



# Tax Appeals



# ANNUAL REPORT

## 2022

**KATHY HOCHUL, GOVERNOR**

**ANTHONY GIARDINA, PRESIDENT AND COMMISSIONER**

**DIERDRE K. SCOZZAFAVA, COMMISSIONER**

**CYNTHIA M. MONACO, COMMISSIONER**





## Tax Appeals

**Anthony Giardina**

President and Commissioner

**New York State Tax Appeals Tribunal**

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April 26, 2023

The Honorable Kathy Hochul  
Governor of the State of New York

The Honorable Andrea Stewart-Cousins  
Temporary President of the Senate

The Honorable Carl E. Heastie  
Speaker of the Assembly

Dear Governor Hochul, Leader Stewart-Cousins and Speaker Heastie:

Pursuant to Tax Law Section 2006 (13), I am pleased to submit the Annual Report of the Tax Appeals Tribunal/Division of Tax Appeals ("Tax Appeals") for calendar year 2022. Together with the statutorily required statistics regarding operations, the report contains general information regarding Tax Appeals, including its mission, functions and operations. I note that prior annual reports were made on a fiscal year basis; however, beginning with this report, Tax Appeals will provide annual reports on a calendar year basis.

Tax Law Section 2000 imposes upon Tax Appeals the responsibility of providing the public with a just system of resolving controversies with the Division of Taxation and ensuring that parties are afforded due process. We take great pride in striving to meet that goal by providing a fair, efficient, and productive process, even in the face of the COVID-19 global pandemic and statewide public health emergency that continued to impact operations into 2022.

I hope that you will find the report informative and useful. I am always available to respond to any questions or observations you may have regarding the Annual Report or the operations of Tax Appeals in general.

Respectfully submitted,

A handwritten signature in black ink that reads "Anthony Giardina".

Anthony Giardina  
President and Commissioner

ENCLOSURE

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## **COVID-19 GLOBAL PANDEMIC AND PUBLIC HEALTH EMERGENCY**

Agency operations during 2022 continued to be impacted by the COVID-19 pandemic. The federal public health emergency that was declared in January 2020 remained in effect throughout 2022. The State disaster emergency that was declared on March 7, 2020 ended on June 24, 2021; however, certain CDC and NYSDOH COVID-related guidelines remained in effect in 2022. The State indoor mask mandate ended, with certain exceptions that did not relate to Tax Appeals operations, on February 11, 2022.

Although Tax Appeals had resumed conducting in-person hearings in Albany in August 2020, a surge in COVID cases in November 2020 necessitated the return to virtual-only proceedings, which continued through May 2021, when Tax Appeals resumed in-person hearings in Albany only. In July 2021 and February 2022, respectively, Tax Appeals began conducting in-person hearings in New York City and Rochester. Tax Appeals continued to offer parties the option of either in-person or virtual hearings and Tribunal oral arguments throughout 2022.

### **MISSION**

It is the mission of the New York State Tax Appeals Tribunal (Tribunal)/Division of Tax Appeals (collectively Tax Appeals) “to provide the public with a clear, uniform, rapid, inexpensive and just system of resolving controversies with the Division of Taxation of the New York State Department of Taxation and Finance” (20 NYCRR 3000.0) (Taxation). In accomplishing our mission, we continuously strive to provide the procedural framework “necessary to facilitate the rapid resolution of controversies, while at the same time avoiding undue formality and complexity” (20 NYCRR 3000.0).

### **ORGANIZATION**

#### **HISTORY**

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

In addition, the regulations that were at issue in many of the cases were promulgated by the Tax Commission itself. Again, the criticism was that the body that had adopted the regulations at issue could not fairly and objectively review their validity or application in an adjudicatory proceeding. Finally, under the former system, the hearing function was performed by a hearing officer who heard the case and recommended a decision to the Tax Commission, which then rendered the decision. Critics argued that the person who had the opportunity to weigh the evidence and evaluate the credibility of the witnesses at the hearing should be the person to make the decision.

Under the current system, the Tribunal and the Division of Tax Appeals are fully independent from Taxation. The Commissioner of the Department of Taxation and Finance is not a member of the Tribunal. The Tribunal can review the validity and application of the regulations of Taxation at issue in the cases before it. The hearing function is performed by Administrative Law Judges, who conduct

formal hearings and render written determinations. These determinations finally resolve the case, unless either party files an appeal with the Tribunal.

### **THE TRIBUNAL**

The Division of Tax Appeals is headed by the Tribunal, which consists of three commissioners nominated by the Governor and confirmed by the New York State Senate. The commissioners are appointed for nine-year terms. One of these commissioners is designated as the President of the Tribunal by the Governor and is solely responsible for the administration of Tax Appeals as a whole.

At least two of the commissioners must be attorneys admitted to practice in New York State for a period of at least ten years and be knowledgeable on the subject of taxation and one member need not be an attorney but must also be knowledgeable on the subject of taxation (Tax Law § 2004).

In 2022, the Tribunal consisted of President and Commissioner Anthony Giardina and Commissioners Dierdre K. Scozzafava and Cynthia M. Monaco.

The Tribunal is responsible for the administration of Tax Appeals and the appellate portion of the process of resolving controversies. It is assisted in its duties by the offices of the Secretary to the Tribunal and the Counsel to the Tribunal.

The Secretary to the Tribunal assists the President in administering the judicial functions of the Division and handles all procedural matters regarding the cases before the Tribunal.

The Counsel to the Tribunal assists the Tribunal in the preparation of decisions on cases before it, as well as preparing the agency's regulatory and legislative proposals, and advises the Tribunal on legal issues as they arise.

### **THE DIVISION OF TAX APPEALS**

The Supervising Administrative Law Judge is responsible for the hearing, or trial, level of the process of resolving controversies. This includes the day-to-day administration of both formal hearings before Administrative Law Judges and small claims hearings before Presiding Officers. In 2022, the hearing staff of the Division of Tax Appeals was comprised of six Administrative Law Judges. Tax Appeals lost two Administrative Law Judges due to retirement in 2021. Those positions remained vacant throughout 2022. The Small Claims Presiding Officer position was vacant from August 2016 to September 2022. In September and October 2022, Tax Appeals was able to hire two part-time Presiding Officers.

The remaining principal staff operations are handled by the Hearing Operations Section, consisting of Petition Intake, Pre-Hearing Support, and Determination Publishing.

## **ADJUDICATORY PROCESS**

### **INTRODUCTION**

A taxpayer can protest any written notice issued by Taxation that has advised the taxpayer of a tax deficiency; a determination of tax due; a denial of a refund or credit application; a denial, cancelation, revocation or suspension of a license, permit or registration; or any other notice that gives a person the right to a hearing in the Division of Tax Appeals, by filing a petition for a hearing (Tax Law § 2008). Unless protested by the taxpayer affected by such action, the action asserted by Taxation will stand.

Of the cases pending before Tax Appeals in 2022, 75% involved the assertion by Taxation that the taxpayer owed additional taxes. The remaining cases involved situations where taxpayers claimed refunds of taxes paid (5%) and controversies involving various licenses and registrations (21%).

### **FORMAL HEARINGS**

Formal hearings are held before an Administrative Law Judge. Hearings are typically held in Albany, New York City and Rochester, but post-COVID, Tax Appeals also offered parties the option of having their hearings conducted virtually in 2022. The Administrative Law Judge hears the testimony, evaluates the evidence and prepares and issues a written determination within six months after the completion of the hearing or submission of briefs of the parties, whichever is later (Tax Law § 2010 [3]). The determination of the Administrative Law Judge sets forth the issues in the case, the relevant facts established by the parties, the necessary legal analysis and the conclusions of law relevant to the issues. The determination is binding on both the taxpayer and Taxation unless one or both of the parties request a review of the determination by the Tribunal by filing an exception with the Secretary to the Tribunal within 30 days of the issuance of the determination (Tax Law §§ 2006 [7], 2010 [4]).

### **SMALL CLAIMS**

As an alternative to a formal hearing, taxpayers have the right to elect a small claims proceeding if the amount in dispute is within certain dollar limits as prescribed by regulations adopted by the Tribunal (Tax Law § 2012). Currently, the limits are \$20,000 (not including penalty and interest) for any 12-month period for personal income and corporate franchise taxes and \$40,000 for sales and compensating use taxes (20 NYCRR 3000.13 [b]). Small claims hearings are typically held in Albany, New York City, Westchester, Syracuse and Rochester, but post-COVID, Tax Appeals also offered parties the option of having their small claims hearings conducted virtually in 2022. A small claims hearing is conducted informally by a Presiding Officer, whose determination is final for both parties. However, at any time before the conclusion of the small claims hearing, a taxpayer may discontinue the proceeding and request that a formal hearing be held before an Administrative Law Judge (Tax Law § 2012).

### **TRIBUNAL REVIEW OF ADMINISTRATIVE LAW JUDGE DETERMINATIONS**

After reviewing the record of the hearing and any arguments, oral or by brief, the Tribunal issues a written decision affirming, reversing or modifying the determination of the Administrative Law Judge, or remanding the case for additional proceedings before such Administrative Law Judge (Tax Law § 2006 [7]). Each decision of the Tribunal sets forth the issues in the case, the relevant facts established by the parties in the record at hearing and the Tribunal's opinion, which applies applicable law to such facts. Each decision must be rendered within six months from the date of notice to the Tribunal that

exception is being taken to the determination of the Administrative Law Judge. This period is extended if oral or written argument is made before the Tribunal (Tax Law § 2006 [7]). In cases where oral arguments are requested and granted, they are typically held in Albany and New York City. However, post-COVID, parties were also given the option of having their oral arguments conducted via teleconference in 2022.

Decisions rendered by the Tribunal are final and binding on Taxation (i.e., there is no right of appeal). However, taxpayers who are not satisfied with the decision of the Tribunal have the right to appeal the Tribunal's decision by instituting a proceeding pursuant to Article 78 of the Civil Practice Law and Rules with the Appellate Division, Third Department of the State Supreme Court. An Article 78 proceeding must be initiated within four months of the issuance of the Tribunal decision (Tax Law § 2016).

## **PUBLICATION OF TRIBUNAL DECISIONS AND ADMINISTRATIVE LAW JUDGE DETERMINATIONS**

Tax Law § 2006 (9) requires the Tribunal to publish and make available to the public all determinations rendered by Administrative Law Judges and all decisions rendered by the Tribunal. The Tribunal may charge a reasonable fee for a copy of such determinations or decisions.

Accordingly, all decisions and determinations are available on the agency's website at [www.dta.ny.gov](http://www.dta.ny.gov). The Tribunal also provides copies of individual decisions and determinations upon request.

The Tribunal posts on its website a monthly docket, which indicates Administrative Law Judge determinations and Tribunal decisions issued for the month, as well as exceptions filed to Administrative Law Judge determinations and Article 78 proceedings instituted by taxpayers to review Tribunal decisions.

All Tribunal decisions and Administrative Law Judge determinations are also available on Westlaw and Lexis and are commercially published by William S. Hein and Company, whose publication also includes the monthly dockets. Determinations and decisions are also available on Commerce Clearing House (CCH).



**DISPOSITION OF CASES**

**The following tables and charts show the inventory of cases before Tax Appeals and the disposition of cases by Administrative Law Judges (ALJ), including Small Claims matters, and the Tribunal in 2022.**

**FORMAL HEARINGS**

**2022 INVENTORY (NET CASES):**

**BEGINNING INVENTORY** **671**

**Add (+)**

**Cases Received** **570**

**Default Vacated** **0**

**Other** **7**

**Subtotal** **577**

**TOTAL CASES FOR HEARINGS** **1,248**

**Deduct (-)**

**Petitions Withdrawn** **86**

**Closing Orders Issued** **204**

**Defaults** **17**

**Determinations Issued** **115**

**Petitions Dismissed** **0**

**Referred to BCMS** **31**

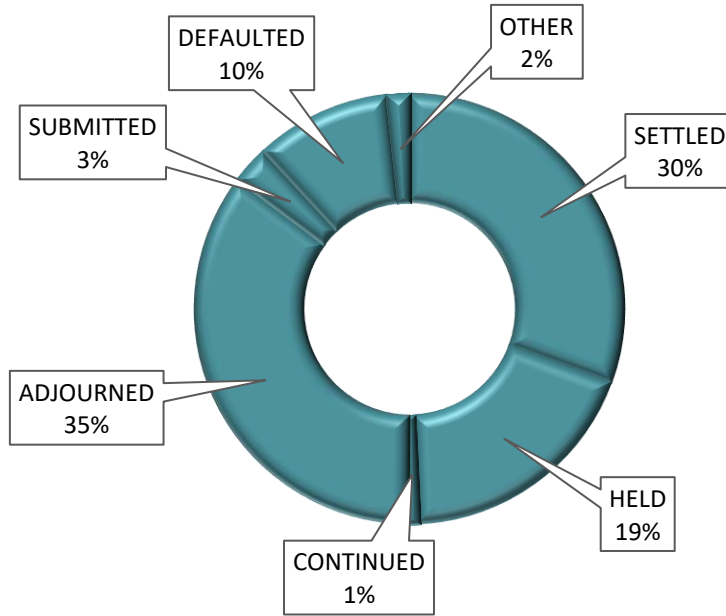
**Bankruptcy** **0**

**Subtotal** **453**

**ENDING INVENTORY** **795**

**ANALYSIS OF CASE SCHEDULING**

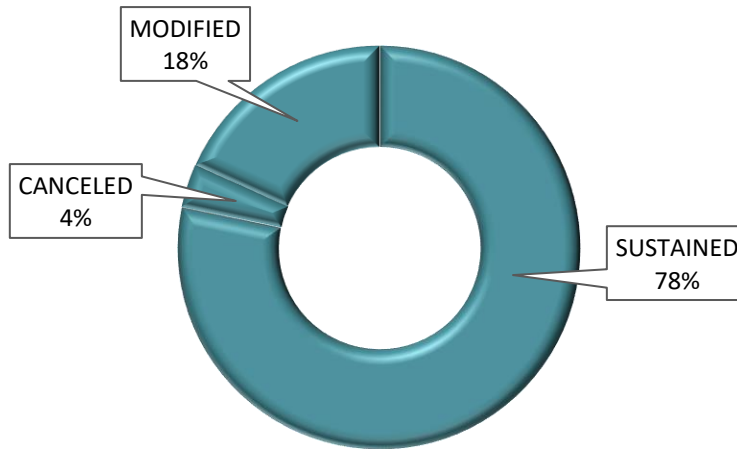
In 2022, 176 cases were scheduled for a formal hearing before Administrative Law Judges. Of that total:



<b>CASE SCHEDULING</b>	<b>NUMBER</b>	<b>PERCENT</b>
<b>ADJOURNED</b> before hearing	62	35%
<b>SETTLED</b> by parties before hearing	54	30%
<b>HELD</b> and completed	33	19%
<b>CONTINUED</b> for completion	1	1%
<b>SUBMITTED</b> on papers without hearing	5	3%
<b>DEFAULTED</b> due to failure of one of the parties to appear	18	10%
<b>OTHER</b>	3	2%
<b>TOTAL</b>	<b>176</b>	<b>100%</b>

**ANALYSIS OF DETERMINATIONS**

Case Disposition: In 2022, the Administrative Law Judges issued **115** determinations. Of that total:



<b>DETERMINATIONS</b>	<b>NUMBER</b>	<b>PERCENT</b>
<b>SUSTAINED</b> the deficiency or other action	90	78%
<b>CANCELED</b> the deficiency or other action	4	4%
<b>MODIFIED</b> the deficiency or other action	21	18%
<b>TOTAL</b>	<b>115</b>	<b>100%</b>

**Breakdown of Determinations by Tax**

<b>TAX</b>	<b>NUMBER</b>	<b>PERCENT</b>
<b>INCOME</b>	70	61%
<b>SALES</b>	35	30%
<b>CORP. FRANCHISE</b>	5	4%
<b>MISCELLANEOUS</b>	5	4%
<b>TOTAL</b>	<b>115</b>	<b>100%*</b>

\*ROUNDED

**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 **4.44** months and Median **3.5** months.

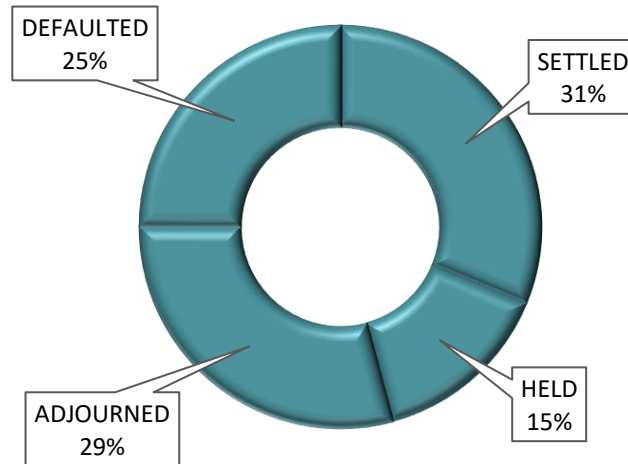
**SMALL CLAIMS HEARINGS\*****2022 INVENTORY (NET CASES):**

<b>BEGINNING INVENTORY</b>		<b>212</b>
<b>Add (+)</b>		
	<b>Cases Received</b>	<b>105</b>
	<b>Defaults Vacated</b>	<b>0</b>
	<b>Other</b>	<b>1</b>
	<b>Subtotal</b>	<b>106</b>
<b>TOTAL CASES FOR HEARINGS</b>		<b>318</b>
<b>Deduct (-)</b>		
	<b>Petitions Withdrawn</b>	<b>28</b>
	<b>Closing Orders Issued</b>	<b>32</b>
	<b>Defaults</b>	<b>12</b>
	<b>Determinations Issued</b>	<b>7</b>
	<b>Referred to BCMS</b>	<b>0</b>
	<b>Subtotal</b>	<b>79</b>
<b>ENDING INVENTORY</b>		<b>239</b>

\*Note: The Small Claims Presiding Officer position was vacant from August 2016 to September 2022. In September and October of 2022, Tax Appeals was able to hire two part-time Presiding Officers. Prior to those hires, the Small Claims matters that were processed in 2022 were handled by Administrative Law Judges sitting as Presiding Officers.

**ANALYSIS OF CASE SCHEDULING**

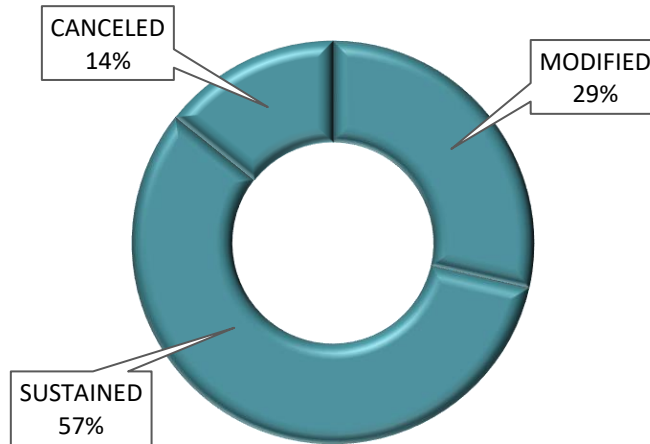
In 2022, **48** cases were scheduled for a small claims hearing. Of that total:



<b>CASE SCHEDULING</b>	<b>NUMBER</b>	<b>PERCENT</b>
<b>SETTLED</b> by parties before hearing	15	31%
<b>HELD</b> and completed	7	15%
<b>ADJOURND</b> before hearing	14	29%
<b>DEFAULTED</b>	12	25%
<b>TOTAL</b>	<b>48</b>	<b>100%</b>

**ANALYSIS OF DETERMINATIONS**

Case Disposition: In 2022, 7 small claims determinations were issued. Of that total:



<b>DETERMINATIONS</b>	<b>NUMBER</b>	<b>PERCENT</b>
<b>SUSTAINED</b> the deficiency or other action	4	57%
<b>CANCELED</b> the deficiency or other action	1	14%
<b>MODIFIED</b> the deficiency or other action	2	29%
<b>TOTAL</b>	<b>7</b>	<b>100%</b>



**BREAKDOWN OF DETERMINATIONS BY TAX**

<b>TAX</b>	<b>NUMBER</b>	<b>PERCENT</b>
<b>INCOME</b>	5	71%
<b>SALES</b>	2	29%
<b>TOTAL</b>	<b>7</b>	<b>100%</b>

**AVERAGE TIME ELAPSED**

The average elapsed time between the later of the hearing date or the last brief date and the issuance of the determination was: Mean **3** months and Median **3** months.

## TAX APPEALS TRIBUNAL

**2022 INVENTORY (NET CASES):**

<b>BEGINNING INVENTORY</b>	<b>73</b>
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<b>Add (+)</b>
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<b>Cases Received</b>	<b>26</b>
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<b>TOTAL CASES</b>	<b>99</b>
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<b>Deduct (-)</b>
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<b>Decisions Issued</b>	<b>23</b>
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<b>Exceptions Withdrawn</b>	<b>0</b>
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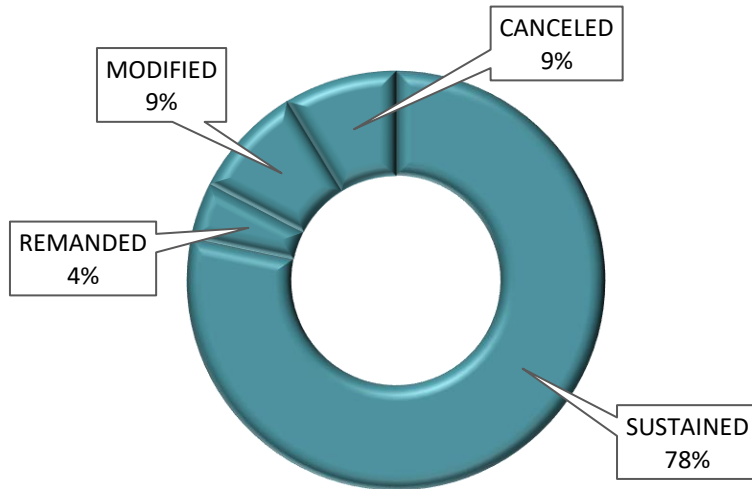
<b>Settled</b>	<b>0</b>
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<b>Subtotal</b>	<b>23</b>
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<b>ENDING INVENTORY</b>	<b>76</b>
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**ANALYSIS OF DECISIONS**

Case Disposition: In 2022, the Tax Appeals Tribunal issued **23** decisions. Of that total:



<b>DECISIONS</b>	<b>NUMBER</b>	<b>PERCENT</b>
<b>SUSTAINED</b> the deficiency or other action	18	78%
<b>CANCELED</b> the deficiency or another action	2	9%
<b>MODIFIED</b> the deficiency or other action	2	9%
<b>REMANDED</b> the matter to the ALJ	1	4%
<b>TOTAL</b>	<b>23</b>	<b>100%</b>

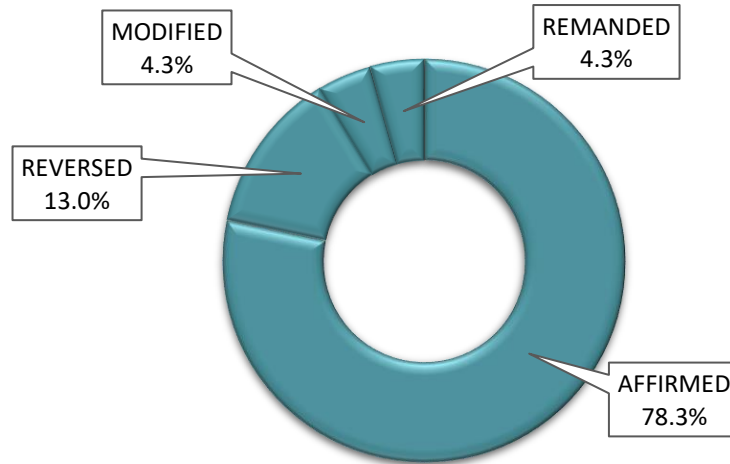
**BREAKDOWN OF DECISIONS BY TAX**

<b>TAX</b>	<b>NUMBER</b>	<b>PERCENT</b>
<b>INCOME</b>	12	52%
<b>SALES</b>	10	43%
<b>MISCELLANEOUS</b>	1	4%
<b>TOTAL</b>	<b>23</b>	<b>100%*</b>

\*ROUNDED

**TRIBUNAL DISPOSITION OF ALJ DETERMINATIONS**

In 2022, the Tribunal issued **23** decisions reviewing determinations of Administrative Law Judges. Of that total:

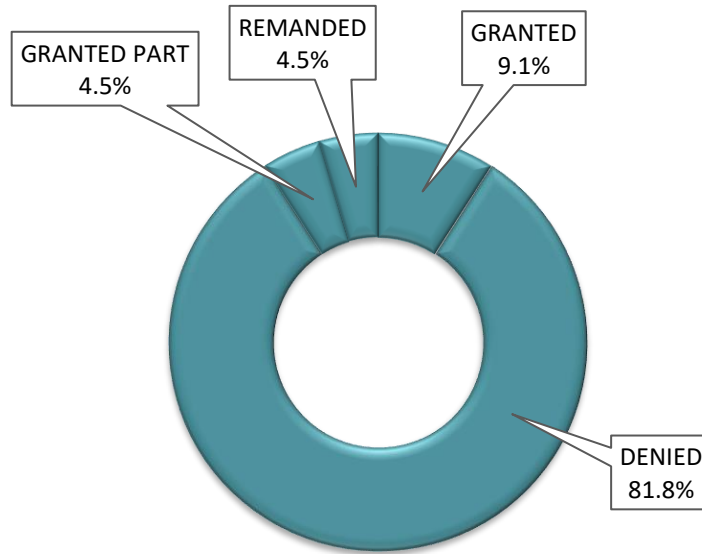


<b>DECISIONS</b>	<b>NUMBER</b>	<b>PERCENT</b>
<b>AFFIRMED</b> the ALJ determination	18	78.3%
<b>REVERSED</b> the ALJ determination	3	13%
<b>MODIFIED</b> the ALJ determination	1	4.3%
<b>REMANDED</b> the matter to ALJ	1	4.3%
<b>TOTAL</b>	<b>23</b>	<b>100%*</b>

\*ROUNDED

**TRIBUNAL DISPOSITION OF PETITIONER EXCEPTIONS**

In 2022, the Tribunal rendered **22** decisions with respect to exceptions filed by Petitioners. Of that total:



<b>DECISIONS</b>	<b>NUMBER</b>	<b>PERCENT</b>
<b>DENIED OR DISMISSED</b> Petitioner's exception	18	81.8%
<b>GRANTED</b> Petitioner's exception	2	9.1%
<b>GRANTED PART</b> of Petitioner's exception	1	4.5%
<b>REMANDED</b> the matter to ALJ	1	4.5%
<b>TOTAL</b>	<b>22</b>	<b>100%*</b>

\*ROUNDED

**TRIBUNAL DISPOSITION OF DIVISION EXCEPTIONS**

In 2022, the Tribunal rendered **1** decision with respect to an exception filed by the Division of Taxation. In this matter, the Division's exception was granted.

<b>DECISIONS</b>	<b>NUMBER</b>	<b>PERCENT</b>
<b>GRANTED</b> Division's exception	1	100%
<b>DENIED</b> Division's exception	0	0%
<b>TOTAL</b>	<b>1</b>	<b>100%</b>

**ORAL ARGUMENT REQUESTS**

In 2022, oral argument was requested in **70%** (16/23) of the cases. The Tribunal granted oral argument in **81%** (13/16) of the cases in which it was requested.

**AVERAGE ELAPSED TIME**

The average elapsed time between the later of the oral argument date or the last brief date and the issuance of the decision was: Mean **4.8** months and Median **5.6** months.

**JUDICIAL REVIEW**

In 2022, **8** Tribunal decisions were appealed to the Appellate Division, Third Department, under Article 78 of New York's Civil Practice Law and Rules.

## TAX APPEALS FIVE-YEAR INVENTORY ANALYSIS

	FISCAL YEAR 2018-2019	FISCAL YEAR 2019-2020	FISCAL YEAR 2020-2021	FISCAL YEAR 2021-2022	2022
<b>FORMAL HEARINGS</b>					
Beginning Inventory	578	570	647	644	671
Petitions Filed/Other	376	448	334	496	570
Cases Disposed of by DTA	384	371	337	452	453
Determinations Issued	28%	26.4%	32%	27%	25%
Closing Orders Issued (Settled)	44%	38.3%	35%	35%	45%
By Other Means	28%	35.3%	33%	38%	30%
Ending Inventory	570	647	644	688	795
<b>SMALL CLAIMS</b>					
Beginning Inventory	95	97	116	169	212
Petitions Filed/Defaults Vacated	50	75	84	116	106
Cases Disposed of by SC	48	56	31	76	79
Determinations Issued	6%	9%	23%	16%	9%
Closing Orders Issued (Settled)	52%	34%	42%	47%	41%
Defaults/Withdrawn	42%	57%	35%	37%	50%
Ending Inventory	97	116	169	209	239
<b>TAX APPEALS TRIBUNAL</b>					
Beginning Inventory	79	75	70	71	73
Exceptions Filed	34	32	30	28	26
Decisions Issued	37	37	24	22	23
Cases Settled/Withdrawn	1	0	5	2	0
Ending Inventory	75	70	71	75	76