



Tax Appeals



ANNUAL REPORT

FISCAL YEAR 2014-2015

ANDREW M. CUOMO, GOVERNOR

ROBERTA MOSELEY NERO, PRESIDENT AND COMMISSIONER

JAMES H. TULLY, JR. COMMISSIONER

CHARLES H. NESBITT, COMMISSIONER



Roberta Moseley Nero

President and Commissioner

New York State Tax Appeals Tribunal

Agency Building 1, Empire State Plaza, Albany, NY 12223

P: (518) 266-3050 | F: (518) 271-0886

www.dta.ny.gov

October 7, 2015

The Honorable Andrew M. Cuomo
Governor of the State of New York

The Honorable John J. Flanagan
Temporary President of the Senate

The Honorable Carl E. Heastie
Speaker of the Assembly

Dear Governor Cuomo, Senator Flanagan 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 the fiscal year 2014-2015. Together with the statutorily required statistics regarding operations, the report contains general information regarding Tax Appeals, including its mission, functions and operations.

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 of the] department of taxation and finance and to ensure that the elements of due process are present with regard to such resolution." The guarantee of justice and due process in the system is rooted, simply, in the opportunity for all taxpayers to timely and adequately pursue their cases and, conversely, the opportunity for the Division of Taxation, on behalf of the people of the State, to timely and adequately pursue the State's interest in tax controversies. We take great pride in striving to provide 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 concerning the Annual Report or the operations of Tax Appeals in general.

Respectfully submitted,

A handwritten signature in black ink that reads "Roberta Moseley Nero". The signature is written in a cursive, flowing style.

Roberta Moseley Nero
President and Commissioner

ENCLOSURE

TABLE OF CONTENTS

MISSION.....	1
ORGANIZATION	1
FORMAL ADJUDICATORY PROCESS.....	1
SMALL CLAIMS ADJUDICATORY PROCESS.....	2
PUBLICATION OF TRIBUNAL DECISIONS AND ADMINISTRATIVE LAW JUDGE DETERMINATIONS.....	2
TRIBUNAL HISTORY.....	3
RECENT DEVELOPMENTS	3
DISPOSITION OF CASES	3
FORMAL HEARINGS.....	5
SMALL CLAIMS HEARINGS.....	9
TAX APPEALS TRIBUNAL	13

MISSION

It is the mission of the New York State Tax Appeals Tribunal/Division of 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). It is the agency’s goal “to afford the public both due process of law and the legal tools necessary to facilitate the rapid resolution of controversies while at the same time avoiding undue formality and complexity.” (20 NYCRR 3000.0).

ORGANIZATION**THE TRIBUNAL**

The Division of Tax Appeals (DTA) is headed by the Tax Appeals Tribunal (Tribunal) (collectively Tax Appeals), which consists of three commissioners appointed by the Governor and confirmed by the 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).

During State Fiscal year 2014-2015, the Tribunal consisted of President and Commissioner Roberta Moseley Nero, and Commissioners James H. Tully, Jr. and Charles H. Nesbitt.

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 with regard to 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. The hearing staff of DTA is currently comprised of nine Administrative Law Judges and one Presiding Officer.

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

THE FORMAL ADJUDICATORY PROCESS**FORMAL HEARINGS**

Formal hearings are held before an Administrative Law Judge. Hearings are currently held in Albany, New York City and Rochester. 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. 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.

TRIBUNAL REVIEW

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. 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 have been requested and granted, such proceedings are currently held in Albany and New York City.

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 (CPLR) to 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.

THE SMALL CLAIMS ADJUDICATORY PROCESS

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 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.

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, decisions and determinations are available on the agency's website at www.dta.ny.gov. 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. All above-referenced materials are available on the agency's website at www.dta.ny.gov.

TRIBUNAL 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). Since 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 Commissioner of the Department of Taxation and Finance is not a member of the Tribunal, and the members of the Tribunal and the Division of Tax Appeals are fully independent from Taxation. The Tribunal can review the validity and application of the regulations of Taxation at issue in the cases before it. However, the Tribunal only has

authority to adopt rules and regulations relating to the exercise of its duties, including rules of practice and procedure, and the duties of the Administrative Law Judges to hear and determine the cases before them.

RECENT DEVELOPMENTS

In 2007, the Tribunal implemented new procedures for the handling of formal hearing matters. These procedures were designed to produce more active and efficient handling of cases, the conduct of more thorough and streamlined hearings, the creation of more complete and accurate trial records, and ultimately, the most proper and fair disposition of cases possible. Under this policy, cases are to be assigned to an Administrative Law Judge upon receipt of Taxation's Answer to the Petition, and prehearing conferences initiated by the presiding Administrative Law Judge in all cases.

In 2012, the Tribunal implemented several policy changes at the Division of Tax Appeals, in an effort to reduce the case backlog. These measures included tightening up timeframes in the prehearing processes, expediting the scheduling of hearings and limiting adjournments of scheduled hearings. This policy has resulted in a significant decrease in the case backlog.

In State Fiscal Year 2014-2015, the Tribunal continued an agency-wide functional assessment of operations, and a comprehensive review of policies that it began in 2013-2014, in an effort to refine and improve practices and procedures. The primary focus in this regard was the agency's IT capabilities, including its case tracking and management system, website and compliance with new statewide IT initiatives.

DISPOSITION OF CASES

A taxpayer can protest any written notice of 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 (Tax Law § 2008) by filing a petition for a hearing. Unless protested by the taxpayer affected by such action, the action asserted by Taxation will stand.

Of the cases filed with Tax Appeals, 78.9% involve the assertion by Taxation that the taxpayer owes additional taxes. The remaining cases involve situations where taxpayers claim refunds of taxes paid (6.5%) and controversies over licenses that Taxation administers (14.6%).

Once a party has presented his or her case, the statute requires that the determination of the Administrative Law Judge or the decision of the Tribunal be rendered within six months.

The guarantee of justice and due process in the system is rooted, simply, in the opportunity for all taxpayers to timely and adequately pursue their cases and, conversely, the opportunity for the Taxation, on behalf of the people of the State, to timely and adequately pursue the State's interest in tax controversies. The Tribunal's procedural regulations are geared to this purpose and provide the needed flexibility to account for the variables in each case.

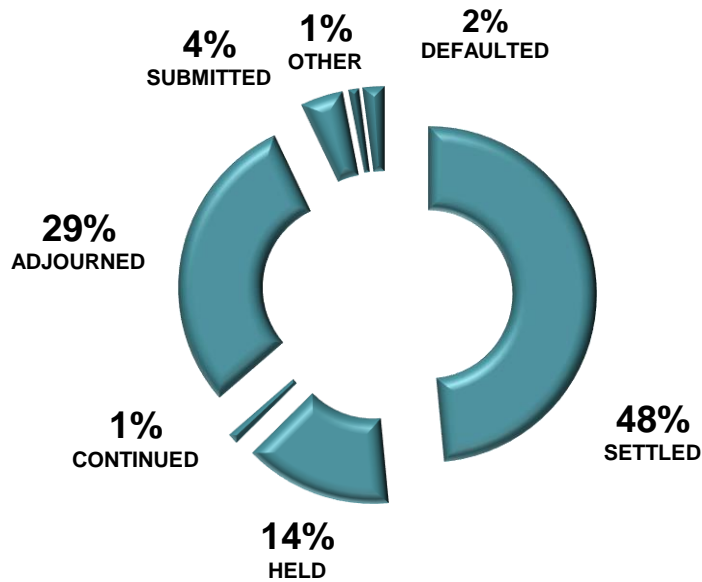
The following tables and charts show the inventory of cases before Tax Appeals and the disposition of cases by Administrative Law Judges, the Small Claims Presiding Officer and the Tribunal for state fiscal year 2014-2015.

FORMAL HEARINGS

2014-2015 INVENTORY (NET CASES):	
BEGINNING INVENTORY	504
Add (+)	
Cases Received	410
Default Vacated	0
Subtotal	410
TOTAL CASES FOR HEARINGS	914
Deduct (-)	
Petitions Withdrawn	67
Closing Orders Issued	234
Defaults	4
Determinations Issued	109
Petitions Dismissed	11
Referred to BCMS	14
Bankruptcy	1
Subtotal	440
ENDING INVENTORY	474

ANALYSIS OF CASE SCHEDULING

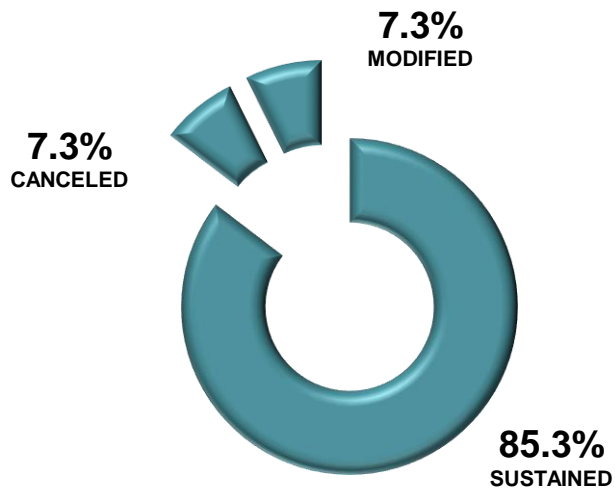
During the state fiscal year 2014-2015, **274** cases were scheduled for a formal hearing before Administrative Law Judges. Of that total:



CASE SCHEDULING		NUMBER	PERCENT
SETTLED by parties before hearing		132	48%
HELD and completed		39	14%
CONTINUED for completion		3	1%
ADJOURNED before hearing		80	29%
SUBMITTED on papers without hearing		12	4%
Handled by OTHER means		3	1%
DEFAULTED due to failure of one of the parties to appear		5	2%

ANALYSIS OF DETERMINATIONS

Case Disposition: During the state fiscal year 2014-2015, the Administrative Law Judges issued **109** determinations. Of that total:



DETERMINATIONS	NUMBER	PERCENT
SUSTAINED the deficiency or other action	93	85.3%
CANCELED the deficiency or other action	8	7.3%
MODIFIED the deficiency or other action	8	7.3%

BREAKDOWN OF DETERMINATIONS BY TAX

TAX	NUMBER	PERCENT
SALES	44	40%
INCOME	46	41%
CORP. FRANCHISE	9	8%
MISCELLANEOUS	12	11%
TOTAL*(Some cases involved more than one type of tax.)	111*	100%

AVERAGE ELAPSED TIME

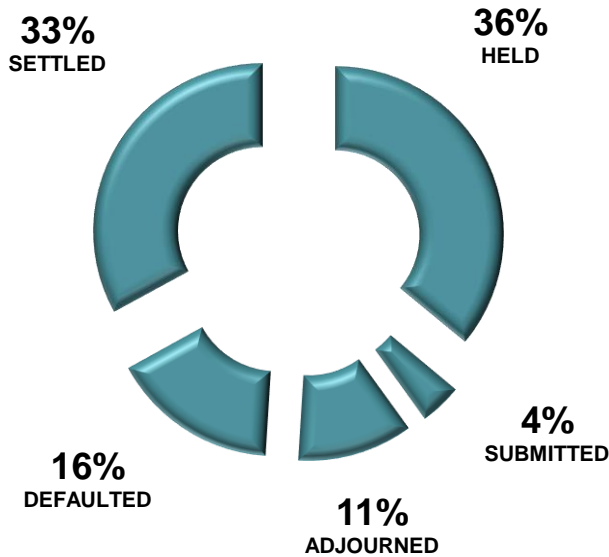
The average elapsed time between the later of the hearing date or the last brief date and the issuance of the determination was: Mean **4.07** months and Median **3** months.

SMALL CLAIMS HEARINGS

2014-2015 INVENTORY (NET CASES):	
BEGINNING INVENTORY	59
Add (+)	
Cases Received	80
Default Vacated	0
Subtotal	80
TOTAL CASES FOR HEARINGS	139
Deduct (-)	
Petitions Withdrawn	7
Closing Orders Issued	22
Defaults	11
Determinations Issued	18
Subtotal	58
ENDING INVENTORY	81

ANALYSIS OF CASE SCHEDULING

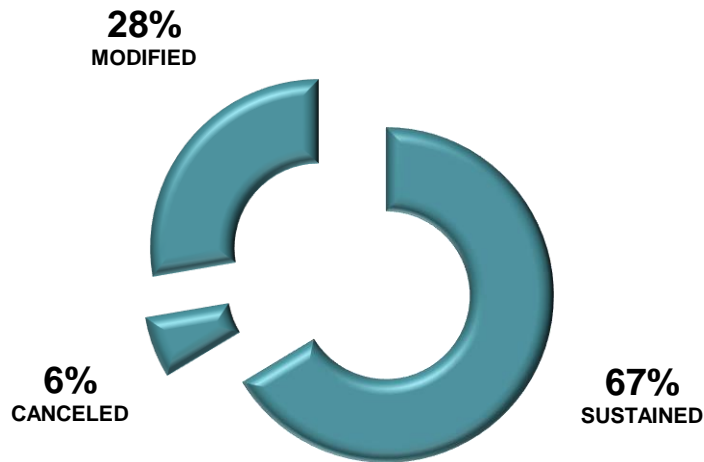
During the state fiscal year 2014-2015, **55** cases were scheduled for a small claims hearing before Presiding Officer. Of that total:



CASE SCHEDULING		NUMBER	PERCENT
SETTLED by parties before hearing		18	33%
HELD and completed		20	36%
ADJOURNED before hearing		6	11%
SUBMITTED on papers without hearing		2	4%
DEFAULTED due to failure of one of the parties to appear		9	16%

ANALYSIS OF DETERMINATIONS

Case Disposition: During the state fiscal year 2014-2015, the Presiding Officer issued **18** small claims determinations. Of that total:



DETERMINATIONS	NUMBER	PERCENT
SUSTAINED the deficiency or other action	12	67%
CANCELED the deficiency or other action	1	6%
MODIFIED the deficiency or other action	5	28%

BREAKDOWN OF DETERMINATIONS BY TAX

TAX	NUMBER	PERCENT
SALES	4	22%
INCOME	12	67%
MISCELLANEOUS	2	11%
TOTAL	18	100%

AVERAGE TIME ELAPSED

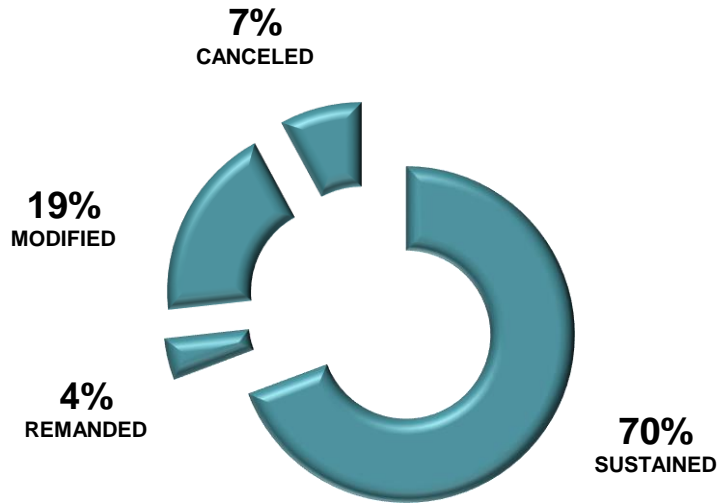
The average elapsed time between the later of the hearing date or the last brief date and the issuance of the determination was: Mean **2.39** months and Median **2** months.

TAX APPEALS TRIBUNAL

2014-2015 INVENTORY (NET CASES):		
BEGINNING INVENTORY		68
Add (+)		
	Cases Received	58
	Subtotal	58
TOTAL CASES		126
Deduct (-)		
	Decisions Issued	27
	Settled	6
	Subtotal	33
ENDING INVENTORY		93

ANALYSIS OF DECISIONS

Case Disposition: During the state fiscal year 2014-2015, the Tax Appeals Tribunal issued **27** decisions. Of that total:



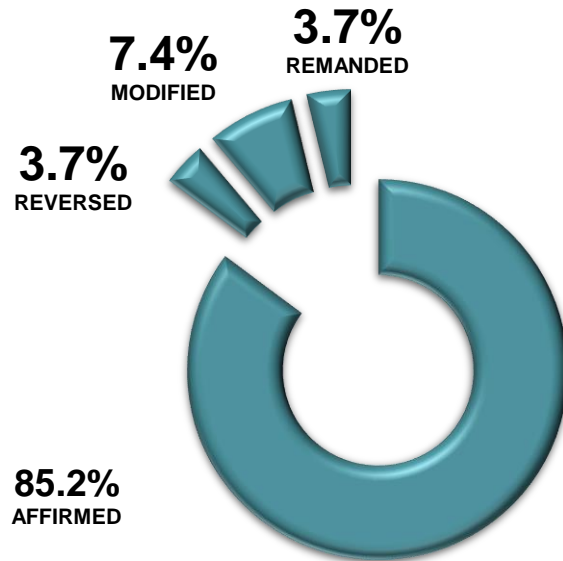
DECISIONS	NUMBER	PERCENT
SUSTAINED the deficiency or other action	19	70%
CANCELED the deficiency or another action	2	7%
MODIFIED the deficiency or other action	5	19%
REMANDED the matter to the ALJ	1	4%

BREAKDOWN OF DECISIONS BY TAX

TAX	NUMBER	PERCENT
INCOME	12	42.9%
SALES	12	42.9%
CORPORATION FRANCHISE	3	10.7%
PETROLEUM BUSINESS TAX	1	3.6%
TOTAL * (One case involved more than one type of tax.)	28*	100%

TRIBUNAL DISPOSITION OF ALJ DETERMINATIONS

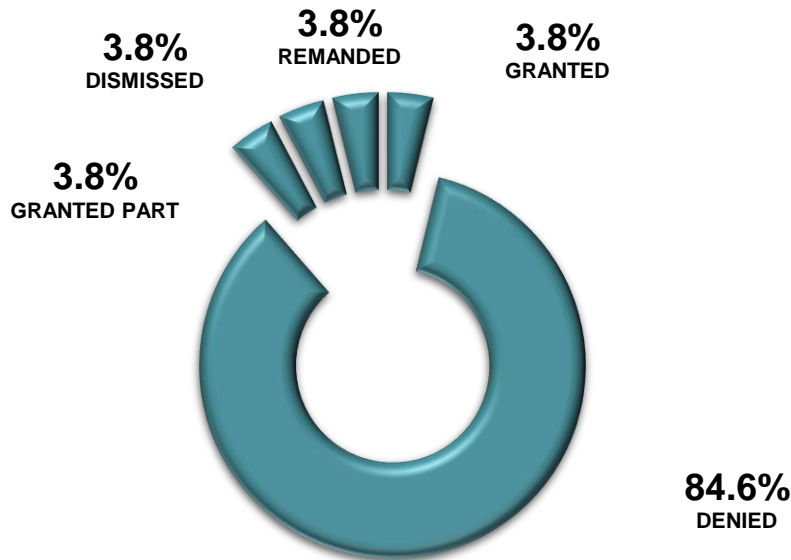
During the state fiscal year 2014-2015, the Tribunal issued **27** decisions reviewing determinations of Administrative Law Judges. Of that total:



DECISIONS	NUMBER	PERCENT
AFFIRMED the ALJ determination	23	85.2%
REVERSED the ALJ determination	1	3.7%
MODIFIED the ALJ determination	2	7.4%
REMANDED the matter to ALJ	1	3.7%

TRIBUNAL DISPOSITION OF PETITIONER EXCEPTIONS

During the state fiscal year 2014-2015, the Tribunal rendered **26** decisions with respect to exceptions filed by Petitioners. Of that total:



DECISIONS

NUMBER PERCENT

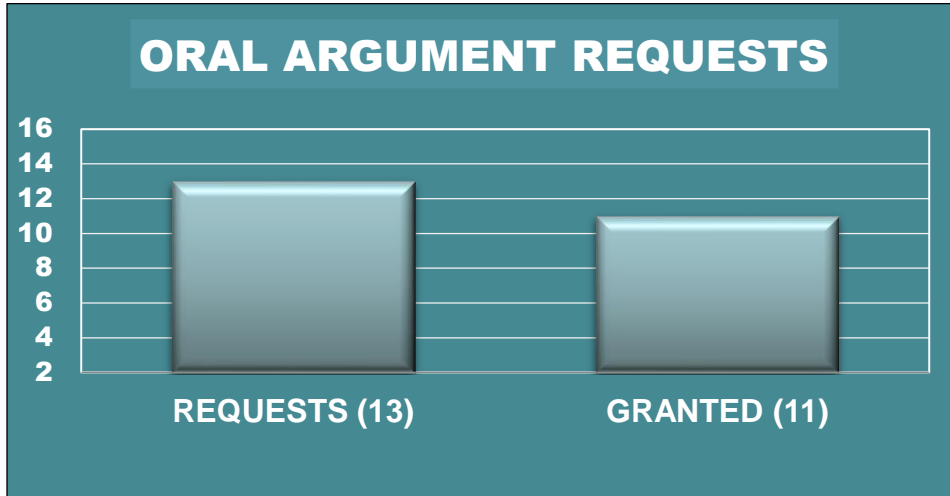
GRANTED Petitioner's exception	1	3.8%
DENIED Petitioner's exception	22	84.6%
GRANTED PART of Petitioner's exception	1	3.8%
DISMISSED Petitioner's exception	1	3.8%
REMANDED the matter to ALJ	1	3.8%

TRIBUNAL DISPOSITION OF DIVISION EXCEPTIONS

During the state fiscal year 2014-2015, the Tribunal rendered **2** decisions with respect to exceptions filed by the Division of Taxation. One of these decisions involved a matter in which both parties filed an exception. The Tribunal denied the Division's exception in both matters.

ORAL ARGUMENT REQUESTS

During the state fiscal year 2014-2015 oral argument was requested in **48%** of the cases. The Tribunal granted oral argument in **85%** 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 **5.8** months.

JUDICIAL REVIEW

During the state fiscal year 2014-2015, **5** Tribunal decisions were subject to judicial review as provided in Article 78 of New York’s Civil Practice Law and Rules.