



Tax Appeals



ANNUAL REPORT

2023

KATHY HOCHUL, GOVERNOR

ANTHONY GIARDINA, PRESIDENT AND COMMISSIONER

CYNTHIA M. MONACO, COMMISSIONER

KEVIN A. CAHILL, COMMISSIONER



Tax Appeals

Anthony Giardina

President and Commissioner

New York State Tax Appeals Tribunal

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February 27, 2024

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 § 2006 (13), I am pleased to submit the Annual Report of the Tax Appeals Tribunal/Division of Tax Appeals ("Tax Appeals") for calendar year 2023. Together with the statutorily required statistics regarding operations, the report contains general information regarding Tax Appeals, including its mission, functions and operations.

Tax Law § 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.

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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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 2023, the Tribunal consisted of President and Commissioner Anthony Giardina, Commissioner Cynthia M. Monaco, and Commissioner Kevin A. Cahill who was appointed in June 2023 to succeed outgoing Commissioner Dierdre Scozzafava, who served through June 13, 2023.

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 2023, the hearing staff of the Division of Tax Appeals was comprised of seven Administrative Law Judges and two part-time Small Claims 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, cancellation, 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 2023, 74.2% involved the assertion by Taxation that the taxpayer owed additional taxes. The remaining cases involved situations where taxpayers claimed refunds of taxes paid (11.3%) and controversies involving various licenses and registrations (14.5%).

FORMAL HEARINGS

Formal hearings are held before an Administrative Law Judge. Hearings are typically held in Albany, New York City and Rochester. Additionally, post-COVID, Tax Appeals now offers parties the option of having their hearings conducted virtually. 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 and Rochester. Additionally, post-COVID, Tax Appeals now offers parties the option of having their small claims hearings conducted virtually. 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. Additionally, post-COVID, parties are also given the option of having their oral arguments conducted via teleconference.

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. Prior to 2023, the Division of Taxation could not appeal Tribunal decisions. However, effective May 3, 2023, § 2016 of the Tax Law was amended to allow the Division of Taxation, in consultation with the Attorney General, to appeal Tribunal decisions that are premised on interpretation of the state or federal constitution, international law, federal law, the law of other states, or other legal matters that are beyond the purview of the state legislature. Article 78 proceedings filed by either party 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 at no cost on the agency's website at 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.

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 2023.

FORMAL HEARINGS

2023 INVENTORY (NET CASES):

BEGINNING INVENTORY **795**

Add (+)

Cases Received **476**

Default Vacated **0**

Other **0**

Subtotal **476**

TOTAL CASES FOR HEARINGS **1,271**

Deduct (-)

Petitions Withdrawn **114**

Closing Orders Issued **216**

Defaults **19**

Determinations Issued **144**

Petitions Dismissed **0**

Referred to BCMS **27**

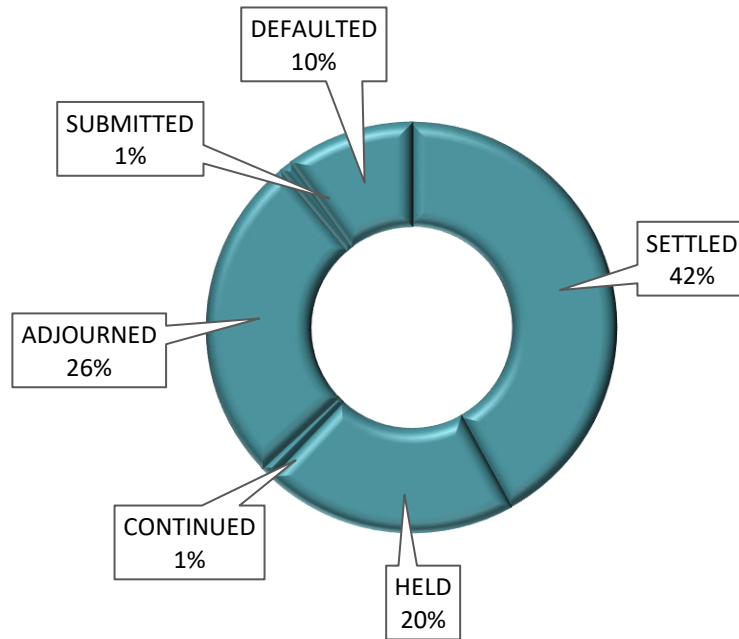
Bankruptcy **0**

Subtotal **520**

ENDING INVENTORY **751**

ANALYSIS OF CASE SCHEDULING

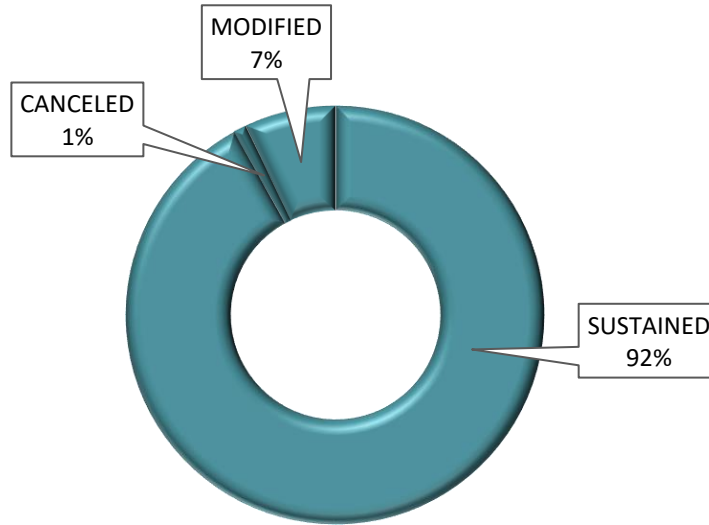
In 2023, **201** cases were scheduled for a formal hearing before Administrative Law Judges. Of that total:



CASE SCHEDULING	NUMBER	PERCENT
ADJOURNED before hearing	52	26%
SETTLED by parties before hearing	85	42%
HELD and completed	41	20%
CONTINUED for completion	1	1%
SUBMITTED on papers without hearing	1	1%
DEFAULTED due to failure of one of the parties to appear	21	10%
TOTAL	201	100%

Analysis of Determinations

Case Disposition: In 2023, the Administrative Law Judges issued **144** determinations. Of that total:



DETERMINATIONS	NUMBER	PERCENT
SUSTAINED the deficiency or other action	132	92%
CANCELED the deficiency or other action	2	1%
MODIFIED the deficiency or other action	10	7%
TOTAL	144	100%

Breakdown of Determinations by Tax

TAX	NUMBER	PERCENT
INCOME	80	56%
SALES	27	19%
CORP. FRANCHISE	9	6%
MISCELLANEOUS	24	17%
DRIVERS LICENSE	4	3%
TOTAL	144	100%*

*ROUNDED

AVERAGE ELAPSED TIME

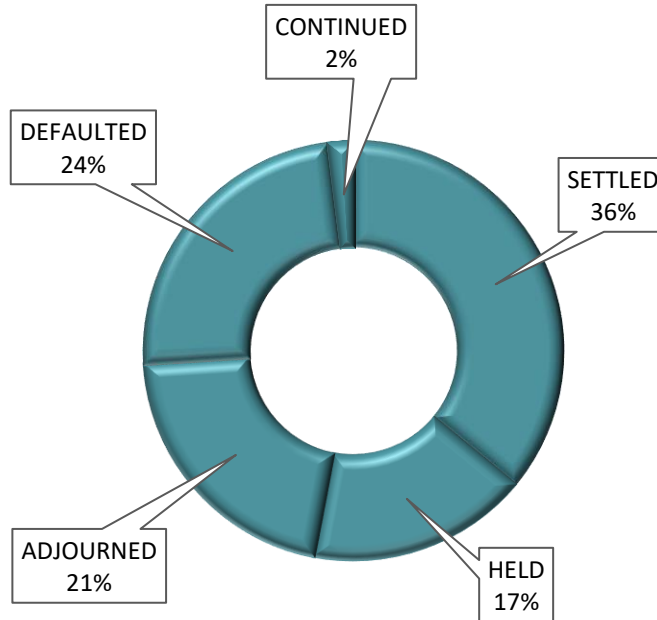
The average elapsed time between the later of the hearing date or the last brief date and the issuance of the determination was: Mean **3.68** months and Median **3** months.

SMALL CLAIMS HEARINGS

2023 INVENTORY (NET CASES):	
BEGINNING INVENTORY	239
Add (+)	
Cases Received	144
Defaults Vacated	0
Other	5
Subtotal	149
TOTAL CASES FOR HEARINGS	388
Deduct (-)	
Petitions Withdrawn	43
Closing Orders Issued	81
Defaults	32
Determinations Issued	17
Referred to BCMS	5
Subtotal	178
ENDING INVENTORY	210

ANALYSIS OF CASE SCHEDULING

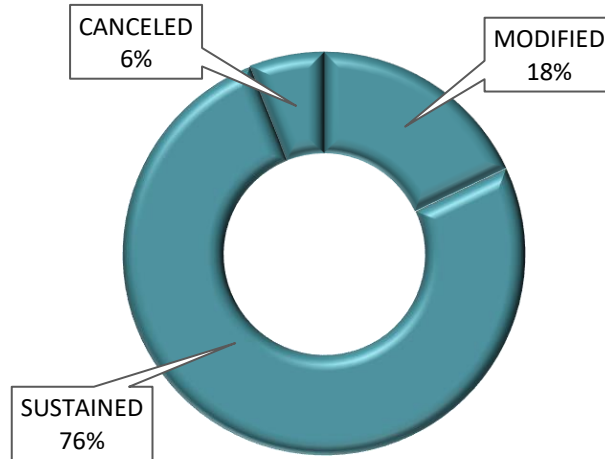
In 2023, 135 cases were scheduled for a small claims hearing. Of that total:



CASE SCHEDULING	NUMBER	PERCENT
SETTLED by parties before hearing	49	36%
HELD and completed	23	17%
ADJOURNED before hearing	28	21%
DEFAULTED	32	24%
CONTINUED	3	2%
TOTAL	135	100%

ANALYSIS OF DETERMINATIONS

Case Disposition: In 2023, 17 small claims determinations were issued. Of that total:



DETERMINATIONS	NUMBER	PERCENT
SUSTAINED the deficiency or other action	13	76%
CANCELED the deficiency or other action	1	6%
MODIFIED the deficiency or other action	3	18%
TOTAL	17	100%

BREAKDOWN OF DETERMINATIONS BY TAX

TAX	NUMBER	PERCENT
INCOME	14	82%
SALES	2	12%
MISCELLANEOUS	1	6%
TOTAL	17	100%

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 **2.44** months and Median **3** months.

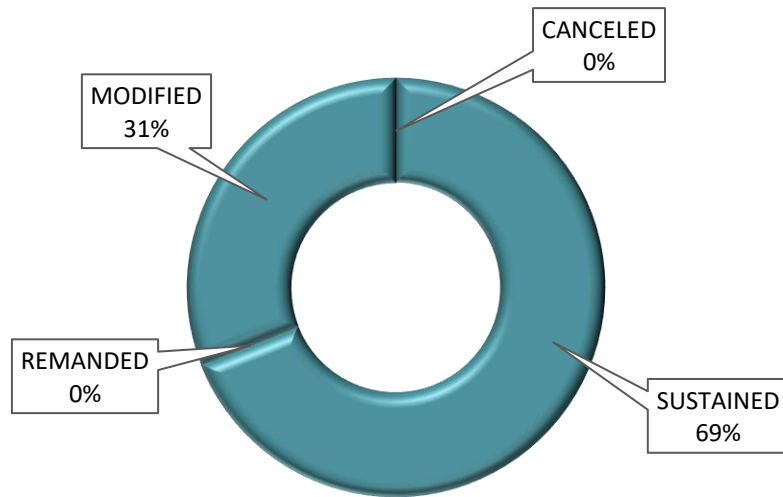
TAX APPEALS TRIBUNAL

2023 INVENTORY (NET CASES):	
BEGINNING INVENTORY	76
Add (+)	
Cases Received	37
TOTAL CASES	113
Deduct (-)	
Decisions Issued	26
Exceptions Withdrawn	1
Settled	0
Subtotal	27
ENDING INVENTORY	86

ANALYSIS OF DECISIONS

CASE DISPOSITION:

In 2023, the Tax Appeals Tribunal issued **26** decisions. Of that total:



DECISIONS	NUMBER	PERCENT
SUSTAINED the deficiency or other action	18	69%
CANCELED the deficiency or another action	0	0%
MODIFIED the deficiency or other action	8	31%
REMANDED the matter to the ALJ	0	0%
TOTAL	26	100%

BREAKDOWN OF DECISIONS BY TAX

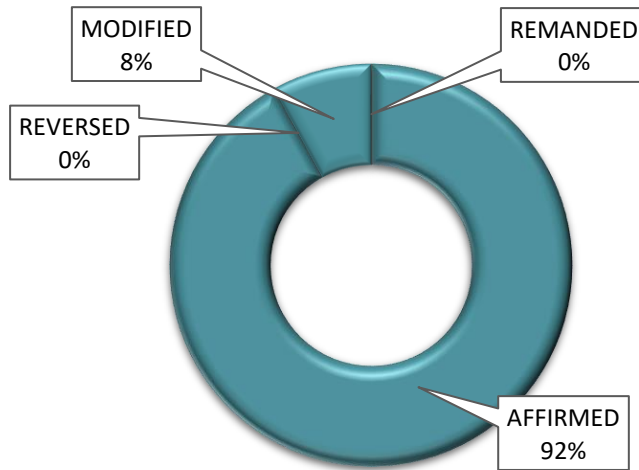
TAX	NUMBER	PERCENT
INCOME	13	48%
SALES	12	44%
CORPORATE	2	7%
TOTAL	27**	100%*

*ROUNDED

**One decision involved both Sales and Corporate Taxes

TRIBUNAL DISPOSITION OF ALJ DETERMINATIONS

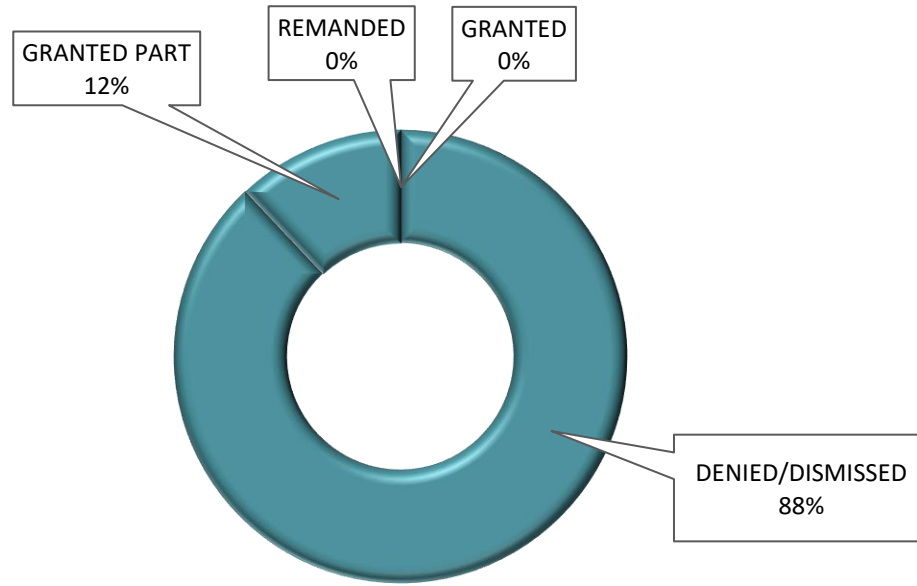
In 2023, the Tribunal issued **26** decisions reviewing determinations of Administrative Law Judges. Of that total:



DECISIONS	NUMBER	PERCENT
AFFIRMED the ALJ determination	24	92%
REVERSED the ALJ determination	0	0%
MODIFIED the ALJ determination	2	8%
REMANDED the matter to ALJ	0	0%
TOTAL	26	100%

TRIBUNAL DISPOSITION OF PETITIONER EXCEPTIONS

In 2023, the Tribunal rendered **26** decisions with respect to exceptions filed by Petitioners. Of that total:



DECISIONS	NUMBER	PERCENT
DENIED OR DISMISSED Petitioner's exception	23	88%
GRANTED Petitioner's exception	0	0%
GRANTED PART of Petitioner's exception	3	12%
REMANDED the matter to ALJ	0	0%
TOTAL	26	100%

TRIBUNAL DISPOSITION OF DIVISION EXCEPTIONS

In 2023, the Tribunal rendered **2** decisions with respect to exceptions filed by the Division of Taxation. These decisions involved matters in which both the Petitioner and the Division of Taxation filed exceptions. Of that total:

DECISIONS	NUMBER	PERCENT
GRANTED Division's exception	0	0%
DENIED Division's exception	2	100%
TOTAL	2	100%

ORAL ARGUMENT REQUESTS

In 2023, oral argument was requested in **65%** (17/26) of the cases. The Tribunal granted oral argument in **76%** (13/17) 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 **5.1** months and Median **5.75** months.

JUDICIAL REVIEW

In 2023, **9** 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 2019-2020	FISCAL YEAR 2020-2021	FISCAL YEAR 2021-2022	2022	2023
FORMAL HEARINGS					
Beginning Inventory	570	647	644	671	795
Petitions Filed/Other	448	334	496	570	476
Cases Disposed of by DTA	371	337	452	453	520
Determinations Issued	26.4%	32%	27%	25%	28%
Closing Orders Issued (Settled)	38.3%	35%	35%	45%	42%
By Other Means	35.3%	33%	38%	30%	31%
Ending Inventory	647	644	688	795	751
SMALL CLAIMS					
Beginning Inventory	97	116	169	212	239
Petitions Filed/Defaults Vacated/Other	75	84	116	106	149
Cases Disposed of by SC	56	31	76	79	178
Determinations Issued	9%	23%	16%	9%	10%
Closing Orders Issued (Settled)	34%	42%	47%	41%	46%
Defaults/Withdrawn/Other	57%	35%	37%	50%	45%
Ending Inventory	116	169	209	239	210
TAX APPEALS TRIBUNAL					
Beginning Inventory	75	70	71	73	76
Exceptions Filed	32	30	28	26	37
Decisions Issued	37	24	22	23	26
Cases Settled/Withdrawn	0	5	2	0	1
Ending Inventory	70	71	75	76	86