reviewing the record of the hearing and any arguments, oral or by brief, the Tribunal issues a written decision affirming, reversing or modifying the determination of the Administrative Law Judge, or remanding the case for additional proceedings before such Administrative Law Judge (Tax Law § 2006 [7]). Each decision of the Tribunal sets forth the issues in the case, the relevant facts established by the parties in the record at hearing and the Tribunal's opinion, which applies applicable law to such facts. Each decision must be rendered within six months from the date of notice to the Tribunal that exception is being taken to the determination of the Administrative Law Judge. This period is extended if oral or written argument is made before the Tribunal (Tax Law § 2006 [7]). In cases where oral arguments have been requested and granted, such proceedings are currently held in Albany and New York City.

Decisions rendered by the Tribunal are final and binding on Taxation (i.e., there is no right of appeal). However, taxpayers who are not satisfied with the decision of the Tribunal have the right to appeal the Tribunal's decision by instituting a proceeding pursuant to Article 78 of the Civil Practice Law and Rules with the Appellate Division, Third Department of the State Supreme Court. An

Article 78 proceeding must be initiated within four months of the issuance of the Tribunal decision (Tax Law § 2016).

### **PUBLICATION OF TRIBUNAL DECISIONS AND ADMINISTRATIVE LAW JUDGE DETERMINATIONS**

Tax Law § 2006 (9) requires the Tribunal to publish and make available to the public all determinations rendered by Administrative Law Judges and all decisions rendered by the Tribunal. The Tribunal may charge a reasonable fee for a copy of such determinations or decisions.

Accordingly, the Tribunal provides copies of individual decisions and determinations upon request. In addition, decisions and determinations are available on the agency's website at [www.dta.ny.gov](http://www.dta.ny.gov).

The Tribunal also posts on its website a monthly docket, which indicates Administrative Law Judge determinations and Tribunal decisions issued for the month, as well as exceptions filed to Administrative Law Judge determinations and Article 78 proceedings instituted by taxpayers to review Tribunal decisions.

All Tribunal decisions and Administrative Law Judge determinations are also available on Westlaw and Lexis, and are commercially published by William S. Hein and Company, whose publication also includes the monthly dockets. Commerce Clearance House also has available selected determinations and decisions.

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## **DISPOSITION OF CASES**

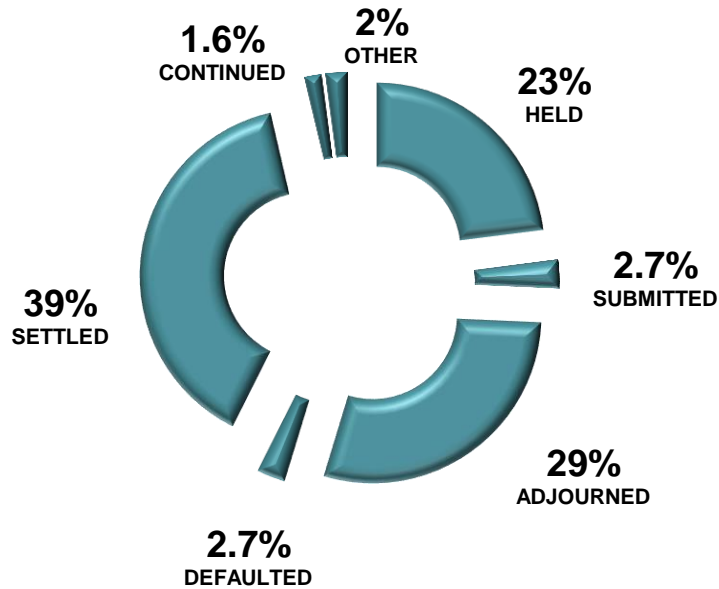
The following tables and charts show the inventory of cases before Tax Appeals and the disposition of cases by Administrative Law Judges, the Small Claims Presiding Officer and the Tribunal for fiscal year 2016-2017.

**FORMAL HEARINGS**

<b>2016-2017 INVENTORY (NET CASES):</b>	
<b>BEGINNING INVENTORY</b>	<b>485</b>
<b>Add (+)</b>	
<b>Cases Received</b>	<b>445</b>
<b>Default Vacated</b>	<b>0</b>
<b>Subtotal</b>	<b>445</b>
<b>TOTAL CASES FOR HEARINGS</b>	<b>930</b>
<b>Deduct (-)</b>	
<b>Petitions Withdrawn</b>	<b>63</b>
<b>Closing Orders Issued</b>	<b>160</b>
<b>Defaults</b>	<b>4</b>
<b>Determinations Issued</b>	<b>136</b>
<b>Petitions Dismissed</b>	<b>8</b>
<b>Referred to BCMS</b>	<b>21</b>
<b>Bankruptcy</b>	<b>3</b>
<b>Subtotal</b>	<b>395</b>
<b>ENDING INVENTORY</b>	<b>535</b>

**ANALYSIS OF CASE SCHEDULING**

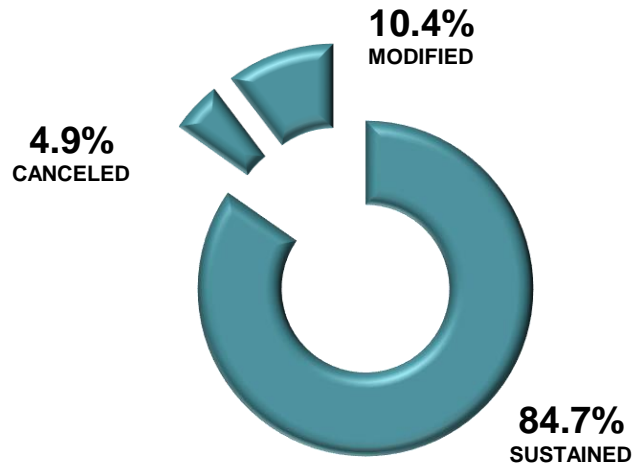
During the fiscal year 2016-2017, **185** cases were scheduled for a formal hearing before Administrative Law Judges. Of that total:



<b>CASE SCHEDULING</b>		<b>NUMBER</b>	<b>PERCENT</b>
<b>SETTLED</b> by parties before hearing		72	39%
<b>HELD</b> and completed		42	23%
<b>CONTINUED</b> for completion		3	1.6%
<b>ADJOURNED</b> before hearing		54	29%
<b>SUBMITTED</b> on papers without hearing		5	2.7%
<b>DEFAULTED</b> due to failure of one of the parties to appear		5	2.7%
Handled by <b>OTHER</b> means		4	2%

**ANALYSIS OF DETERMINATIONS**

Case Disposition: During the fiscal year 2016-2017, the Administrative Law Judges issued **144** determinations. Of that total:



DETERMINATIONS	NUMBER	PERCENT
<b>SUSTAINED</b> the deficiency or other action	122	84.7%
<b>CANCELED</b> the deficiency or other action	7	4.9%
<b>MODIFIED</b> the deficiency or other action	15	10.4%

**BREAKDOWN OF DETERMINATIONS BY TAX**

<b>TAX</b>	<b>NUMBER</b>	<b>PERCENT</b>
<b>SALES</b>	64	44.4%
<b>INCOME</b>	61	42.4%
<b>CORP. FRANCHISE</b>	6	4.2%
<b>MISCELLANEOUS</b>	13	9%
<b>TOTAL</b>	<b>144</b>	<b>100%</b>

**AVERAGE ELAPSED TIME**

The average elapsed time between the later of the hearing date or the last brief date and the issuance of the determination was: Mean **3.97** months and Median **3** months.

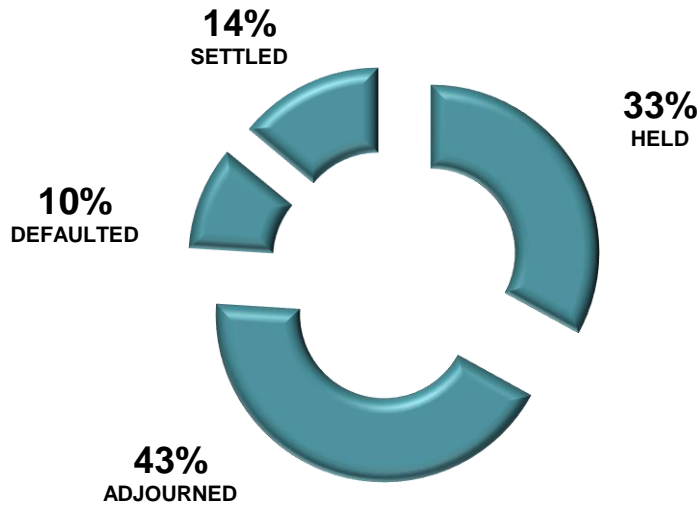
**SMALL CLAIMS HEARINGS**

<b>2016-2017 INVENTORY (NET CASES):</b>	
<b>BEGINNING INVENTORY</b>	<b>53</b>
<b>Add (+)</b>	
<b>Cases Received</b>	<b>55</b>
<b>TOTAL CASES FOR HEARINGS</b>	
	<b>108</b>
<b>Deduct (-)</b>	
<b>Petitions Withdrawn</b>	<b>3</b>
<b>Closing Orders Issued</b>	<b>22</b>
<b>Defaults</b>	<b>4</b>
<b>Determinations Issued</b>	<b>12</b>
<b>Subtotal</b>	<b>41</b>
<b>ENDING INVENTORY</b>	<b>67</b>



**ANALYSIS OF CASE SCHEDULING**

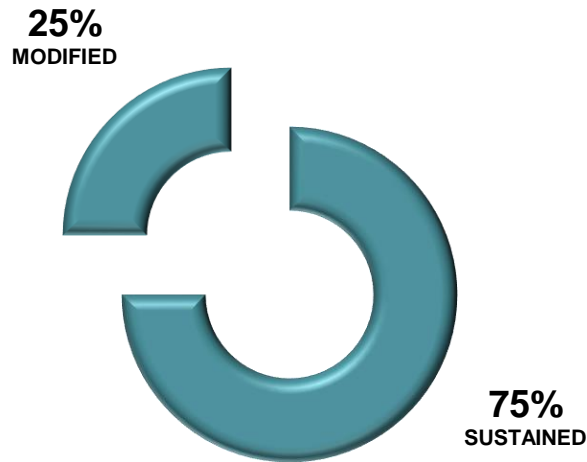
During the fiscal year 2016-2017, **21** cases were scheduled for a small claims hearing before Presiding Officer. Of that total:



<b>CASE SCHEDULING</b>	NUMBER	PERCENT
<b>SETTLED</b> by parties before hearing	3	14%
<b>HELD</b> and completed	7	33%
<b>ADJOURNED</b> before hearing	9	43%
<b>SUBMITTED</b> on papers without hearing	0	0%
<b>DEFAULTED</b> due to failure of one of the parties to appear	2	10%

**ANALYSIS OF DETERMINATIONS**

Case Disposition: During the fiscal year 2016-2017, the Presiding Officer issued **12** small claims determinations. Of that total:



DETERMINATIONS	NUMBER	PERCENT
<b>SUSTAINED</b> the deficiency or other action	9	75%
<b>CANCELED</b> the deficiency or other action	0	0%
<b>MODIFIED</b> the deficiency or other action	3	25%

**BREAKDOWN OF DETERMINATIONS BY TAX**

<b>TAX</b>	<b>NUMBER</b>	<b>PERCENT</b>
<b>INCOME</b>	8	67%
<b>SALES</b>	3	25%
<b>MISCELLANEOUS</b>	1	8%
<b>TOTAL</b>	<b>12</b>	<b>100%</b>

**AVERAGE TIME ELAPSED**

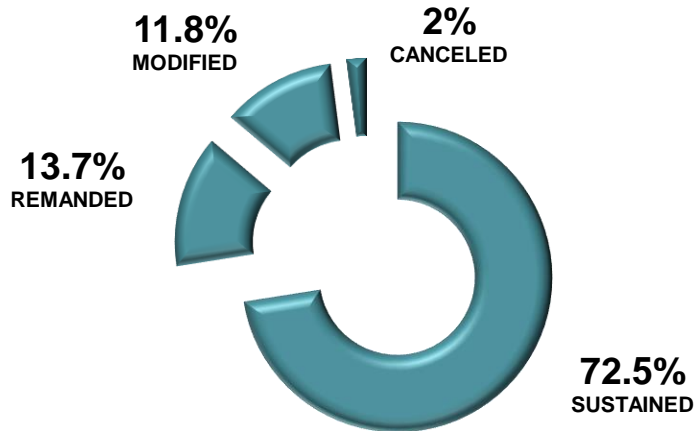
The average elapsed time between the later of the hearing date or the last brief date and the issuance of the determination was: Mean **1.35** months and Median **1** months.

**TAX APPEALS TRIBUNAL**

<b>2016-2017 INVENTORY (NET CASES):</b>		
<b>BEGINNING INVENTORY</b>		<b>84</b>
<b>Add (+)</b>		
	Cases Received	49
<b>TOTAL CASES</b>		<b>133</b>
<b>Deduct (-)</b>		
	Decisions Issued	51
	Settled	2
	<b>Subtotal</b>	<b>53</b>
<b>ENDING INVENTORY</b>		<b>80</b>

**ANALYSIS OF DECISIONS**

Case Disposition: During the fiscal year 2016-2017, the Tax Appeals Tribunal issued **51** decisions. Of that total:



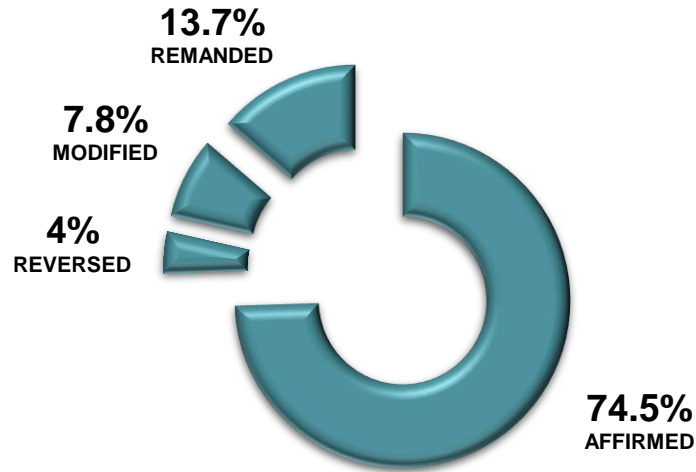
DECISIONS	NUMBER	PERCENT
<b>SUSTAINED</b> the deficiency or other action	37	72.5%
<b>CANCELED</b> the deficiency or another action	1	2%
<b>MODIFIED</b> the deficiency or other action	6	11.8%
<b>REMANDED</b> the matter to the ALJ	7	13.7%

**BREAKDOWN OF DECISIONS BY TAX**

TAX	NUMBER	PERCENT
<b>INCOME</b>	26	51%
<b>SALES</b>	14	27.5%
<b>CIGARETTE TAX</b>	4	7.8%
<b>DMV LICENSES</b>	4	7.8%
<b>CORPORATION TAX</b>	2	3.9%
<b>MORTGAGE RECORDING TAX</b>	1	2%
<b>TOTAL</b>	<b>51</b>	<b>100%</b>

**TRIBUNAL DISPOSITION OF ALJ DETERMINATIONS**

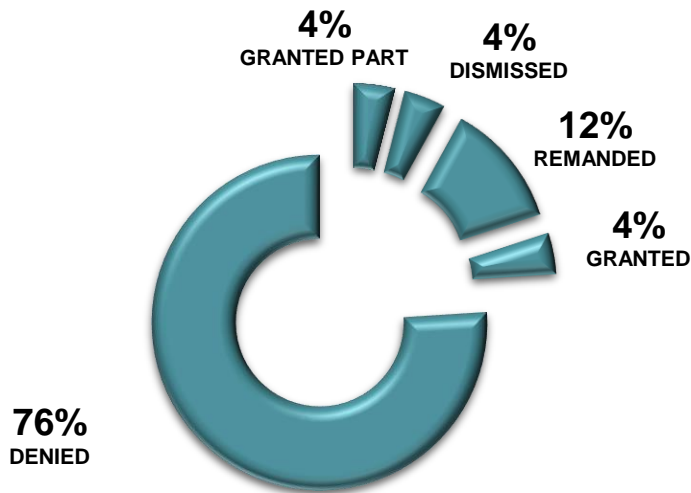
During the fiscal year 2016-2017, the Tribunal issued **51** decisions reviewing determinations of Administrative Law Judges. Of that total:



DECISIONS	NUMBER	PERCENT
<b>AFFIRMED</b> the ALJ determination	38	74.5%
<b>REVERSED</b> the ALJ determination	2	4%
<b>MODIFIED</b> the ALJ determination	4	7.8%
<b>REMANDED</b> the matter to ALJ	7	13.7%

**TRIBUNAL DISPOSITION OF PETITIONER EXCEPTIONS**

During the fiscal year 2016-2017, the Tribunal rendered **49** decisions with respect to exceptions filed by Petitioners. Three of these decisions involved matters in which both parties filed exceptions. Of that total:



**DECISIONS**

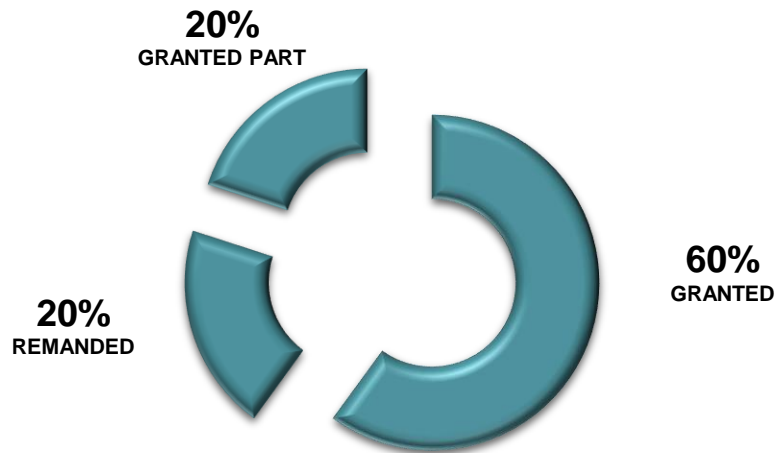
**NUMBER**

**PERCENT**

<b>GRANTED</b> Petitioner's exception	2	4%
<b>DENIED</b> Petitioner's exception	37	76%
<b>GRANTED PART</b> of Petitioner's exception	2	4%
<b>DISMISSED</b> Petitioner's exception	2	4%
<b>REMANDED</b> the matter to ALJ	6	12%

**TRIBUNAL DISPOSITION OF DIVISION EXCEPTIONS**

During the fiscal year 2016-2017, the Tribunal rendered **5** decisions with respect to exceptions filed by the Division of Taxation. Three of these decisions involved matters in which both parties filed exceptions. Of that total:

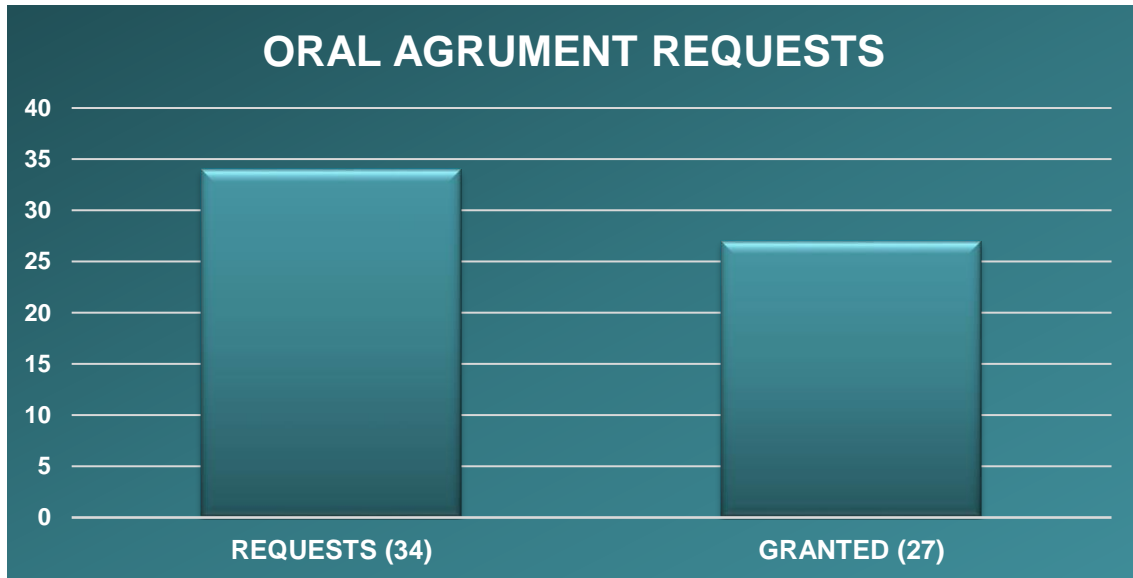


DECISIONS	NUMBER	PERCENT
<b>GRANTED</b> Division's exception	3	60%
<b>DENIED</b> Division's exception	0	0%
<b>GRANTED PART</b> of Division's exception	1	20%
<b>REMANDED</b> the matter to the ALJ	1	20%



**ORAL ARGUMENT REQUESTS**

During the fiscal year 2016-2017 oral argument was requested in **67%** of the cases. The Tribunal granted oral argument in **79%** of the cases in which it was requested.

**AVERAGE ELAPSED TIME**

The average elapsed time between the later of the oral argument date or the last brief date and the issuance of the decision was: Mean **5.8** months and Median **5.7** months.

**JUDICIAL REVIEW**

During the fiscal year 2016-2017, **16** Tribunal decisions were appealed to the Appellate Division, Third Department, under Article 78 of New York's Civil Practice Law and Rules.