



Tax Appeals



ANNUAL REPORT

FISCAL YEAR 2020-2021

ANDREW M. CUOMO, GOVERNOR

ROBERTA MOSELEY NERO, PRESIDENT AND COMMISSIONER

DIERDRE K. SCOZZAFAVA, COMMISSIONER

ANTHONY GIARDINA, COMMISSIONER



Dierdre K. Scozzafava
Anthony Giardina

Commissioners

New York State Tax Appeals Tribunal

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June 14, 2021

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

The Honorable Andrea Stewart-Cousins
Temporary President of the Senate

The Honorable Carl E. Heastie
Speaker of the Assembly

Dear Governor Cuomo, Senator Stewart-Cousins and Speaker Heastie:

Pursuant to Tax Law Section 2006 (13), we are pleased to submit the Annual Report of the Tax Appeals Tribunal/Division of Tax Appeals ("Tax Appeals") for the fiscal year 2020-2021. As Tax Appeals Tribunal President Roberta Moseley Nero retired from State service at the end of January 2021, we submit this report on behalf of the Tribunal pursuant to Tax Law Section 2004. 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 and ensuring that parties are afforded due process. We take great pride in striving to meet that goal by providing a fair, efficient, and productive process, even in the face of the COVID-19 global pandemic and statewide public health emergency that defined state fiscal year 2020-2021.

We hope that you will find the report informative and useful. We are 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 "Dierdre K. Scozzafava". The signature is written in a cursive, flowing style.

Dierdre K. Scozzafava
Commissioner

A handwritten signature in black ink that reads "Anthony Giardina". The signature is written in a cursive, flowing style.

Anthony Giardina
Commissioner

ENCLOSURE

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COVID-19 GLOBAL PANDEMIC AND PUBLIC HEALTH EMERGENCY

Fiscal Year 2020-2021 was an unprecedented year, defined by a global pandemic and worldwide social and economic shutdowns. The World Health Organization declared a Public Health Emergency of International Concern regarding COVID-19 on January 30, 2020, and later declared a pandemic on March 11, 2020. On March 7, 2020, Governor Cuomo declared a State disaster emergency for the entire State of New York based on the threat that COVID-19 posed to the health and welfare of its residents and visitors. On March 20, 2020, Governor Cuomo issued a statewide stay-at-home order, NY on Pause, under which all non-essential businesses were ordered to close. The State disaster emergency remained in effect for fiscal year 2020-2021, with an eventual phased-in return to 50% capacity for businesses, with mask and social distancing requirements and strict cleaning and disinfecting safety protocols. Tax Appeals continued operations throughout the fiscal year, with a fully operational remote workforce and continual but reduced in-person staffing in the office.

In furtherance of the State's efforts to respond to the COVID-19 public health emergency, on March 18, 2020, Tax Appeals announced that all hearings scheduled before the agency between that date and May 8, 2020 would be rescheduled to a later date. The agency subsequently rescheduled all hearings that were scheduled to be held through the end of July 2020 to a later date. On June 15, 2020, Tax Appeals began conducting virtual hearings and the Tribunal began conducting oral arguments via teleconference. The agency resumed in-person proceedings in Albany in the first week in August, while continuing to offer parties the option of virtual proceedings. However, due to a resurgence of COVID cases, on November 27, 2020, Tax Appeals had to again revert to virtual-only proceedings, which continued for the remainder of the fiscal year. Additionally, due to

COVID-19 and budgetary concerns, the agency did not conduct any proceedings outside of Albany during SFY 2020-2021.

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 Tribunal and the Division of Tax Appeals are fully independent from Taxation. The Commissioner of the Department of Taxation and Finance is no longer a member of the Tribunal. The Tribunal can review the validity and application of the regulations of Taxation at issue in the cases before it. The hearing function is performed by Administrative Law Judges, who conduct formal hearings and render written determinations. These determinations finally resolve the case, unless either party files an appeal with the Tribunal.

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 2020-2021, the Tribunal consisted of President and Commissioner Roberta Moseley Nero through January 29, 2021, and Commissioners Dierdre K. Scozzafava and Anthony Giardina. Although the Tribunal has been comprised of only two commissioners since the retirement of

President and Commissioner Moseley Nero at the end of January 2021, Tax Law § 2004 provides that a majority of the Tribunal shall constitute a quorum for the purposes of exercising the powers and duties of the Tribunal, including the issuing of decisions.

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 2020-2021, the hearing staff of the Division of Tax Appeals was comprised of eight Administrative Law Judges. The Small Claims Presiding Officer position has been vacant since August 2016.

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 pending before Tax Appeals this fiscal year, 66% involved the assertion by Taxation that the taxpayer owed additional taxes. The remaining cases involved situations where taxpayers claimed refunds of taxes paid (6%) and controversies involving various licenses and registrations (28%).

FORMAL HEARINGS

Formal hearings are held before an Administrative Law Judge. Although hearings are typically held in Albany, New York City and Rochester, the COVID-19 State disaster emergency and budget constraints precluded Tax Appeals from conducting any hearings outside of Albany, and for much of fiscal year 2020-21, hearings were either suspended or conducted virtually. 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

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 taxes and \$40,000 for sales and compensating use taxes (20 NYCRR 3000.13 [b]). Although small claims hearings are typically held in Albany, New York City, Westchester, Syracuse and Rochester, the COVID-19 State disaster emergency and budget constraints precluded Tax Appeals from conducting any hearings outside of Albany, and for much of fiscal year 2020-2021, hearings were either suspended or conducted virtually. 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 are requested and granted, they are typically held in Albany and New York City. However, due to the COVID-19 State disaster emergency and budget constraints, the Tribunal was precluded from conducting any oral arguments outside of Albany, and for much of fiscal year 2020-2021, oral arguments were either suspended or conducted via teleconference.

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).

The Tribunal 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. Determinations and decisions are also available on Commerce Clearing House (CCH).

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, all decisions and determinations are available on the agency's website at www.dta.ny.gov. The Tribunal also provides copies of individual decisions and determinations upon request.

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 (ALJ), including Small Claims matters, and the Tribunal for fiscal year 2020-2021.

FORMAL HEARINGS

2020-2021 INVENTORY (NET CASES):

BEGINNING INVENTORY 648

Add (+)

Cases Received 325

Default Vacated 0

Other 9

Subtotal 334

TOTAL CASES FOR HEARINGS 982

Deduct (-)

Petitions Withdrawn 97

Closing Orders Issued 117

Defaults 5

Determinations Issued 109

Petitions Dismissed 0

Referred to BCMS 8

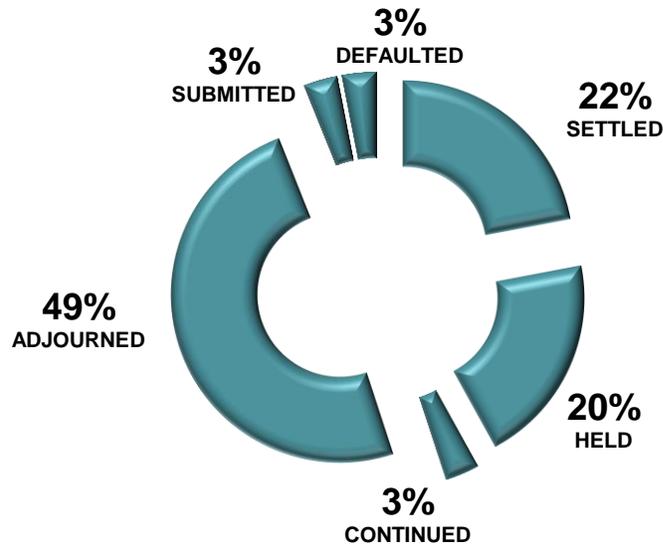
Bankruptcy 1

Subtotal 337

ENDING INVENTORY 645

ANALYSIS OF CASE SCHEDULING

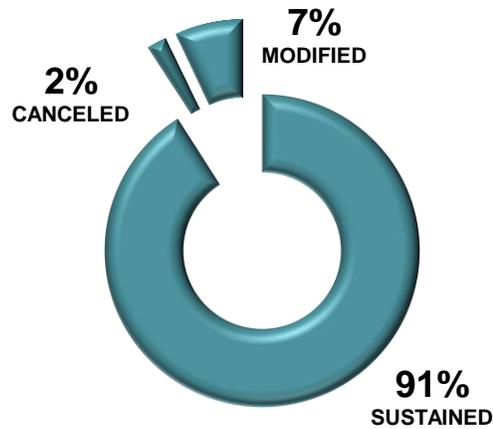
During the fiscal year 2020-2021, **152** cases were issued notices for a formal hearing before Administrative Law Judges. Of that total:



CASE SCHEDULING		NUMBER	PERCENT
ADJOURNED before hearing		75	49%
SETTLED by parties before hearing		34	22%
HELD and completed		30	20%
CONTINUED for completion		4	3%
SUBMITTED on papers without hearing		4	3%
DEFAULTED due to failure of one of the parties to appear		5	3%
TOTAL		152	100%

ANALYSIS OF DETERMINATIONS

Case Disposition: During the fiscal year 2020-2021, the Administrative Law Judges issued **109** determinations. Of that total:



DETERMINATIONS	NUMBER	PERCENT
SUSTAINED the deficiency or other action	99	91%
CANCELED the deficiency or other action	2	2%
MODIFIED the deficiency or other action	8	7%
TOTAL	109	100%

BREAKDOWN OF DETERMINATIONS BY TAX

TAX	NUMBER	PERCENT
INCOME	64	59%
SALES	34	31%
CORP. FRANCHISE	1	1%
DRIVER'S LICENSE SUSPENSION REFERRALS	3	3%
MISCELLANEOUS	7	6%
TOTAL	109	100%

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 **4.46** months and Median **3** months.

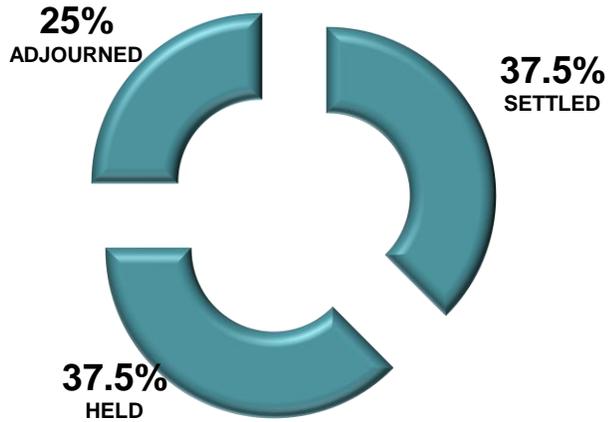
SMALL CLAIMS HEARINGS*

2020-2021 INVENTORY (NET CASES):	
BEGINNING INVENTORY	116
Add (+)	
Cases Received	84
Defaults Vacated	0
TOTAL CASES FOR HEARINGS	200
Deduct (-)	
Petitions Withdrawn	10
Closing Orders Issued	13
Defaults	1
Determinations Issued	7
Referred to BCMS	0
Subtotal	31
ENDING INVENTORY	169

*Note: The Small Claims Presiding Officer position has been vacant since August 2016. The small claims matters that were processed in 2020-2021 were handled by Administrative Law Judges sitting as Presiding Officers.

ANALYSIS OF CASE SCHEDULING

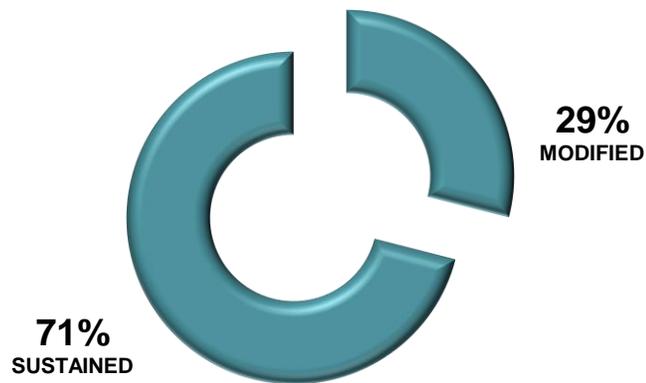
During the fiscal year 2020-2021, **8** cases were scheduled for a small claims hearing. Of that total:



CASE SCHEDULING	NUMBER	PERCENT
SETTLED by parties before hearing	3	37.5%
HELD and completed	3	37.5%
ADJOURNED before hearing	2	25%
TOTAL	8	100%

ANALYSIS OF DETERMINATIONS

Case Disposition: During the fiscal year 2020-2021, 7 small claims determinations were issued. Of that total:



DETERMINATIONS	NUMBER	PERCENT
SUSTAINED the deficiency or other action	5	71%
CANCELED the deficiency or other action	0	0%
MODIFIED the deficiency or other action	2	29%
TOTAL	7	100%

BREAKDOWN OF DETERMINATIONS BY TAX

TAX	NUMBER	PERCENT
INCOME	6	86%
SALES	1	14%
TOTAL	7	100%

AVERAGE TIME ELAPSED

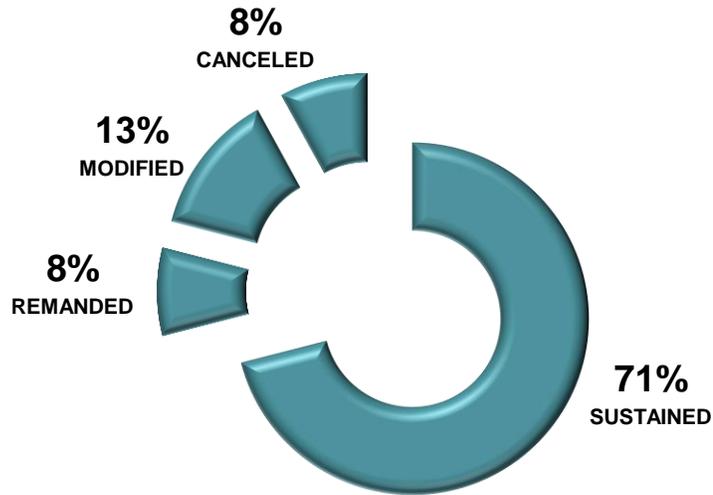
The average elapsed time between the later of the hearing date or the last brief date and the issuance of the determination was: Mean **4** months and Median **4.5** months.

TAX APPEALS TRIBUNAL

2020-2021 INVENTORY (NET CASES):	
BEGINNING INVENTORY	70
Add (+)	
Cases Received	30
TOTAL CASES	100
Deduct (-)	
Decisions Issued	24
Exceptions Withdrawn	2
Settled	3
Subtotal	29
ENDING INVENTORY	71

ANALYSIS OF DECISIONS

Case Disposition: During the fiscal year 2020-2021, the Tax Appeals Tribunal issued **24** decisions. Of that total:



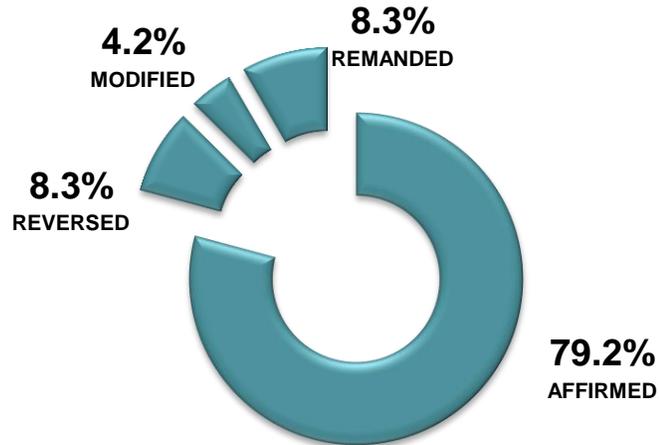
DECISIONS	NUMBER	PERCENT
SUSTAINED the deficiency or other action	17	71%
CANCELED the deficiency or another action	2	8%
MODIFIED the deficiency or other action	3	13%
REMANDED the matter to the ALJ	2	8%
TOTAL	24	100%

BREAKDOWN OF DECISIONS BY TAX

TAX	NUMBER	PERCENT
SALES	7	29%
INCOME	11	46%
CORPORATION TAX	3	12.5%
MISCELLANEOUS	3	12.5%
TOTAL	24	100%

TRIBUNAL DISPOSITION OF ALJ DETERMINATIONS

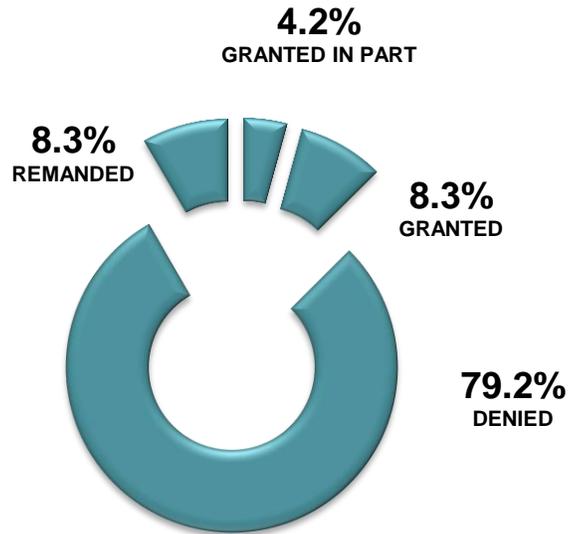
During the fiscal year 2020-2021, the Tribunal issued **24** decisions reviewing determinations of Administrative Law Judges. Of that total:



DECISIONS	NUMBER	PERCENT
AFFIRMED the ALJ determination	19	79.2%
REVERSED the ALJ determination	2	8.3%
MODIFIED the ALJ determination	1	4.2%
REMANDED the matter to ALJ	2	8.3%
TOTAL	24	100%

TRIBUNAL DISPOSITION OF PETITIONER EXCEPTIONS

During the fiscal year 2020-2021, the Tribunal rendered **24** decisions with respect to exceptions filed by Petitioners. Of that total:



DECISIONS	NUMBER	PERCENT
GRANTED Petitioner's exception	2	8.3%
DENIED Petitioner's exception	19	79.2%
GRANTED PART of Petitioner's exception	1	4.2%
REMANDED the matter to ALJ	2	8.3%
TOTAL	24	100%

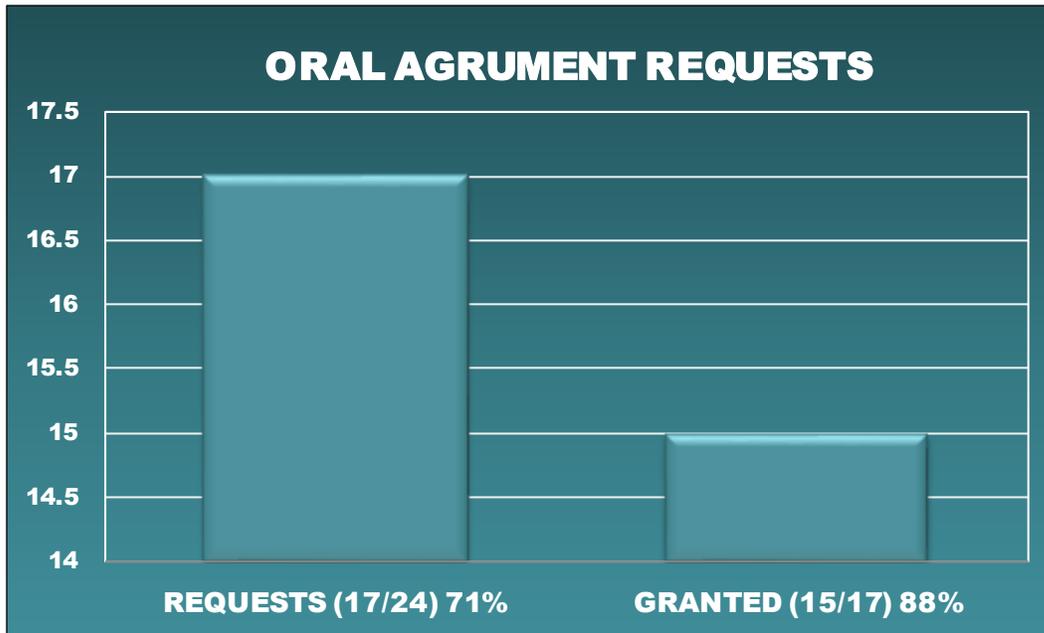
TRIBUNAL DISPOSITION OF DIVISION EXCEPTIONS

During the fiscal year 2020-2021, the Tribunal rendered **2** decision with respect to exceptions filed by the Division of Taxation. In each of these matters, both the petitioner and the division filed an exception to the determination of the Administrative Law Judge. Of that total:

DECISIONS	NUMBER	PERCENT
DENIED Division's exception	2	100%
GRANTED Division's exception	0	0%
TOTAL	2	100%

ORAL ARGUMENT REQUESTS

During the fiscal year 2020-2021, oral argument was requested in **71%** of the cases. The Tribunal granted oral argument in **88%** 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 **5.7** months and Median **6** months.

JUDICIAL REVIEW

During the fiscal year 2020-2021, **6** Tribunal decisions were appealed to the Appellate Division, Third Department, under Article 78 of New York's Civil Practice Law and Rules.

TAX APPEALS FIVE-YEAR INVENTORY ANALYSIS

	FISCAL YEAR 2016-2017	FISCAL YEAR 2017-2018	FISCAL YEAR 2018-2019	FISCAL YEAR 2019-2020	FISCAL YEAR 2020-2021
FORMAL HEARINGS – ADMINISTRATIVE LAW JUDGES					
Beginning Inventory	485	535	578	571	648
Petitions Filed/Other	445	355	376	448	334
Cases Disposed of by DTA	395	312	384	371	337
Determinations Issued	36.5%	32.7%	28%	26.4%	32%
Closing Orders Issued (Settled)	40.5%	44.6%	44%	38.3%	35%
By Other Means	23%	22.7%	28%	35.3%	33%
Ending Inventory	535	578	571	648	645
SMALL CLAIMS					
(Note: The Small Claims Presiding Officer position has been vacant since August 2016.)					
Beginning Inventory	53	67	95	97	116
Petitions Filed/Defaults Vacated	55	44	50	75	84
Cases Disposed of by SC	41	16	48	56	31
Determinations Issued	29%	0%	6%	9%	23%
Closing Orders Issued (Settled)	54%	56%	52%	34%	42%
Defaults/Withdrawn	17%	44%	42%	57%	35%
Ending Inventory	67	95	97	116	169
TAX APPEALS TRIBUNAL					
Beginning Inventory	84	80	79	75	70
Exceptions Filed	49	53	34	32	30
Decisions Issued	51	50	37	37	24
Cases Settled/Withdrawn	2	4	1	0	5
Ending Inventory	80	79	75	70	71

