



**THE NEW YORK STATE  
DIVISION OF TAX APPEALS  
TAX APPEALS TRIBUNAL**

**ANNUAL REPORT**

**FOR THE STATE FISCAL YEAR  
1996-1997**

**Submitted October 3, 1997**

**Donald C. DeWitt, President  
Carroll R. Jenkins, Commissioner  
Joseph W. Pinto, Jr., Commissioner**

**George E. Pataki  
Governor**

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**NEW YORK STATE  
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TAX APPEALS TRIBUNAL  
ANNUAL REPORT**

**October 3, 1997**

***I. INTRODUCTION.***

This report is prepared pursuant to Tax Law section 2006(13) which provides that the Tax Appeals Tribunal shall "collect, compile and prepare for publication statistics and other data with respect to the operations of the division of tax appeals, and . . . submit annually to the governor, the temporary president of the senate and the speaker of the assembly a report on such operations including but not limited to, the number of proceedings initiated, the types of dispositions made and the number of proceedings pending."

***PERIOD COVERED.*** This report covers the period from April 1, 1996 to March 31, 1997.

***OVERVIEW.*** The Division of Tax Appeals was created by Chapter 282 of the Laws of 1986 as an independent division within the Department of Taxation and Finance (Tax Law section 2002). The effective date of the law was September 1, 1987. It is headed by the Tax Appeals Tribunal which is comprised of three commissioners appointed by the Governor and confirmed by the State Senate. The commissioners are appointed for nine-year terms. One of the commissioners is designated the President of the Tribunal by the Governor and is responsible for the administration of the Tribunal and the Division 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. The third member need not be an attorney but must also be knowledgeable on the subject of taxation (Tax Law section 2004).

At the present, the Tribunal consists of Donald C. DeWitt, President and Commissioner, whose term expires on December 31, 2004; Carroll R. Jenkins, Commissioner, whose term expires on December 31, 2001; and Joseph W. Pinto, Jr., Commissioner, whose term expires on December 31, 1998.

**PURPOSE.** The Tribunal is charged with the responsibility of "providing the public with a just system of resolving controversies with [the] department of taxation and finance and to ensure that the elements of due process are present with regard to such resolution of controversies" (Tax Law section 2000, emphasis added). This purpose is accomplished by separating the administration of the taxes from the adjudication of disputes between 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 current 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.

On July 1, 1993, the Division of Tax Appeals/Tax Appeals Tribunal closed its New York City office and centralized its offices in Troy, New York as a result of budgeting constraints. The Division of Tax Appeals continued 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 City; and in the counties of Westchester, Nassau and Suffolk.

Beginning in January, 1997, the Division of Tax Appeals implemented a pilot program and started holding hearings in New York City. This program was approved by Governor Pataki to ensure greater access for taxpayers to

administrative tax proceedings. Oral argument proceedings before the Tribunal will be held at the New York City location as well. The Tribunal is utilizing office space at the New York State Housing Finance Agency in Manhattan as part of a cooperative arrangement.

The Division of Tax Appeals is currently involved in the development and implementation of a computer technology plan. The agency has developed a number of short- and long-term strategies to achieve greater efficiencies in word processing, case tracking and legal research. The Division of Tax Appeals is moving forward to avail itself of the latest technologies such as access to the Internet, development of a Web page and CD Rom legal research capabilities.

The agency has purchased 30 personal computers and new printers that will ultimately be connected to a PC network system utilizing our server. The Division is also finalizing plans to recable certain areas of our facility to accomplish this goal. Coupled with the agency's enhancement of its computer hardware is an allocation of resources to staff training in the newest software programs being utilized. This has been achieved through various off-site training courses as well as a number of in-house training sessions for Division of Tax Appeals/Tax Appeals Tribunal personnel.

One of our primary goals is to become more accessible to the taxpayers and the Department of Taxation and Finance. One way of achieving this is through the development of a Web page that will list our decisions, determinations and other important information. We are in the process of evaluating and acquiring the technology to accomplish this objective. We are optimistic that the Division will have a Web page by early 1998.

***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 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, 10 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 78% 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 [22%] 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 of Tax Appeals and the disposition of cases by Administrative Law Judges, Presiding Officers and the Tribunal itself for state fiscal year 1996-1997.

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

### 1996-1997 Inventory (Net Cases):

**A. Beginning Inventory:** 856

Add:

Cases received 601

Defaults vacated 2

Subtotal 603

**B. Total Cases for Hearing:** 1,459

Deduct:

Settled by Office of Counsel 492

Defaults 28

Determinations issued 190

Petitions dismissed 28

Referred to BCMS 77

Bankruptcy 8

Subtotal 823

**C. Ending Inventory:** 636

### ANALYSIS OF CASE SCHEDULING:

During fiscal year 1996-1997, **637** cases were scheduled for formal hearing before Administrative Law Judges. Of that total:

**99** cases (15.5%) were adjourned before hearing.

**368** cases (58%) were settled by the parties before scheduled hearing date.

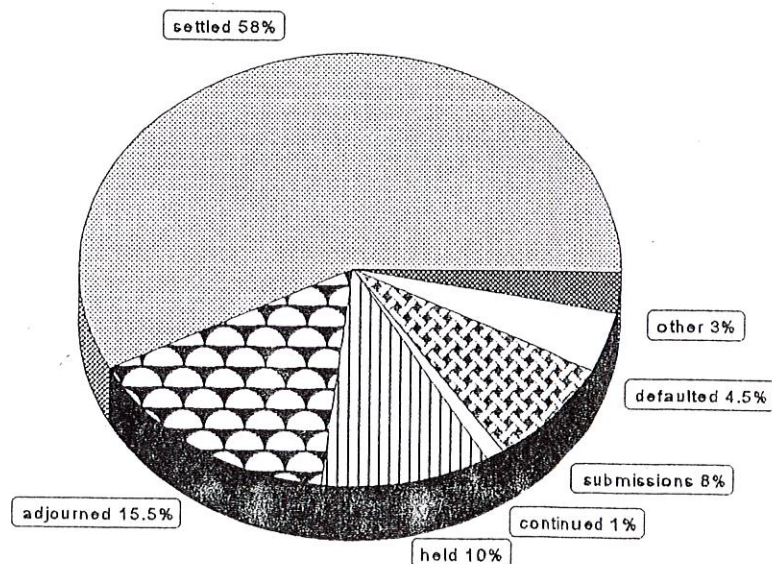
**64** cases (10%) were held and completed on the scheduled date.

**7** cases (1%) were held but continued for completion on a subsequent date.

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

**29** cases (4.5%) were defaulted due to failure of one of the parties to appear at the hearing.

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



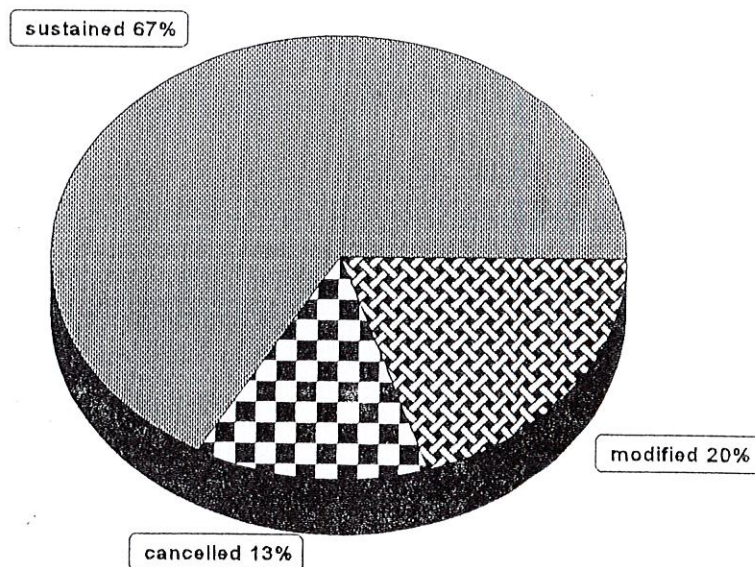
**ANALYSIS OF DETERMINATIONS:**

**A. Case Disposition:** During the state fiscal year 1996-1997, the Administrative Law Judges issued **190** determinations. Of that total:

**128** determinations (67%) sustained the deficiency or other action asserted by the Department.

**24** determinations (13%) cancelled the deficiency or other action asserted by the Department.

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



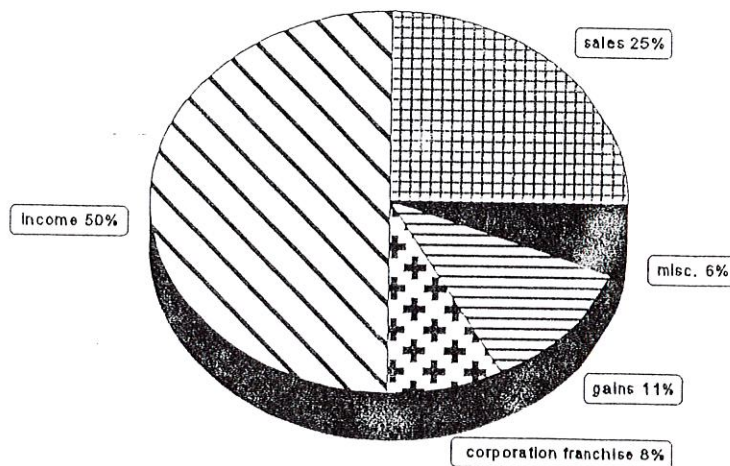
**B. Average Elapsed Time:** The average elapsed time between the later of the hearing date or the last brief date and the issuance of the determination was:

Mean: 4.33 months  
Median: 5.00 months

**C. Breakdown of Determinations by Tax:**

<u>Tax</u>	<u>Number</u>	<u>Percent</u>
Sales	50	25%
Income	100	50%
Corp. Franchise	16	8%
Gains	21	11%
Miscellaneous	12	6%
Total	199*	100%

\*Note: Some cases involve more than one tax.



## *SMALL CLAIMS HEARINGS*

### 1996-1997 Inventory (Net Cases):

**A. Beginning Inventory:** 210

Add:

Cases received 129

Defaults vacated 2

Subtotal 131

**B. Total Cases for Hearing:** 341

Deduct:

Settled by Office of Counsel 71

Defaults 18

Determinations issued 62

Subtotal 151

**C. Ending Inventory** 190

### ANALYSIS OF CASE SCHEDULING:

During fiscal year 1996-1997, **151** cases were scheduled for small claims hearings before Presiding Officers. Of that total:

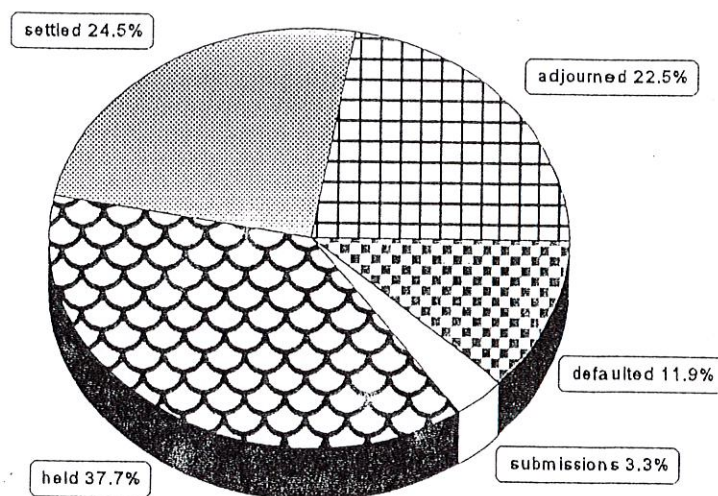
**34** cases (22.5%) were adjourned before hearing.

**37** cases (24.5%) were settled by the parties before hearing.

**57** cases (37.7%) were held and completed on the scheduled date.

**5** cases (3.3%) were submitted on the papers without a hearing.

**18** cases (11.9%) were defaulted due to failure of one of the parties to appear at the hearing.



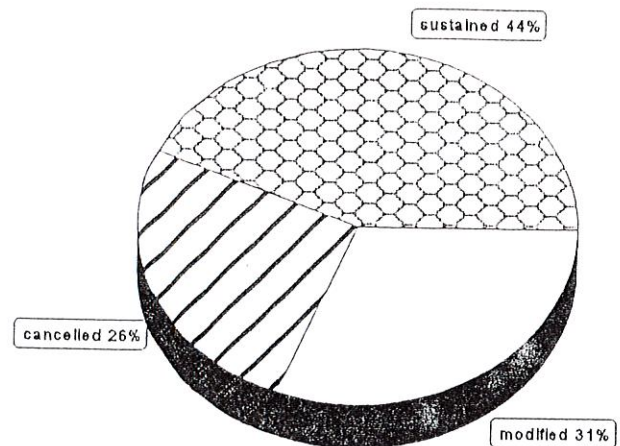
## **ANALYSIS OF DETERMINATIONS:**

**A. Case Disposition:** During the state fiscal year 1996-1997, the Presiding Officers issued **62** small claims determinations. Of that total:

**27** determinations (43.5%) sustained the deficiency or other action asserted by the Department.

**16** determinations (25.8%) cancelled the deficiency or other action asserted by the Department.

**19** determinations (30.6%) modified the deficiency or other action asserted by the Department, e.g., tax reduced, penalty waived or audit period reduced.



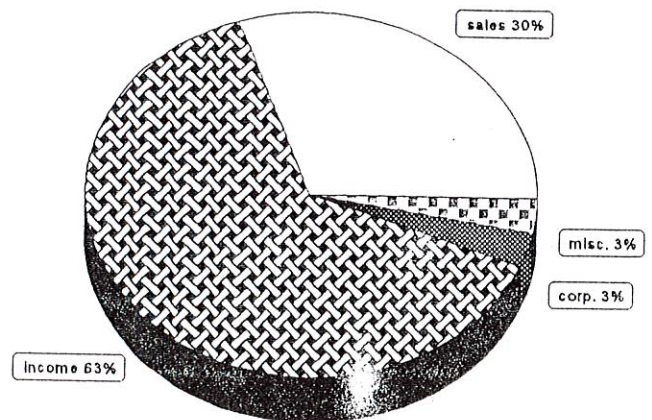
**B. Average Elapsed Time:** The average elapsed time between the later of the hearing date or the last brief date and the issuance of the determination was:

Mean: 2.56 months

Median: 3.00 months

## **C. Breakdown of Small Claims Determinations by Tax:**

<u>Tax</u>	<u>Number</u>	<u>Percent</u>
Sales	19	30%
Income	40	63%
Corp. Franchise	2	3%
Gains	0	0%
Miscellaneous	2	3%
Total	63*	100%



\*Note: Some cases involve more than one tax.

## *TAX APPEALS TRIBUNAL*

### 1996-1997 Inventory (Net Cases):

**A. Beginning Inventory:** 103

Add:  
Cases Received 124

**B. Total Cases for Hearing:** 227

Deduct:  
Decisions issued 95  
Settled by Office of Counsel 20  
Withdrawn 5

Subtotal 120

**C. Ending Inventory:** 107

## ANALYSIS OF DECISIONS:

**A. Case Disposition:** During fiscal year 1996-1997, the Tax Appeals Tribunal issued **95** decisions. Of that total:

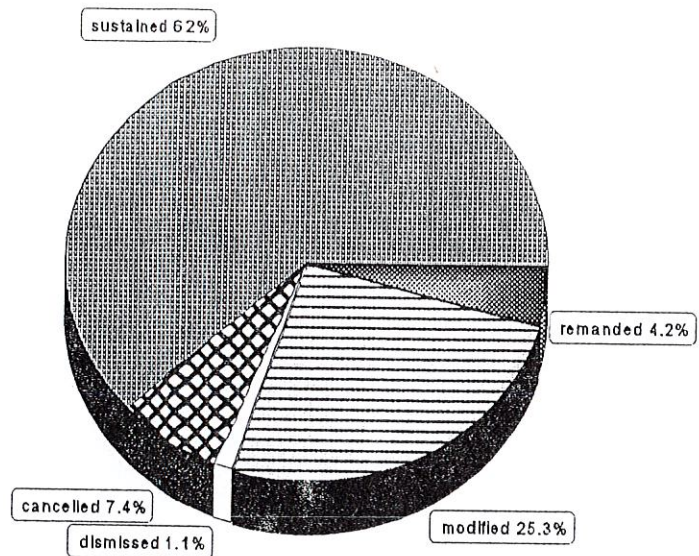
**59** decisions (62%) sustained the deficiency or other action asserted by the Department.

**7** decisions (7.4%) cancelled the deficiency or other action asserted by the Department.

**24** decisions (25.3%) modified the deficiency or other action asserted by the Department, e.g., tax reduced, penalty waived or audit period reduced.

**4** decisions (4.2%) remanded the matter for further action below.

**1** decision (1.1%) withdrew the Notice of Intent to Dismiss Exception as untimely; exception to be entertained.



**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:

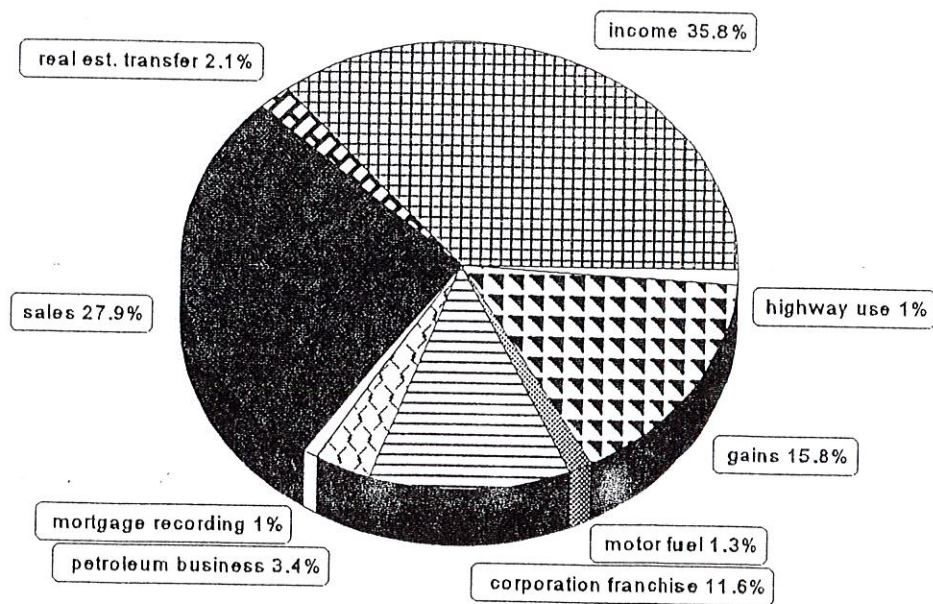
Mean: 6.75 months\*

Median: 5.71 months

\* The average mean exceeded six months as the Tribunal was unable to issue decisions from August 2, 1996 to December 18, 1996. The resignation of one of its Commissioners and the retirement of another Commissioner left the Tribunal with only one Commissioner to review the record and render a decision. The statute requires that two Commissioners are necessary to issue a decision.

*C. Breakdown of Tribunal Decisions by Tax:*

<u>Tax</u>	<u>Number</u>	<u>Percent</u>
Sales	26.50	27.9%
Income	34.00	35.8%
Corp. Franchise	11.00	11.6%
Gains	15.00	15.8%
Real Estate Transfer	2.00	2.1%
Mortgage Recording	1.00	1.0%
Petroleum Business	3.25	3.4%
Motor Fuel	1.25	1.3%
Highway Use	1.00	1.0%
Total	95.00	100%



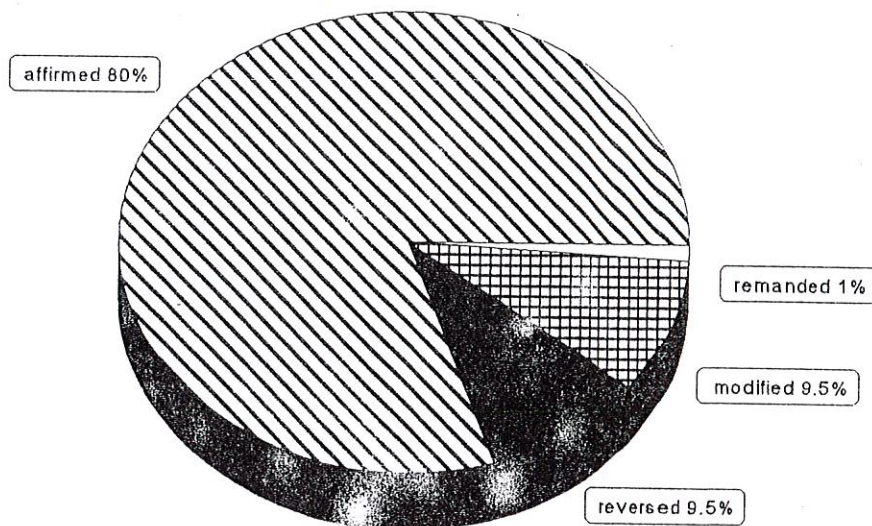
***D. Tribunal Disposition of ALJ Determinations:*** During the state fiscal year 1996-1997, the Tribunal issued **95** decisions reviewing determinations of Administrative Law Judges. Of that total:

**76** decisions (80%) affirmed the determination of the Administrative Law Judge.

**9** decisions (9.5%) reversed the determination of the Administrative Law Judge.

**9** decisions (9.5%) modified the determination of the Administrative Law Judge.

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



**E. Tribunal Disposition of Petitioner Exceptions:** During fiscal year 1996-1997, the Tribunal rendered **88** decisions with respect to exceptions filed by Petitioners. Of that total:

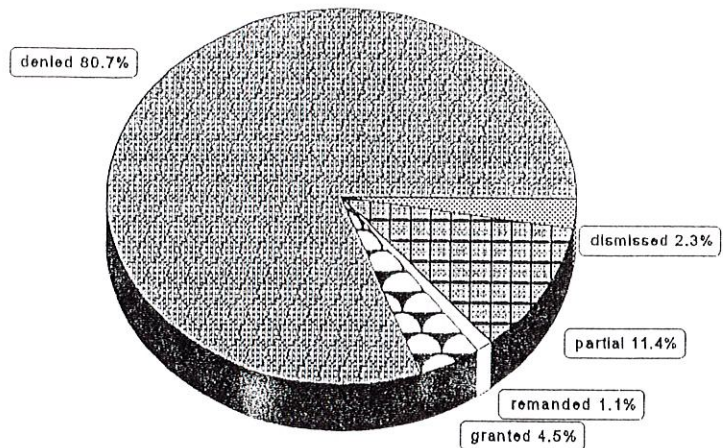
**4** decisions (4.5%) granted Petitioner's exception.

**71** decisions (80.7%) denied Petitioner's exception.

**10** decisions (11.4%) granted Petitioner's exception in part.

**2** decisions (2.3%) dismissed Petitioner's exception.

**1** decision (1.1%) remanded the matter to the Administrative Law Judge for further proceedings based on the Tribunal's decision.



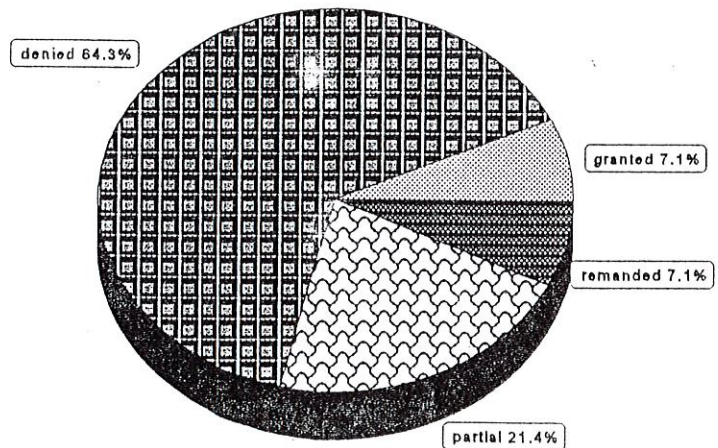
**F. Tribunal Disposition of Department Exceptions:** During fiscal year 1996-1997, the Tribunal rendered **14** decisions with respect to exceptions filed by the Department. Of that total:

**1** decision (7.1%) granted the Department's exception.

**9** decisions (64.3%) denied the Department's exception.

**3** decisions (21.4%) granted the Department's exception in part.

**1** decision (7.1%) remanded the matter to the Administrative Law Judge for further proceedings based on the Tribunal's decision.



### ***III. DIVISION OF TAX APPEALS DIRECTORY***

**Riverfront Professional Tower  
500 Federal Street  
Troy, New York 12180-2893**

#### ***TAX APPEALS TRIBUNAL***

Donald C. DeWitt	President	
Carol S. Donnelly	Secretary to the President	266-3050
Carroll R. Jenkins	Commissioner	
Joseph W. Pinto, Jr.	Commissioner	
Diane T. Walker	Secretary to the Commissioners	266-3051
Robert P. Rivers	Secretary	
Barbara A. Volland	Secretary to the Secretary	266-3036
Donna M. Gardiner	Counsel	
Linda L. Matice	Legal Assistant 2	266-3052
Charleen W. Zetena	Administrative Officer	266-3034

#### ***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

### *Administrative Law Judges*

Timothy J. Alston	266-3000
Frank W. Barrie	266-3000
Catherine M. Bennett	266-3000
Arthur S. Bray	266-3000
Jean Corigliano	266-3000
Brian L. Friedman	266-3000
Dennis M. Galliher	266-3000
Winifred M. Maloney	266-3000
Roberta Moseley Nero	266-3000
Thomas C. Sacca	266-3000

### *Presiding Officers*

Allen Caplowaith	266-3000
James Hoefer	266-3000
Arthur Johnson	266-3000

### *Petition Intake and Review*

Frank Landers	Director	266-3000
Frank McMahon	Assistant Director	266-3000
Gisela R. Schlederer	Clerk	266-3000
Maureen Urquhart	Clerk	266-3000

### *Calendar Section*

Janet M. Danahy	Calendar Clerk	266-3000
Lynne M. Washburn	Assistant Calendar Clerk	266-3000
Gail A. Walker	Keyboard Specialist	266-3000

### *Computer Support*

Jean L. McWilliams	Assoc. Computer Programmer Analyst	266-3000
Barbara J. Giek	Supervisor	266-3000
Louise Healey	Keyboard Specialist	266-3000
Jan M. Madigan	Keyboard Specialist	266-3000