

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

ANNUAL REPORT

**FOR THE STATE FISCAL YEAR
1997-1998**

**Submitted
October 16, 1998**

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

*George E. Pataki
Governor*

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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, 1997 to March 31, 1998.

OVERVIEW. The Division of Tax Appeals ("Division") 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. The Division is headed by the Tax Appeals Tribunal ("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 solely responsible for the administration of the Division 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 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 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 Division of Tax Appeals.

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 issues 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 right of appeal. 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 that a formal hearing before an Administrative Law Judge be held.

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 then rendered the decision. Critics argued that the person who had the opportunity to weigh the evidence and evaluate the credibility of the witnesses at the hearing should be the person to make the decision.

Under the current system, the Commissioner of the Department 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 duties 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 headquarters 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 closed its New York City office and centralized its operations in Troy, New York as a result of budgeting constraints. The Division 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 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. Administrative Law Judge hearings are now conducted in New York City on a permanent basis. Oral argument proceedings before the Tribunal are 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.

For the first time in May of 1998, the Tribunal conducted oral argument proceedings in Buffalo. It is planned that the Tribunal will periodically hold its oral arguments in the Buffalo area as the need dictates.

The Division 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 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 Division accomplished many of its technology objectives in fiscal year 1997-98. The agency re-cabled its facility and purchased additional computer hardware and software, which allowed it to establish a local area network (LAN). All Division employees now have E-mail and scheduling services, resource sharing capabilities and data backup and protection. In addition, the Division has started converting its law library to a CD Rom-based format. The Division also established Internet access for strategic users and added to the office environment specialty computer-based services such as color printing, OCR conversion and scanning. The agency continues to allocate significant resources to staff training to ensure that personnel are instructed in the latest software and hardware applications.

One of the Division's primary goals is to become more accessible to taxpayers and to the Department of Taxation and Finance. One way of achieving this is through the development of a Web page that will feature 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 1999.

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.

OPERATIONS.

THE TRIBUNAL. The Secretary to the Tribunal assists the President in administering the judicial function and certain non-judicial functions of the Division. In this regard, the Secretary has direct supervisory authority over the Chief Administrative Law Judge as well as over the Division's technology staff.

The Counsel to the Tribunal assists the Tribunal in the preparation of decisions on cases before it as well as preparing the Division's regulatory and legislative proposals.

The Administrative Officer assists the President in administering the budgetary and human services needs of the Division.

THE DIVISION OF TAX APPEALS. The Chief Administrative Law Judge is responsible for the day-to-day administration of 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 adversarial in nature involving, in 86% of the cases, the assertion by the Department that the taxpayer owes additional taxes. The remaining cases involve situations where taxpayers claim refunds of taxes paid (14%) and controversies over licenses which the Department administers.

The taxpayer protests 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) by filing a petition for a hearing with the Division. Unless protested by the taxpayer affected by such action, the action asserted by the Department will stand.

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 1997-1998.

FORMAL HEARINGS

1997-1998 Inventory (Net Cases):

A. Beginning Inventory: 636

Add:

Cases received	435
Defaults vacated	1

Subtotal	436
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B. Total Cases for Hearing: 1,072

Deduct:

Settled by Office of Counsel	282
Defaults	14
Determinations issued	122
Petitions dismissed	22
Referred to BCMS	45
Bankruptcy	2

Subtotal	487
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C. Ending Inventory: 585

ANALYSIS OF CASE SCHEDULING:

During fiscal year 1997-1998, **381** cases were scheduled for formal hearing before Administrative Law Judges. Of that total:

50 cases (13.1%) were adjourned before hearing.

195 cases (51.2%) were settled by the parties before scheduled hearing date.

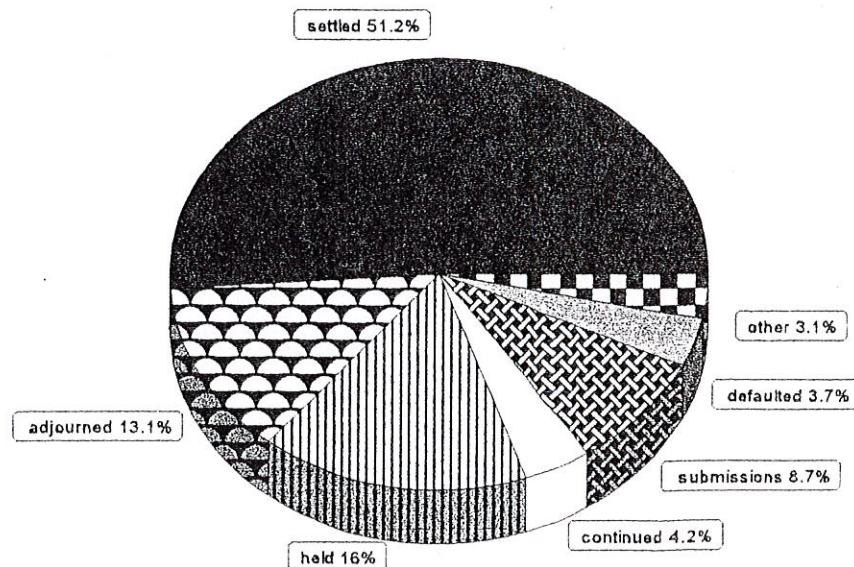
61 cases (16%) were held and completed on the scheduled date.

16 cases (4.2%) were held but continued for completion on a subsequent date.

33 cases (8.7%) were submitted on the papers without a hearing.

14 cases (3.7%) were defaulted due to failure of one of the parties to appear at the hearing.

12 cases (3.1%) resulted in other dispositions including referrals to BCMS and bankruptcies.



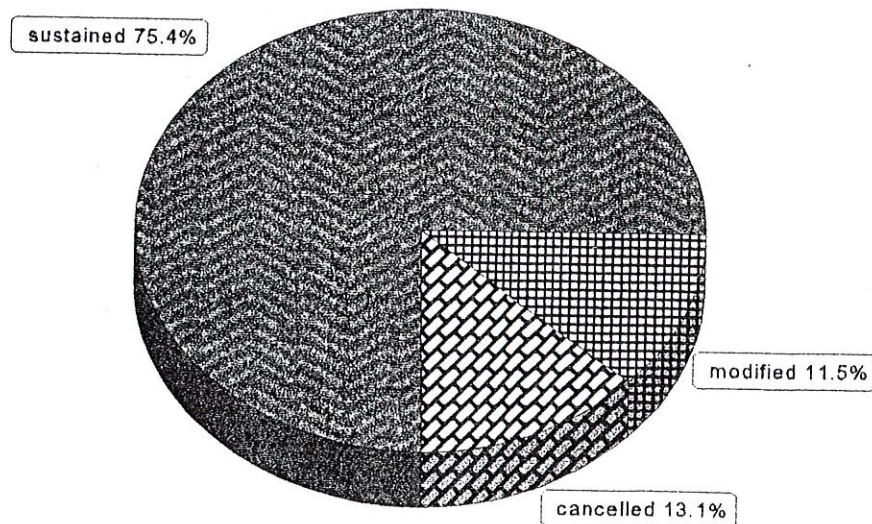
ANALYSIS OF DETERMINATIONS:

A. Case Disposition: During the state fiscal year 1997-1998, the Administrative Law Judges issued 122 determinations. Of that total:

92 determinations (75.4%) sustained the deficiency or other action asserted by the Department.

16 determinations (13.1%) cancelled the deficiency or other action asserted by the Department.

14 determinations (11.5%) 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:

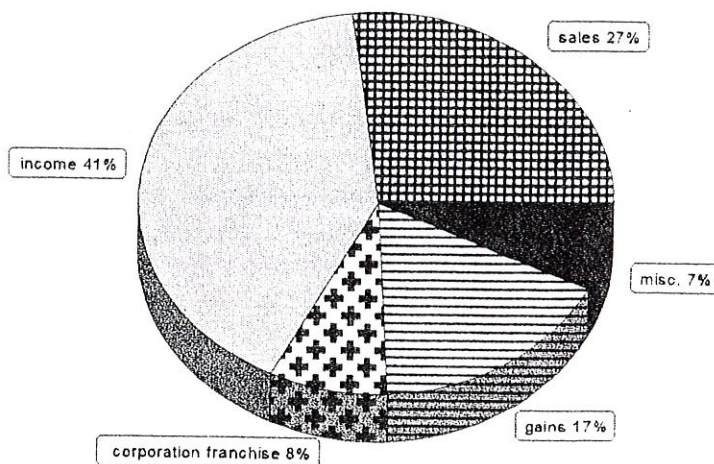
Mean: 4.48 months

Median: 5.00 months

C. Breakdown of Determinations by Tax:

<u>Tax</u>	<u>Number</u>	<u>Percent</u>
Sales	34	27%
Income	51	41%
Corp. Franchise	10	8%
Gains	21	17%
Miscellaneous	9	7%
Total	125*	100%

*Note: Some cases involve more than one tax.



SMALL CLAIMS HEARINGS

1997-1998 Inventory (Net Cases):

A. Beginning Inventory: 190

Add:

Cases received 103

Defaults vacated 1

Subtotal 104

B. Total Cases for Hearing: 294

Deduct:

Settled by Office of Counsel 68

Defaults 21

Determinations issued 53

Subtotal 142

C. Ending Inventory 152

ANALYSIS OF CASE SCHEDULING:

During fiscal year 1997-1998, **169** cases were scheduled for small claims hearings before Presiding Officers. Of that total:

48 cases (28.4%) were adjourned before hearing.

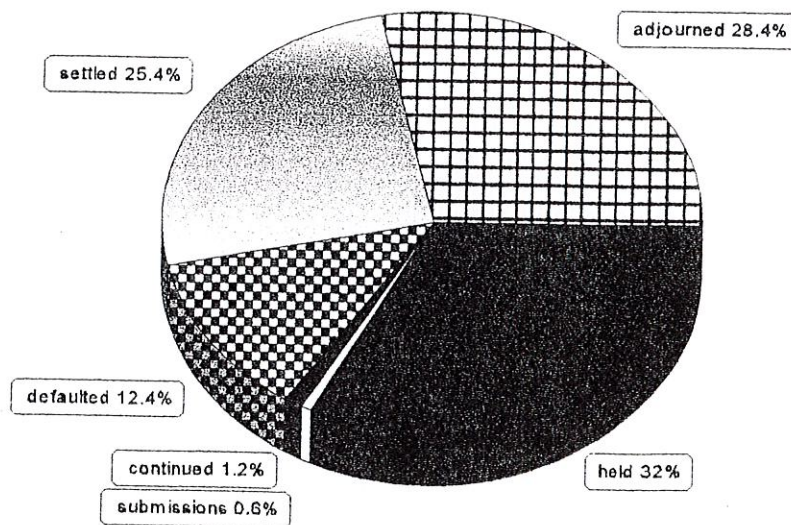
43 cases (25.4%) were settled by the parties before hearing.

54 cases (32%) were held and completed on the scheduled date.

2 cases (1.2%) were held but continued for completion on another date.

1 case (0.6%) was submitted on the papers without a hearing.

21 cases (12.4%) were defaulted due to failure of one of the parties to appear at the hearing.



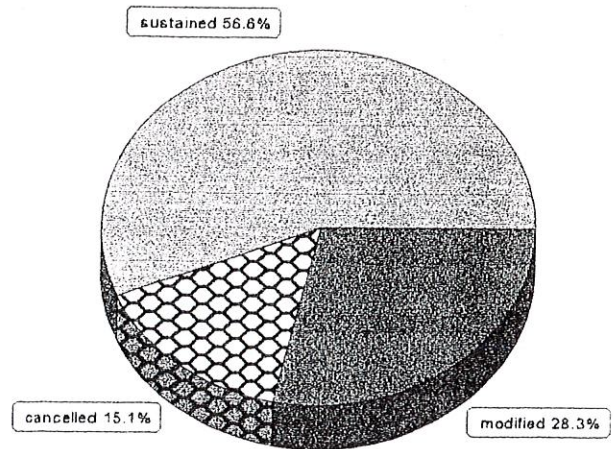
ANALYSIS OF DETERMINATIONS:

A. Case Disposition: During the state fiscal year 1997-1998, the Presiding Officers issued **53** small claims determinations. Of that total:

30 determinations (56.6%) sustained the deficiency or other action asserted by the Department.

8 determinations (15.1%) cancelled the deficiency or other action asserted by the Department.

15 determinations (28.3%) modified the deficiency or other action asserted by the Department, e.g., tax reduced, penalty waived or audit period reduced.



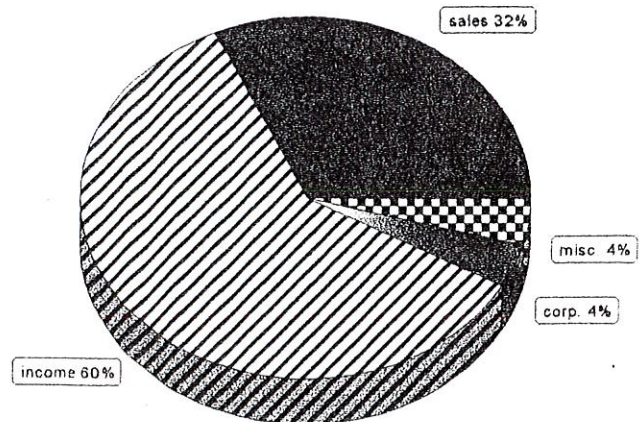
B. Average Elapsed Time: The average elapsed time between the later of the hearing date or the last brief date and the issuance of the determination was:

Mean: 2.55 months

Median: 3.00 months

C. Breakdown of Small Claims Determinations by Tax:

<u>Tax</u>	<u>Number</u>	<u>Percent</u>
Sales	17	32%
Income	32	60%
Corp. Franchise	2	4%
Miscellaneous	2	4%
Total	53	100%



TAX APPEALS TRIBUNAL

1997-1998 Inventory (Net Cases):

A. Beginning Inventory: 107

Add:

Cases Received 79

B. Total Cases for Hearing: 186

Deduct:

Decisions issued 111

Settled by Office of Counsel 10

Withdrawn 1

Subtotal 122

C. Ending Inventory: 64

ANALYSIS OF DECISIONS:

A. Case Disposition: During fiscal year 1997-1998, the Tax Appeals Tribunal issued 111 decisions. Of that total:

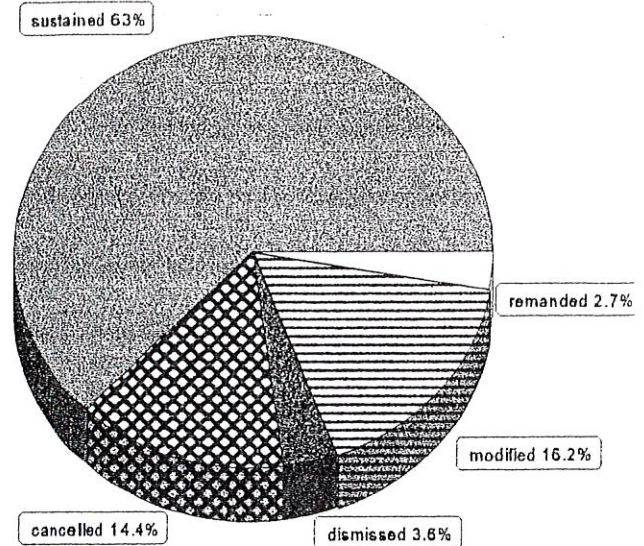
70 decisions (63%) sustained the deficiency or other action asserted by the Department.

16 decisions (14.4%) cancelled the deficiency or other action asserted by the Department.

18 decisions (16.2%) modified the deficiency or other action asserted by the Department, e.g., tax reduced, penalty waived or audit period reduced.

3 decisions (2.7%) remanded the matter for further action below.

4 decisions (3.6%) dismissed the exception.



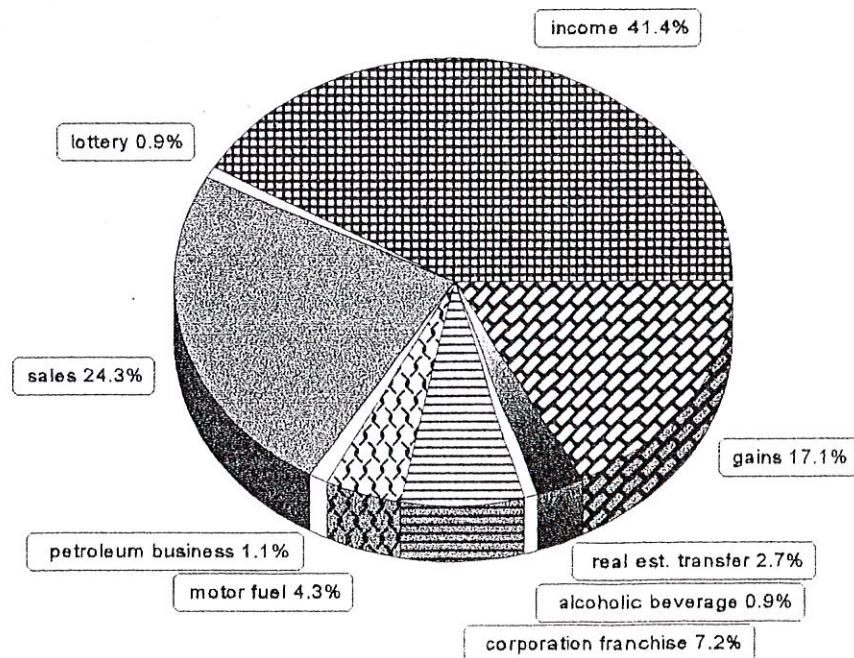
B. Average Elapsed Time: The average elapsed time between the later of the oral argument date or the last brief date and the issuance of the decision was:

Mean: 6.39 months*
Median: 5.75 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 Tax Law requires that at least two Commissioners are necessary in order to issue a decision. The Tribunal commenced issuing decisions after December 18, 1996 and eliminated its case backlog by July, 1997.

C. Breakdown of Tribunal Decisions by Tax:

<u>Tax</u>	<u>Number</u>	<u>Percent</u>
Sales	27.00	24.3%
Income	46.00	41.4%
Corp. Franchise	8.00	7.2%
Gains	19.00	17.1%
Real Estate Transfer	3.00	2.7%
Petroleum Business	1.25	1.1%
Motor Fuel	4.75	4.3%
Lottery	1.00	0.9%
Alcoholic Beverage	1.00	0.9%
Total	111.00	100%



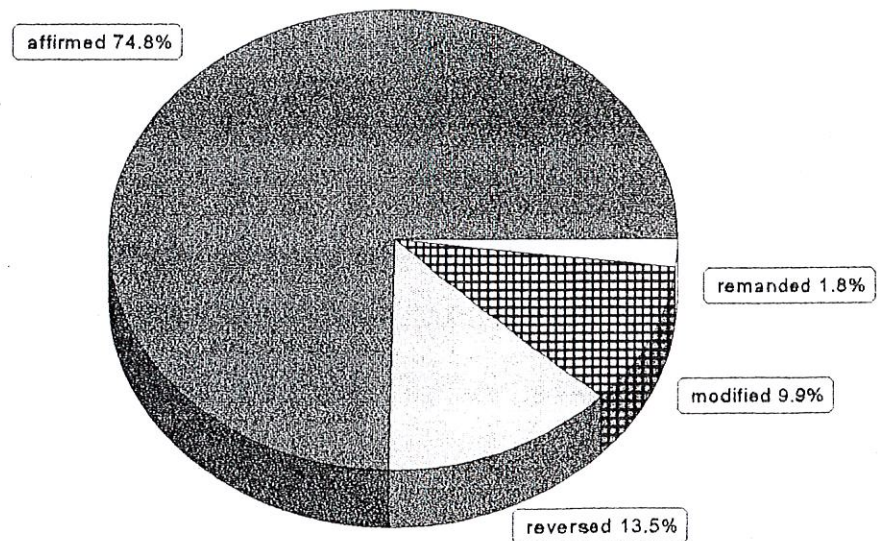
D. Tribunal Disposition of ALJ Determinations: During the state fiscal year 1997-1998, the Tribunal issued 111 decisions reviewing determinations of Administrative Law Judges. Of that total:

83 decisions (74.8%) affirmed the determination of the Administrative Law Judge.

15 decisions (13.5%) reversed the determination of the Administrative Law Judge.

11 decisions (9.9%) modified the determination of the Administrative Law Judge.

2 decisions (1.8%) 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 1997-1998, the Tribunal rendered 88* decisions with respect to exceptions filed by Petitioners. Of that total:

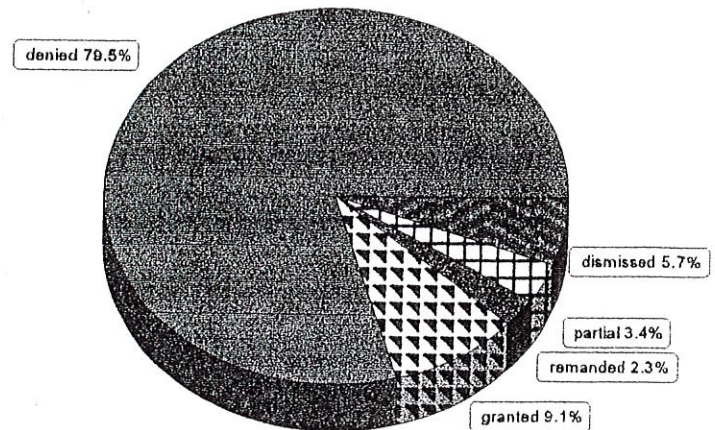
8 decisions (9.1%) granted Petitioner's exception.

70 decisions (79.5%) denied Petitioner's exception.

3 decisions (3.4%) granted Petitioner's exception in part.

5 decisions (5.7%) dismissed Petitioner's exception.

2 decisions (2.3%) remanded the matter to the Administrative Law Judge for further proceedings based on the Tribunal's decision.



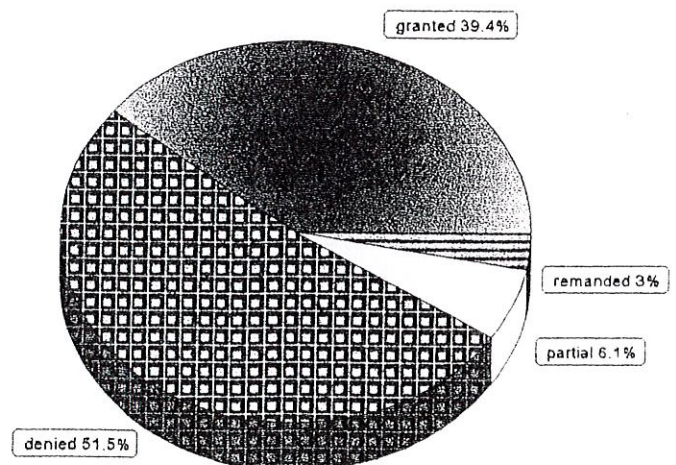
F. Tribunal Disposition of Department Exceptions: During fiscal year 1997-1998, the Tribunal rendered 33* decisions with respect to exceptions filed by the Department. Of that total:

13 decisions (39.4%) granted the Department's exception.

17 decisions (51.5%) denied the Department's exception.

2 decisions (6.1%) granted the Department's exception in part.

1 decision (3%) remanded the matter to the Administrative Law Judge for further proceedings based on the Tribunal's decision.



*Total (121) includes 10 dual exceptions filed.

III. DIVISION OF TAX APPEALS DIRECTORY

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

TAX APPEALS TRIBUNAL

Donald C. DeWitt	President and Commissioner	
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 to the Tribunal	
Barbara A. Volland	Assistant to the Secretary	266-3036
Donna M. Gardiner	Counsel to the Tribunal	
Linda L. Matice	Legal Assistant 2	266-3052
Vacant	Administrative Officer	
Jacalyn Guay	Clerk 2	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
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	Information Processing Specialist IV	266-3000
Jan M. Madigan	Keyboard Specialist	266-3000