

THE NEW YORK STATE TAX APPEALS TRIBUNAL

ANNUAL REPORT

FOR THE STATE FISCAL YEAR
1995-1996

Submitted June 24, 1996

John P. Dugan, President
Donald C. DeWitt, Commissioner
Francis R. Koenig, Commissioner

George E. Pataki
Governor

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taxpayers and the Department of Taxation and Finance. The administration of taxes is solely the responsibility of the Department while the adjudication of disputes falls solely under the province of the Tax Appeals Tribunal.

RESPONSIBILITY. The responsibility of the Tribunal is two-fold: (1) the administration of the Division of Tax Appeals and (2) the carrying out of the judicial function for the resolution of disputes.

The administrative duties of the Tribunal entail management of the finances, personnel and operations of the Division of Tax Appeals.

The judicial function of the Tribunal involves the conduct of formal hearings by Administrative Law Judges, small claims hearings by Presiding Officers, and review of Administrative Law Judge determinations by the three members of the Tribunal upon a request from the taxpayer or the Department (see generally, Tax Law section 2006).

FORMAL HEARINGS. Formal hearings are held before an Administrative Law Judge who 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. The determination of the Administrative Law Judge sets forth the issues in the case, the relevant facts established by the parties and the conclusions of law relevant to the issues. The determination is binding on both parties (i.e., the taxpayer and the Department) 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 notification of the determination of the Administrative Law Judge.

TRIBUNAL REVIEW. After reviewing the record of the hearing and any arguments, oral or by brief, the Tribunal will issue a written decision either affirming, reversing or modifying the determination of the Administrative Law Judge, or remanding the case for additional proceedings before such Administrative Law Judge. 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 section 2006[7]).

Decisions rendered by the Tribunal are final and binding on the Department, i.e., there is no appeal to the courts. 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 (CPLR) to the Appellate Division Third Department of the State Supreme Court.

SMALL CLAIMS PROCEEDINGS. 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. 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). A small claims hearing is conducted informally by a presiding officer whose determination is final on both parties. However, at any time before the conclusion of the small claims hearing, a taxpayer may discontinue the proceeding and request transfer to a formal hearing before an Administrative Law Judge.

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

In addition, the regulations which were at issue in many of the cases were promulgated by the Commission itself. Again, the criticism was that the body which 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 in turn made the decision. Critics argued that the person who heard the case and had the opportunity at first hand to weigh the evidence and evaluate the credibility of the witnesses should be the person to make the decision.

Under the new system, the Commissioner of the Department is not a member of the Tribunal, and the members of the Tribunal and the Division of Tax Appeals are fully independent from the Department. The Tribunal has the authority to adopt rules and regulations relating only to the exercise of its duties, including rules of practice and procedure, and the duty of the Administrative Law Judge to hear and determine the cases before them.

The first Administrative Law Judge determinations were issued in the fall of 1987. The first determination of a Presiding Officer in a small claims case was issued in January of 1988. The first decision of the Tribunal was issued in February of 1988.

In April of 1989, the Tribunal moved its offices from the Tax Department building (#9) at the State Office Building Campus in Albany to the Riverfront Professional Tower, 500 Federal Street, Troy, New York. This physical separation of the Tribunal from the

Department of Taxation and Finance was the necessary final step in the separation of the administration of taxes from the adjudication of tax controversies between taxpayers and the Department.

In the spring of 1989, the Tribunal appointed an Advisory Panel on Practice and Procedure to assist it in evaluating the adequacy and appropriateness of the Tribunal's regulations on practice and procedure. The panel is comprised of practicing tax attorneys, tax accountants and the Deputy Commissioner and Counsel of the Department of Taxation and Finance.

Beginning April 1, 1991, the Tribunal centralized its formal hearing function in Troy, New York. On July 1, 1993 the Tribunal closed its New York City office and centralized its offices in Troy. The Tribunal continues to conduct small claims proceedings at various locations throughout the state including sites in the cities of Buffalo, Rochester, Syracuse, Binghamton, Troy and New York; and the counties of Westchester, Nassau and Suffolk.

PUBLICATION OF TRIBUNAL DECISIONS AND ADMINISTRATIVE LAW JUDGE DETERMINATIONS. The law 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.

The Tribunal provides copies of individual decisions and determinations upon request. In addition, all Tribunal decisions and determinations of Administrative Law Judges are carried on Westlaw and Lexis and are commercially published by William S. Hein Company, Buffalo, New York. Also, Commerce Clearing House publishes selected determinations and decisions. The Tribunal provides a monthly docket, also published by the Hein Company, which indicates Administrative Law Judge determinations and Tribunal decisions issued for the month, as well as exceptions to Administrative Law Judge determinations and Article 78 proceedings instituted by taxpayers to review Tribunal decisions. In addition, the Department of Taxation and Finance also publishes all Tribunal decisions and selected Administrative Law Judge determinations.

THE TRIBUNAL. The Office of Secretary to the Tribunal and the Office of Counsel to the Tribunal are the two principal staff operations working directly with the Tribunal.

The Secretary to the Tribunal is responsible for the administrative aspects of the judicial (review function) and non-judicial functions of the Tribunal.

The Counsel to the Tribunal is responsible for assisting the Tribunal in the preparation of decisions on cases before it. The office is staffed by an Assistant Counsel, who serves on a two year clerkship basis, and a paralegal.

THE DIVISION OF TAX APPEALS. The Chief Administrative Law Judge is responsible for the day-to-day administration of the hearing function, both the formal hearings before Administrative Law Judges and the small claims hearings before Presiding Officers. The hearing staff of the Division is comprised of the Assistant Chief Administrative Law Judge, 13 Administrative Law Judges and three Presiding Officers. All of these positions, including the Chief Administrative Law Judge position, are in the competitive class of the Civil Service.

The remaining principal staff operations in the Division are the Petition Intake and Review, Calendaring, Computer Support and Computer Operations units.

II. DISPOSITION OF CASES.

Introduction. The system over which the Tribunal presides is clearly adversary in nature involving, in 88% of the cases, the assertion by the Department that the taxpayer owes additional taxes. The taxpayer protests the Department's claim through the filing of a petition for hearing. (The remaining cases involve situations where taxpayers claim refunds of taxes paid [12%] and controversies over licenses which the Department administers.)

The guarantee of "justness" and "due process" in the system is rooted, simply, in the opportunity for each taxpayer to timely and adequately pursue their case and, conversely, the opportunity for the Department, on behalf of the people of the State, to timely and adequately pursue the State's interest in the controversy. The Tribunal's procedural regulations are geared to this purpose and provide the needed flexibility to account for the variables in each case. However, once the parties have presented their cases, the statute requires that the determination of the Administrative Law Judge or the decision of the Tribunal be rendered within six months.

The following tables and charts show the inventory of cases before the Tribunal/Division and the disposition of cases by Administrative Law Judges, Presiding Officers and the Tribunal itself for state fiscal year 1995-1996.

In reviewing the tables and charts, it should be remembered that all the proceedings in the Division are commenced with the filing of a petition by the taxpayer protesting any written notice of the Department of Taxation which has advised the taxpayer of a tax deficiency, a determination of tax due, a denial of a refund or credit application, a denial, cancellation, revocation or suspension of a license, permit or registration or any other notice which gives a person the right to a hearing in the Division of Tax Appeals (Tax Law section 2008). Stated alternatively, the action asserted by the Department will stand unless protested by the taxpayer affected by such action.

FORMAL HEARINGS

1995-1996 Inventory (Net Cases):

| | | |
|---------------------------------|-----|-----------|
| A. Beginning Inventory: | | 961 |
| Add: | | |
| Cases received | 788 | |
| Defaults vacated | 2 | |
| SUBTOTAL | 790 | |
| B. Total Cases for Hearing: | | 1,751 |
| Deduct: | | |
| Settled by Office of Counsel | 511 | |
| Defaults | 36 | |
| Determinations issued | 216 | |
| Petitions dismissed | 32 | |
| Referred to BCMS | 91 | |
| Bankruptcy | 9 | |
| SUBTOTAL | 895 | |
| C. Ending Inventory: | | 856 |

Analysis Of Case Scheduling:

During fiscal year 1995-1996, 729 cases were scheduled for formal hearing before Administrative Law Judges. Of that total:

110 cases (15%) were adjourned before hearing.

372 cases (51%) were settled by the parties before scheduled hearing date.

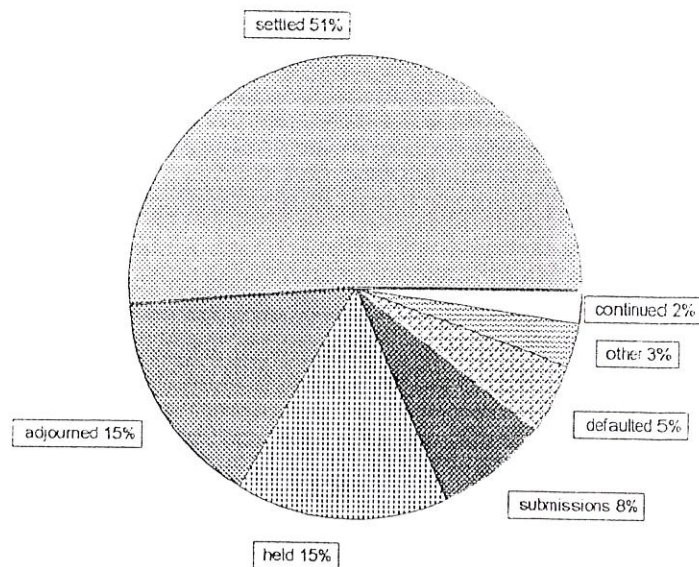
111 cases (15%) were held and completed on the scheduled date.

16 cases (2%) were held but continued for completion on a subsequent date.

60 cases (8%) were submitted on the papers without a hearing.

36 cases (5%) were defaulted due to failure of one of the parties to appear at the hearing.

24 cases (3%) resulted in other dispositions including referrals to BCMS and bankruptcies.



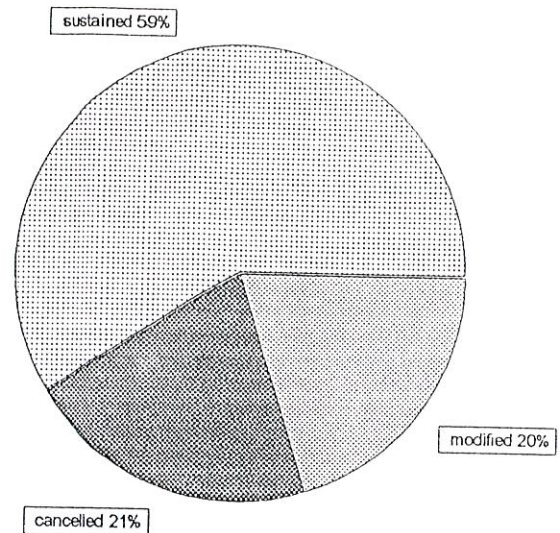
Analysis of Determinations:

A. Case Disposition: During the state fiscal year 1995-1996, the Administrative Law Judges issued 216 determinations. Of that total:

127 determinations (59%) sustained the deficiency or other action asserted by the Department.

46 determinations (21%) cancelled the deficiency or other action asserted by the Department.

43 determinations (20%) modified the deficiency or other action asserted by the Department, e.g., tax reduced, penalty waived or audit period reduced.

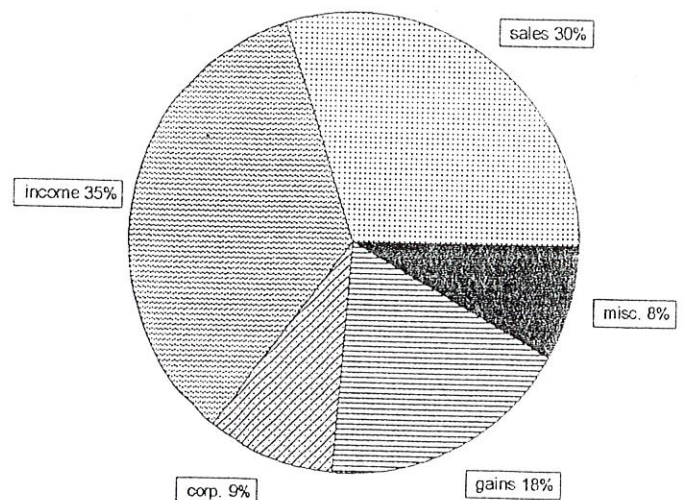


B. Average Elapsed Time: The average elapsed time between the later of the hearing date or the last brief date and the issuance of the determination was:

Mean: 4.84 months
Median: 5.00 months

C. Breakdown of Determinations by Tax:

| <u>Tax</u> | <u>Number</u> | <u>Percent</u> |
|-----------------|---------------|----------------|
| Sales | 66 | 30% |
| Income | 79 | 35% |
| Corp. Franchise | 20 | 9% |
| Gains | 40 | 18% |
| Miscellaneous | 18 | 8% |
| Total | 223* | 100% |



*Note: Some cases involve more than one tax.

SMALL CLAIMS HEARINGS

1995-1996 Inventory (Net Cases):

| | | |
|---------------------------------|-----|---------|
| A. Beginning Inventory: | | 218 |
| Add: | | |
| Cases received | 150 | |
| Defaults vacated | 0 | |
| SUBTOTAL | 150 | |
| B. Total Cases for Hearing: | | 368 |
| Deduct: | | |
| Settled by Office of Counsel | 80 | |
| Defaults | 13 | |
| Determinations issued | 65 | |
| SUBTOTAL | 158 | |
| C. Ending Inventory | | 210 |

Analysis Of Case Scheduling:

During fiscal year 1995-1996, 173 cases were scheduled for small claims hearings before Presiding Officers. Of that total:

34 cases (20%) were adjourned before hearing.

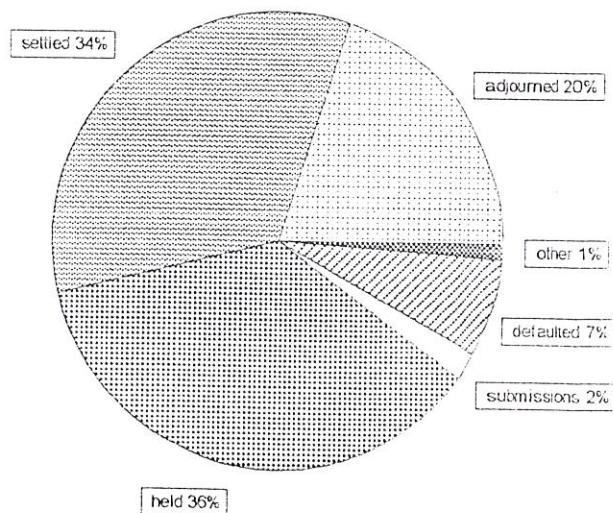
58 cases (34%) were settled by the parties before hearing.

62 cases (36%) were held and completed on the scheduled date.

4 cases (2%) were submitted on the papers without a hearing.

13 cases (7%) were defaulted due to failure of one of the parties to appear at the hearing.

2 cases (1%) resulted in other dispositions including referrals to BCMS and bankruptcies.



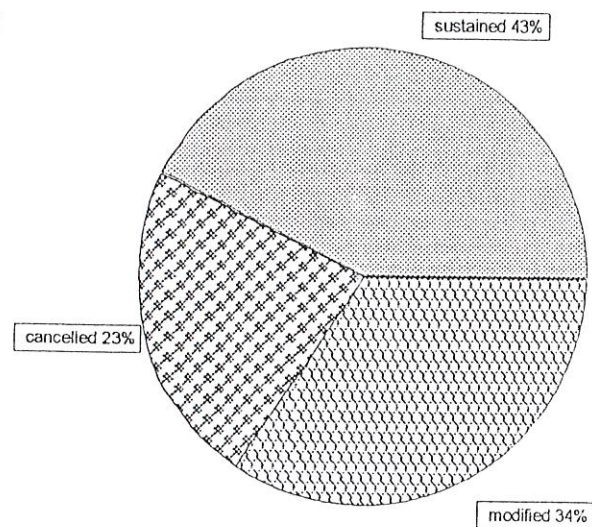
Analysis of Determinations:

A. Case Disposition: During the state fiscal year 1995-1996, the Presiding Officers issued 65 small claims determinations. Of that total:

28 determinations (43%) sustained the deficiency or other action asserted by the Department.

15 determinations (23%) cancelled the deficiency or other action asserted by the Department.

22 determinations (34%) modified the deficiency or other action asserted by the Department, e.g., tax reduced, penalty waived or audit period reduced.

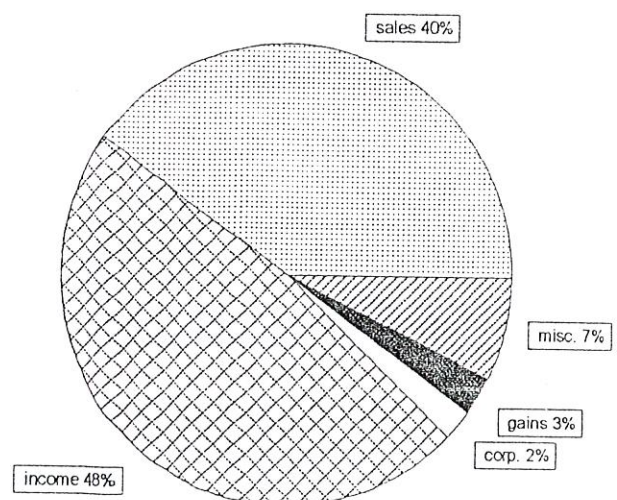


B. Average Elapsed Time: The average elapsed time between the later of the hearing date or the last brief date and the issuance of the determination was:

| | |
|---------|-------------|
| Mean | 2.32 months |
| Median: | 2.00 months |

C. Breakdown of Small Claims Determinations by Tax:

| <u>Tax</u> | <u>Number</u> | <u>Percent</u> |
|-----------------|---------------|----------------|
| Sales | 27 | 40% |
| Income | 32 | 48% |
| Corp. Franchise | 1 | 2% |
| Gains | 2 | 3% |
| Miscellaneous | 5 | 7% |
| Total | 67* | 100% |



*Note: Some cases involve more than one tax.

TAX APPEALS TRIBUNAL

1995-1996 Inventory (Net Cases):

A. Beginning Inventory: 130

Add:

| | |
|-------------------|-----|
| Cases Received | 135 |
| Misc. Adjustments | 0 |

| | |
|----------|-----|
| SUBTOTAL | 135 |
|----------|-----|

B. Total Cases for Hearing: 265

Deduct:

| | |
|------------------------------|-----|
| Decisions issued | 139 |
| Settled by Office of Counsel | 20 |
| Defaults/Withdrawn | 8 |
| Misc. Adjustments | 0 |

| | |
|----------|-----|
| SUBTOTAL | 167 |
|----------|-----|

C. Ending Inventory: 98

Analysis of Decisions:

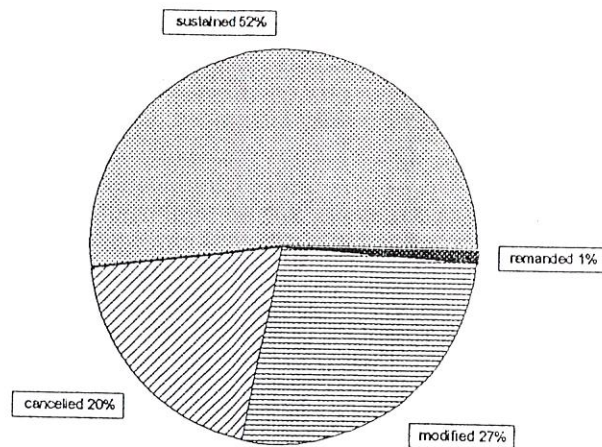
A. Case Disposition: During fiscal year 1995-1996, the Tax Appeals Tribunal issued 139 decisions. Of that total:

72.5 decisions (52%) sustained the deficiency or other action asserted by the Department.

27.5 decisions (20%) cancelled the deficiency or other action asserted by the Department.

37 decisions (27%) modified the deficiency or other action asserted by the Department, e.g., tax reduced, penalty waived or audit period reduced.

2 decisions (1%) remanded the matter for further action below.

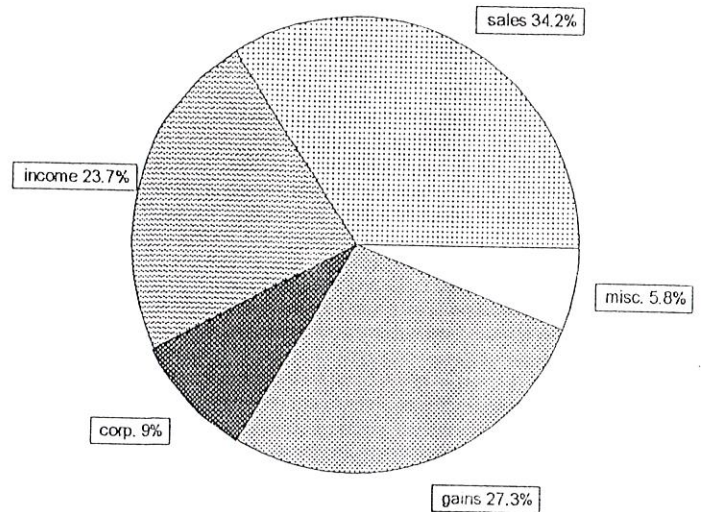


B. Average Elapsed Time: The average elapsed time between the later of the oral argument date or the last brief date and the issuance of the decision was:

Mean: 5.17 months
Median: 5.39 months

C. Breakdown of Tribunal Decisions by Tax:

| <u>Tax</u> | <u>Number</u> | <u>Percent</u> |
|-----------------|---------------|----------------|
| Sales | 47.5 | 34.2% |
| Income | 33.0 | 23.7% |
| Corp. Franchise | 12.5 | 9.0% |
| Gains | 38.0 | 27.3% |
| Miscellaneous | 8.0 | 5.8% |
| Total | 139.0 | 100% |



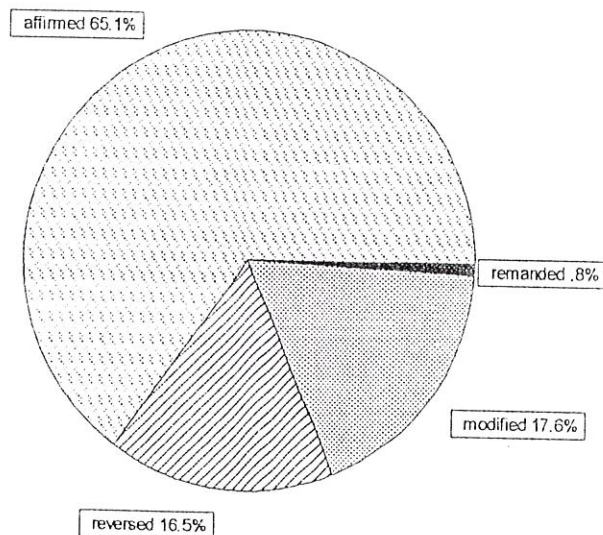
D. Tribunal Disposition of ALJ Determinations: During the state fiscal year 1995-1996, the Tribunal issued 139 decisions reviewing determinations of Administrative Law Judges. Of that total:

90.5 decisions (65.1%) affirmed the determination of the Administrative Law Judge.

23 decisions (16.5%) reversed the determination of the Administrative Law Judge.

24.5 decisions (17.6%) modified the determination of the Administrative Law Judge.

1 decision (.8%) remanded the matter to the Administrative Law Judge for further proceedings in accordance with the Tribunal's decision.



III. TAX APPEALS TRIBUNAL DIRECTORY

Riverfront Professional Tower
500 Federal Street
Troy, New York 12180-2894

| | | |
|--------------------|--------------------------------|----------|
| John P. Dugan | President | |
| Carol Donnelly | Secretary to the President | 266-3050 |
| Francis R. Koenig | Commissioner | |
| Donald C. DeWitt | Commissioner | |
| Diane Walker | Secretary to the Commissioners | 266-3051 |
| Robert P. Rivers | Secretary | |
| Barbara Volland | Secretary to the Secretary | 266-3036 |
| Linda Matice | Counsel | |
| | Legal Assistant 2 | 266-3052 |
| Charleen W. Zetena | Administrative Officer | 266-3034 |
| Kevin Law | Assistant Counsel | 266-3052 |

DIVISION OF TAX APPEALS

| | | |
|--------------------|--------------------------------------|----------|
| Andrew F. Marchese | Chief Administrative Law Judge | |
| BarbaraAnne Miller | Secretary | 266-3017 |
| Daniel J. Ranalli | Ass't Chief Administrative Law Judge | 266-3000 |
| Anne Rody-Wright | Deputy Ass't Chief Admin. Law Judge | 266-3035 |
| Raymond Freda | Legal Aide | 266-3000 |

Administrative Law Judges

| | |
|----------------------|----------|
| Timothy Alston | 266-3000 |
| Frank W. Barrie | 266-3000 |
| Catherine M. Bennett | 266-3000 |
| Arthur S. Bray | 266-3000 |
| Jean Corigliano | 266-3000 |
| Marilyn M. Faulkner | 266-3000 |
| Brian L. Friedman | 266-3000 |
| Dennis M. Galliher | 266-3000 |
| Winifred M. Maloney | 266-3000 |
| Roberta Moseley Nero | 266-3000 |
| Joseph W. Pinto, Jr. | 266-3000 |
| Thomas C. Sacca | 266-3000 |
| Kathy Sanderson | 266-3000 |

Presiding Officers

| | |
|---------------------|----------|
| Allan E. Caplowaith | 266-3000 |
| James Hoefer | 266-3000 |
| Arthur J. Johnson | 266-3000 |

Petition Intake and Review

| | | |
|-------------------|---------------------|----------|
| Frank A. Landers | Director | 266-3000 |
| Frank McMahon | Assistant Director | 266-3000 |
| Lisa Paddock | Keyboard Specialist | 266-3000 |
| Gisela Schlederer | Clerk | 266-3000 |
| Maureen Urquhart | Clerk | 266-3000 |

Calendar Section

| | | |
|----------------|--------------------------|----------|
| Janet Danahy | Calendar Clerk | 266-3000 |
| Lynne Washburn | Assistant Calendar Clerk | 266-3000 |
| Gail Walker | Keyboard Specialist | 266-3000 |

Computer Support

| | | |
|-----------------|---------------------|----------|
| Barbara J. Giek | Supervisor | 266-3000 |
| Louise Healey | Keyboard Specialist | 266-3000 |
| Jan Madigan | Keyboard Specialist | 266-3000 |

IV. TAX APPEALS TRIBUNAL ADVISORY PANEL ON PRACTICE & PROCEDURE

During fiscal year 1995-1996, the Advisory Panel on Practice and Procedure consisted of the following individuals:

E. Parker Brown, Esq.
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Deputy Commissioner & Counsel
NYS Department of Taxation and Finance
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Mr. Douglas J. Green
National Director of State and Local Taxes
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Ms. Janice Johnson
Coopers and Lybrand
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Philips, Lytle, Hitchcock, Blaine & Huber
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Merrick, New York 11566

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Arthur Andersen, LLP
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New York, New York 10105