STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :

of :

DAVID LEIMAN :

for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Year 2002. :

In the Matter of the Petition :

of :

COAXIAL COMPONENTS CORPORATION : DETERMINATION
DTA NOS. 822385, 822386
AND 822387

for Redetermination of a Deficiency or for Refund of Corporation Franchise Tax under Article 9-A of the Tax Law for the Fiscal Years Ended July 31, 2003, July 31, 2004 and July 31, 2005. :

In the Matter of the Petition :

of :

DAVID AND SHARON LEIMAN :

for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Year 2003. :

Petitioner David Leiman filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 2002.

Petitioner Coaxial Components Corporation filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the fiscal years ended July 31, 2003, July 31, 2004 and July 31, 2005.

Petitioners David and Sharon Leiman filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 2003.

A consolidated hearing was held before Thomas C. Sacca, Administrative Law Judge, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on March 19, 2009 at 10:30 A.M., with all briefs to be submitted by August 7, 2009, which date began the six-month period for the issuance of this determination. Petitioners appeared by DeGraff, Foy & Kunz, LLP (James H. Tully, Jr., Esq., of counsel). The Division of Taxation appeared by Daniel Smirlock, Esq. (Nicholas Behuniak, Esq., of counsel).

ISSUES

I. Whether petitioner David Leiman was a New York State resident who maintained a permanent place of abode in this state and spent in the aggregate more than 183 days in this state during the year 2002.

II. Whether petitioners David and Sharon Leiman, nonresidents of the State of New York, had New York source income for the year 2003.

III. Whether petitioner Coaxial Components Corporation properly computed its business allocation percentage for the fiscal years ended July 31, 2003, July 31, 2004 and July 31, 2005.

FINDINGS OF FACT

1. Petitioner David Leiman founded Dal-Tech Devices, Inc., in the 1960s as a sales representation company dealing with microwave components in the communications field. Dal-Tech was incorporated in the State of New York. During the audit period, Dal-Tech was located

in Bohemia, New York. To address a growing need within the business operation, Dal-Tech began a distribution company, Microwave Distributors Company (MDC), to cater specifically to the microwave components field. MDC would purchase large quantities of lower-priced components within the microwave, radar, countermeasures, communications and radio frequency connector fields, inventory the products and then sell the components in smaller quantities to its customers. A private label was created for these small components, Midisco. Components would be purchased from various suppliers and the name "Midisco" would be placed thereon. The formation of MDC allowed Mr. Leiman to concentrate on and spend more time selling parametric amplifiers, a high-frequency amplifier with a cost of between $150,000.00 to $200,000.00 per unit. MDC was a New York Subchapter S corporation of which Mr. Leiman was president and 90% shareholder.

2. The main supplier for the Midisco label was the manufacturer Solitron, located in Stuart, Florida. Solitron was having difficulty filling its orders to MDC, and as a result, Mr. Leiman decided to establish the Coaxial Components Corporation (Coaxial) in Stuart, Florida, to manufacture the needed components. Coaxial, although located in Florida, was incorporated in the State of New York. Coaxial is basically a machine shop and manufacturer that sells to various distributors throughout the world, including MDC.

3. On May 16, 1996, Coaxial entered into a master distribution agreement with MDC that was in effect during the years at issue herein. The agreement provided MDC with special pricing for Coaxial products, as well as more favorable terms and conditions than that provided to other distributors. The distribution agreement required that MDC have employees who were "product specialists who are apart from those specialists selling both competitive and more expensive and exotic products." The agreement further required that MDC maintain a suitable

place of business that would be available for regular visits by Coaxial for the purposes of motivational and product training. MDC was required to have adequate sales, stocking and financial stability continuously present to maintain a normal operation. The agreement also required MDC to maintain an inventory of all standard items as shown in the current Coaxial catalog plus any items inherent to the industry. Approximately 75% of Coaxial's output was sold to MDC.

4. Coaxial Components Corporation listed its address on its general business corporation franchise tax returns, form CT-3, for the fiscal years ended July 31, 2003, July 31, 2004 and July 31, 2005 as 10547 Stonebridge Blvd., Boca Raton, Florida 33498. Its date of incorporation was August 27, 1985 in the State of New York. The returns indicate petitioner David Leiman as the 100 percent shareholder of the corporation. All three checks paid to the order of "NYS Corporation Tax" contain the preprinted payer as "COAXIAL COMPONENTS CORP., 10 DA VINCI DRIVE, BOHEMIA, NY 11716-2601." On its franchise tax returns, Coaxial indicated its New York State business allocation percentage to be zero, and paid the statutory fixed dollar minimum which at the time was $350.00.

5. Following the hearing, Coaxial introduced amended franchise tax returns into the record for the three fiscal years at issue indicating a business allocation percentage of 37.5% based upon a property factor of zero, a payroll factor of zero and a receipts factor of 75%. According to the amended returns, Coaxial has additional franchise tax due of $2,544.00 for the fiscal year ended July 31, 2003, $2,530.00 for the fiscal year ended July 31, 2004 and $1,811.00 for the fiscal year ended July 31, 2005.

6. On August 1, 2000, Dal-Tech Devices, Inc., entered into a management agreement with Coaxial because Mr. Leiman was an expert on various products sold by MDC. Coaxial

agreed to be a consultant for MDC and was to make itself available at all reasonable times by telephone and correspondence. More specifically, Coaxial was to provide advice, counsel and assistance in connection with: (i) maintaining contract volume on existing contracts with customers; (ii) making introductions with new potential customers and maintaining relations with ongoing customers; and (iii) making introductions with, and maintaining relationships with, key local and state persons having any relationship to Dal-Tech and its operations. The services by Coaxial also included (i) finding and evaluating potential business acquisitions; (ii) evaluation of Dal-Tech's internal research and development organizations and programs; (iii) recommendations as to new areas of technology in which Dal-Tech may engage; and (iv) general advice in the field of Mr. Leiman's expertise. The management agreement provided that all inventions, improvements, discoveries and techniques developed by Coaxial during the term of the agreement remain the exclusive property of Dal-Tech. Pursuant to the agreement, Coaxial received a consultation fee of $12,000.00 per month and 1.25% of Dal-Tech's sales. Although the agreement was between Dal-Tech and Coaxial, it was understood that Mr. Leiman was to be the main provider of the enumerated services. Mr. Leiman testified that he spent only two or three days a year at the MDC location in New York, providing instructions on Coaxial products and answering questions from the MDC sales staff.

7. On November 29, 2005, the Division of Taxation (Division), sent a letter to Coaxial indicating that the corporation had been selected for a franchise tax audit for the period August 1, 2002 through July 31, 2004. Attached to the letter was a list of specific items that were to be made available in conjunction with the audit. The requested records for review stated as follows:

> 1) A written description of the business activities of the taxpayer both within and without NYS. Also include a description of the places of business and activities

performed at each location, the number of employees, and whether the location is owned or leased.

2) An organizational chart identifying parent, subsidiary, brother or sister entities as well as a detailed description of their business activity inside and outside of New York.

3) Provide a federal audit history, including information about ongoing audits. If there are any recently completed federal audits, please provide a copy of the RAR. If these changes have been reported to NYS, provide a copy of the document filed with NYS and proof of payment.

4) Federal Payroll Tax Returns including: Copies of 1099s, W-2s, W-3s and 941s issued in each year. Please include a schedule reconciling the amount of wages per the W-3 to the amount claimed on the return.

5) Copies of all allocation work papers supporting the New York State CT-3 report for the above years. Please include documentation to support the property rented (including lease agreements) and breakdown regarding the allocation of the sales/receipts.

6) Invoices and supporting documentation regarding the inventory of the company.

Additionally, please make available the general ledger, cash disbursements journal, Sales and/or Receipts journal, payroll ledgers and **year ending adjusting entries** to tie amounts from the tax returns to the general journals.

8. During the course of the audit, the auditor discovered the following:

a. Product catalogs of Coaxial listed its address as 10 DaVinci Drive, Bohemia, New York. Telephone and facsimile numbers on the catalogs contained the Suffolk County, New York area code.

b. The web site of Coaxial contained the following statement: "Customers are serviced from our New York office; manufacturing at our Florida facility." The web site also contained a telephone and facsimile number with the Suffolk County area code and the 10 DaVinci Drive address as the sales office. The toll free number listed on the web site was answered in New York.

c. Business cards of Coaxial with the 10 DaVinci Drive address as its sales department, and Suffolk County, New York, telephone and facsimile numbers.

d. Suffolk County, New York, telephone listings for Coaxial for the years 2002 through 2004 indicated its address to be 10 DaVinci Drive, Bohemia, New York. The Business Yellow Pages for Long Island, New York, provided a 500 Johnson Avenue, Bohemia, New York, address for Coaxial. Johnson Avenue and DaVinci Drive intersect, and the same structural building contains the addresses of 500 Johnson Avenue and 10 DaVinci Drive.

e. A business sign outside 10 DaVinci Drive contained the names of the following enterprises: Microwave Distributors Company, Coaxial Components Corporation and Midisco.

9. On audit, the Division determined a business allocation for Coaxial of 75% based upon discussions with Coaxial's certified public accountant. During the hearing, Coaxial agreed that 75% of its sales were made into New York.

10. On May 19. 2002, Mr. Leiman's residence located in Boca Raton, Florida, was totally destroyed by fire and his then fiancée, Sharon Brown, was seriously injured. After Ms. Brown's release from the hospital, Mr. Leiman and Ms. Brown went to live in New York to allow Ms. Brown to recuperate. The couple stayed at a residence located in Patchogue, New York, on Long Island. The Patchogue residence was conveyed on October 29, 2001 to Mr. Leiman as to a life estate, and to his daughter, Melissa Leiman, as to a remaining interest. The house was leased by MDC from Melissa Leiman pursuant to a lease agreement which commenced on February 1, 2002 and terminates on January 1, 2012. The annual rent was $24,000.00 which included payments for electricity, fuel, gas, oil, water, telephone, landscaping, snow removal and sanitation services.

11. No specific information was provided by either petitioners or the Division as to Mr. Leiman's whereabouts during the period January 1, 2002 through May 4, 2002. An analysis by the Division of Mr. Leiman's cell phone records for the period May 5, 2002 through December 31, 2002 indicated that Mr. Leiman was in New York for 162 days. An analysis of Mr. Leiman's cell phone records for the year 2003 revealed Mr. Leiman was in New York for 132 days, 97 of which were weekdays and 35 of which were weekend days. While in New York during 2002 and 2003, David and Sharon Leiman stayed at the Patchogue, New York, residence.

12. For the year 2002, Mr. Leiman filed a New York State nonresident personal income tax return. For the tax year 2003, Mr. Leiman and his wife, Sharon (Brown) Leiman, filed a joint New York State nonresident income tax return. During 2002 and 2003, Mr. Leiman received wage income of $320,000.00 and $120,000.00, respectively, from Coaxial. None of the income Mr. Leiman received from Coaxial during the years 2002 and 2003 was reported as New York income.

13. For the tax years 2001 through 2005, Melissa Leiman filed New York State personal income tax returns indicating her address to be in New York City.

14. As a result of the audit, the Division determined that (i) petitioner David Leiman maintained a permanent place of abode and spent in excess of 183 days in New York State during the year 2002; (ii) the wage income Mr. Leiman received from Coaxial during the year 2003 was New York source income; and (iii) Coaxial's business allocation percentage during the years at issue was 75%.

15. On April 19, 2007, the Division issued to petitioner David Leiman a Notice of Deficiency for the year 2002 asserting personal income tax due of $44,467.00, plus penalty and interest. On the same date, the Division issued to petitioners David and Sharon Leiman a Notice

of Deficiency for the year 2003 asserting personal income tax due of $8,942.00, plus penalty and interest. On April 20, 2007, the Division issued to petitioner Coaxial Components Corporation a Notice of Deficiency for the fiscal years ended July 31, 2003, July 31, 2004 and July 31, 2005 asserting corporate franchise tax due in the amount of $14,601.00, plus penalty and interest.

CONCLUSIONS OF LAW

A. Tax Law § 601 imposes New York state personal income tax on "resident individuals." In turn, Tax Law § 605(b)(1) defines "resident individual" as someone:

> (A) who is domiciled in this state, unless (i) he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state . . . , or
>
> (B) who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state . . . .

B. The parties agree that during the years at issue petitioners David and Sharon Leiman were domiciled in Florida. Therefore, in order to conclude that Mr. Leiman was a "resident individual" during the tax year 2002 required to pay New York personal income tax on his income from all sources and not merely on his New York source income, the issue is whether petitioner maintained a *permanent place of abode* and spent in the aggregate more than 183 days of the taxable year in New York.

C. The Tax Law does not include a definition of the term "permanent place of abode." However, the regulation at 20 NYCRR former 105.20(e)(1), in effect during the years in issue and unchanged in the current regulation, provided, in part, the following interpretation of this term:

> *Permanent place of abode*. (1) A permanent place of abode means a dwelling place permanently maintained by the taxpayer, whether or not owned by such

> taxpayer, and will generally include a dwelling place owned or leased by such taxpayer's spouse. However, a mere camp or cottage, which is suitable and used only for vacations, is not a permanent place of abode. Furthermore, a barracks or any construction which does not contain facilities ordinarily found in a dwelling, such as facilities for cooking, bathing, etc., will generally not be deemed a permanent place of abode.

D. Mr. Leiman claims that he did not maintain the house in Patchogue, New York, that it was owned by his daughter, who leased it to MDC for business purposes. It is noted, however, that the deed to the property indicates that Mr. Leiman had a life estate interest in the property with his daughter having the remainder interest. A life tenant is the owner of the property and as such is entitled to the full and exclusive possession, control, and enjoyment of the property for the duration of his life (EPTL 6-1.1; ***Ackerman v. State***, 199 Misc 2d 76, 102 NYS2d 536[1951]). Mr. Leiman's life estate, coupled with the lack of any evidence that he transferred his ownership and right of possession to his daughter, establishes that he maintained a permanent place of abode in Patchogue, New York, during the year 2002.

E. The second criterion to be addressed is whether petitioner was present in New York State for more than 183 days during 2002. In order to overcome the deficiency asserted in this case, petitioner bears the burden to "come forward with clear and convincing evidence proving . . . that . . . he did not spend in the aggregate more than 183 days" in New York State in 2002 (***Matter of Holt***, Tax Appeals Tribunal, July 17, 2008). Petitioner may meet this burden of proof through testimonial evidence, documentary evidence, or a combination of the two (***see Matter of Avildsen***, Tax Appeals Tribunal, May 19, 1994; ***Matter of Armel***, Tax Appeals Tribunal, August 17, 1995; ***Matter of Moss***, Tax Appeals Tribunal, November 25, 1992). The Tribunal has held that a clearly established "pattern of conduct" from which a taxpayer's location may be determined for a particular day suffices to meet the burden of proof with regard to that day (***see***

Matter of Kern, Tax Appeals Tribunal, November 9, 1995, ***confirmed*** 240 AD2d 969 [3rd Dept 1997]), and further that general testimony regarding the "patterns and habits of life," when coupled with supporting documentary evidence, is sufficient to meet the burden of proof (***see Matter of Armel***). The Tribunal has also held that where a taxpayer presents a contemporaneously maintained diary or calendar accompanied by consistent and supporting testimony, the same will be sufficient to meet the burden of proof as to the day count, absent other evidence which is inconsistent therewith or indicates that the diary or calendar is in some other manner unreliable (***see Matter of Moss; Matter of Reid***, Tax Appeals Tribunal, October 5, 1995.) Finally, even where taxpayers did not produce a diary or refused to produce a diary, the Tribunal has determined nonetheless that the taxpayers met the burden of proving they were not present on more than 183 days based upon their testimony and affidavits regarding their habit and pattern of conduct during the last month of the year in issue (***Matter of Armel***), based upon the testimony of the taxpayer's secretary regarding entries in the diary the taxpayer refused to submit (***Matter of Avildsen***), and based upon affidavits and additional evidence concerning the taxpayers' whereabouts (***Matter of Golub***, Tax Appeals Tribunal, March 24, 1994).

F. Petitioner David Leiman presented no documentation or testimony as to his whereabouts during the year 2002 except that he generally visited the MDC location two or three times a year. Such lack of evidence falls far short of meeting his burden to show that he was not present in New York State for more than 183 days during 2002. Accordingly, the Division's determination that petitioner was subject to New York State income tax as a resident individual for the year 2002 was proper.

G. Regulations regarding foreign corporations doing business in New York pursuant to Tax Law § 209(1) (20 NYCRR 1-3.2) state, in pertinent part, as follows:

(a)(1) The tax is imposed on every foreign corporation, not specifically exempt as provided in section 1-3.4 of this Subpart, whose activities include one or more of the following:

(i) doing business in New York State in a corporate or organized capacity or in a corporate form; or

(ii) employing capital in New York State in a corporate or organized capacity or in a corporate form; or

(iii) owning or leasing property in New York State in a corporate or organized capacity or in a corporate form; or

(iv) maintaining an office in New York State.

(2) A foreign corporation engaged in New York State in any one or more of the activities described in paragraph (1) of this subdivision is subject to tax even though its activities are wholly or partly in interstate or foreign commerce.

* * *

(4) A foreign corporation engaged in New York State in any one or more of the activities described in paragraph (1) of this subdivision is subject to tax regardless of whether it is authorized to do business in New York State.

H. The regulations provide a framework for determining whether a foreign corporation is "doing business" in New York.

(b)(1) The term doing business is used in a comprehensive sense and includes all activities which occupy the time or labor of people for profit. Regardless of the nature of its activities, every corporation organized for profit and carrying out any of the purposes of its organization is deemed to be 'doing business' for the purposes of the tax. In determining whether a corporation is doing business, it is immaterial whether its activities actually result in a profit or a loss.

(2) Whether a corporation is doing business in New York State is determined by the facts in each case. Consideration is given to such factors as:

(i) the nature, continuity, frequency, and regularity of the activities of the corporation in New York State;

(ii) the purposes for which the corporation was organized;

(iii) the location of its offices and other places of business;

(iv) the employment in New York State of agents, officers, and employees; and

(v) the location of the actual seat of management or control of the corporation. (20 NYCRR 1-3.2[b].)

I. The facts in this case support the conclusion that Coaxial had significant contacts in New York during the year 2003. Coaxial admitted that 75% of its sales were made into New York. Petitioner had an extensive and ongoing presence in New York through its offices in Bohemia, New York. Product catalogs of Coaxial listed its address as 10 DaVinci Drive, Bohemia, New York, with telephone and facsimile numbers containing the Suffolk County, New York, area code. Coaxial's web site stated that its manufacturing facilities were in Florida while its "customers were serviced from our New York office." The web site also contained telephone and facsimile numbers with the Suffolk County area code and the 10 DaVinci Drive address as its sales office. The toll free number listed on the web site was answered in New York. Business cards of Coaxial contained the DaVinci Drive address as its sales department and Suffolk County, New York, telephone and facsimile numbers. Listings in the Suffolk County, New York, telephone book for the years 2002 through 2004 indicate its address to be 10 DaVinci Drive. The Business Yellow pages for Long Island, New York, provide a 500 Johnson Avenue, Bohemia, New York, address for Coaxial. The same structural building contains the addresses of 500 Johnson Avenue and 10 DaVinci Drive. A business sign outside 10 DaVinci Drive contains the business names Microwave Distributors Company, Coaxial Components Corporation and Midisco. Finally, the checks paid to the order of "NYS Corporation Tax" which accompanied Coaxial's general business corporation franchise tax returns for the fiscal years ended July 31, 2003, July 31, 2004 and July 31, 2005 contain the preprinted payer as "Coaxial Components

Corp., 10 DaVinci Drive, Bohemia, NY 11716-2601." Taken together, these facts establish that Coaxial was doing business in New York State during the tax year 2003.

J. New York State imposes personal income tax on the income of nonresident individuals to the extent that their income is derived from or connected to New York sources (Tax Law § 601[e]). The portion of the individual's income derived from or connected with New York sources is determined per Tax Law §§ 631 - 639 (Tax Law § 601[e][3]). Included in such income is that which is attributable to a business, trade, profession or occupation carried on in New York State (Tax Law § 631[b][1][B];[2]). If a taxpayer's business, trade, profession or occupation is carried on partly within and partly without this state, as determined under regulations of the Commissioner of Taxation, the items of income, gain, loss and deduction derived from or connected with New York sources shall be determined by apportionment and allocation under such regulations.

K. The New York source income of a nonresident individual, such as petitioner David Leiman, rendering personal services as an employee includes the compensation for personal services entering into his federal adjusted gross income, but only if and to the extent such services were rendered within New York State (***id.***; 20 NYCRR 132.4[b]). Where such personal services are performed within and without New York State, the portion of the compensation attributable to the services performed within New York State must be determined in accordance with 20 NYCRR 132.15 through 132.18. An allocation of such personal service income on the basis of the number of working days employed in New York State in relation to the total number of working days employed both within and without New York State is provided for pursuant to 20 NYCRR 132.18(a).

L. To prevail in this matter, petitioners were required to show that the income in question was not secured or earned pursuant to activities connected with or derived from New York sources (***Matter of Laurino***, Tax Appeals Tribunal, May 20, 1993). Coaxial was clearly doing business in New York during the year 2003. The Division established through a review of Mr. Leiman's cell phone records that he was in New York for 132 days during 2003. Of the total amount of days spent in New York during 2003, 97 days were weekdays, or working days. No documentation or testimony was presented by Mr. Leiman or Coaxial which established the number of days petitioner worked in New York State during 2003. Absent any documentation to the contrary, the Division has established that Mr. Leiman spent 97 working days in New York, and such figure should form the basis of an allocation of Mr. Leiman's personal service income from Coaxial pursuant to 20 NYCRR 132.18(a).

M. Article 9-A of the Tax Law imposes a franchise tax on all domestic and foreign corporations doing business, employing capital, owning or leasing property, or maintaining an office in New York State (Tax Law § 209[1]). The franchise tax is based on the taxpayer's entire net income (ENI). ENI is generally the same as the taxpayer's federal taxable income with certain modifications, and consists of two components, business income and investment income. Business income is equal to ENI less investment income (Tax Law § 208[8]), and is allocated to New York State by multiplying the taxpayer's business income by its business allocation percentage as defined in Tax Law § 210(3)(a). The business allocation percentage is made up of a property factor, payroll factor and receipts factor, each expressed as a percentage (Tax Law § 210[3][a]; 20 NYCRR 4-2.2[a]).

N. Based upon discussions with Coaxial's accountant, and absent any records, the Division determined that Coaxial's business allocation percentage should be 75%, while Coaxial

filed amended franchise tax returns with a business allocation percentage of 37.5%, based upon a property factor of zero, a payroll factor of zero and a receipts factor of 75%. Coaxial bears the burden of proof in establishing that the payroll and property factors entering into its business allocation factor are zero (Tax Law § 1089[e]). Coaxial has failed to meet its burden. The record raises many questions as to the relationship between Coaxial and MDC, as well as the relationship between Coaxial and the business premises in Bohemia, New York. Web sites, telephone listings, Coaxial's product catalogs, business cards and the business signs at the location all indicate that Coaxial was doing business in New York, had employees in New York, and had property in New York. Coaxial and Mr. Leiman produced few or no records in an attempt to clarify the relationship between Coaxial, MDC and the business location in Bohemia, New York. Under these circumstances, it is held that Coaxial has failed to establish that the property and payroll factors of its business allocation percentage are zero, and the Division's estimate that Coaxial had a business allocation percentage of 75% is sustained.

O. The petition of David Leiman is denied, and the Notice of Deficiency dated April 19, 2007 is sustained. The petition of David and Sharon Leiman is granted to the extent indicated in Conclusion of Law L, and the Division of Taxation is directed to modify the Notice of Deficiency dated April 19, 2007 accordingly; in all other respects the petition is denied. The petition of Coaxial Components Corporation is denied, and the Notice of Deficiency dated April 20, 2007, is sustained.

DATED: Troy, New York
February 4, 2010

/s/ Thomas C. Sacca
ADMINISTRATIVE LAW JUDGE