



ANNUAL REPORT FISCAL YEAR 2013-2014

ANDREW M. CUOMO, GOVERNOR

ROBERTA MOSELEY NERO, PRESIDENT AND COMMISSIONER

JAMES H. TULLY, JR., COMMISSIONER

CHARLES H. NESBITT, COMMISSIONER



**NEW YORK STATE
TAX APPEALS TRIBUNAL**

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January 20, 2015

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

The Honorable Dean G. Skelos
Temporary President of the Senate

The Honorable Sheldon Silver
Speaker of the Assembly

Dear Governor Cuomo, Senator Skelos and Speaker Silver:

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 2013 – 2014.

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,

/s/ Roberta Moseley Nero

Roberta Moseley Nero
President

Enclosure

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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) 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), 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 DTA 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 2013 - 2014, the Tribunal consisted of Roberta Moseley Nero, who was appointed Commissioner in July 2013 and designated President in October 2013, James H. Tully, Jr., Commissioner (who served as President until October 2013) and Charles H. Nesbitt, Commissioner.

The Tribunal is responsible for the administration of DTA 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. 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 the Division of 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 of the Administrative Law Judge. Administrative Law Judge Hearings are now conducted in New York City, Rochester, and Albany and Oral Argument proceedings before the Tribunal are held in New York City and Albany.



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]).

Decisions rendered by the Tribunal are final and binding on the Division of 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 the Tribunal on September 1, 1987 separated the administration of taxes from the adjudication of disputes between taxpayers and the Division of Taxation. Under prior law, disputes between taxpayers and the Division of Taxation were resolved by a three-member State Tax Commission, the President of which was also the Commissioner of the Department of Taxation and Finance. Since the Division of Taxation 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 that were at issue in many of the cases were promulgated by the 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 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 Judges to hear and determine the cases before them.

RECENT DEVELOPMENTS

In 2007, the Tribunal implemented new procedures for the handling of all matters pending before DTA's Hearing Unit. 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 the Division of Taxation's Answer to the Petition, and prehearing conferences initiated by the presiding ALJ 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 2013 – 2014 the Tribunal began an agency-wide functional assessment of operations, and a comprehensive review of policies, in an effort to refine and improve practices and procedures. This project will continue through State Fiscal Year 2014 – 2015.





DISPOSITION OF CASES

A taxpayer can protest any written notice of the Division 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 with DTA. Unless protested by the taxpayer affected by such action, the action asserted by the Division of Taxation will stand.

Of the cases filed with DTA, 83% involve the assertion by the Division of Taxation that the taxpayer owes additional taxes. The remaining cases involve situations where taxpayers claim refunds of taxes paid (12%) and controversies over licenses that the Division of Taxation administers (5%).

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 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. 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 the Tribunal/DTA and the disposition of cases by Administrative Law Judges, the Small Claims Presiding Officer and the Tribunal for state fiscal year 2013 -2014.

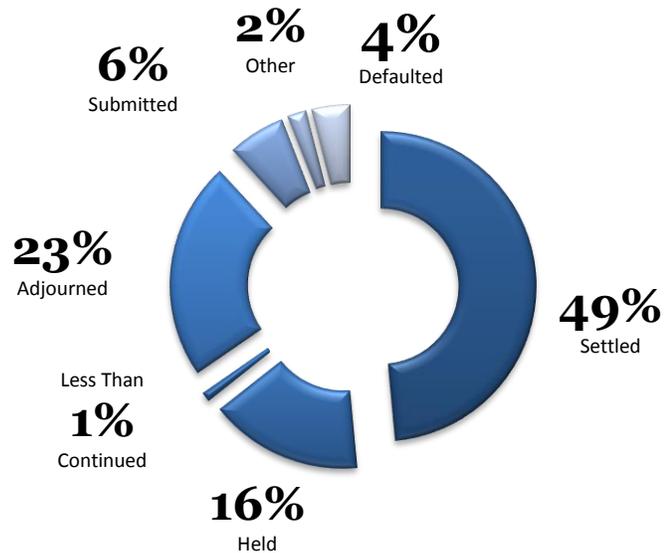


FORMAL HEARINGS

2013 - 2014 Inventory (Net Cases):		
Beginning Inventory		
		525
Add (+)		
	Cases Received	441
	Default Vacated	0
	Subtotal	441
Total Cases for Hearings		
		966
Deduct (-)		
	Petitions Withdrawn	54
	Closing Orders Issued	284
	Defaults	11
	Determinations Issued	57
	Petitions Dismissed	25
	Referred to BCMS	25
	Bankruptcy	6
	Subtotal	462
Ending Inventory		
		504

Analysis of Case Scheduling

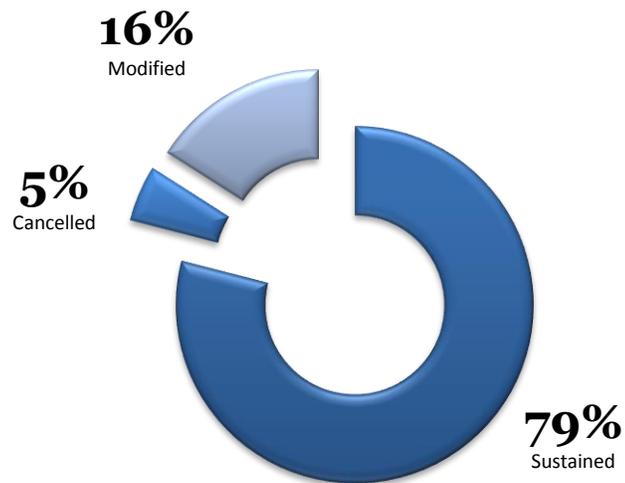
During the state fiscal year 2013 – 2014, **264** cases were scheduled for a formal hearing before Administrative Law Judges. Of that total:



CASE SCHEDULING	NUMBER	PERCENT
Settled by parties before hearing	130	49%
Held and completed	42	16%
Continued for completion	1	Less than 1%
Adjournd before hearing	61	23%
Submitted on papers without hearing	16	6%
Handled by Other means	4	2%
Defaulted due to failure of one of the parties to appear	10	4%

Analysis of Determinations

Case Disposition: During the state fiscal year 2013 - 2014, the Administrative Law Judges issued **57** determinations. Of that total:



DETERMINATIONS	NUMBER	PERCENT
Sustained the deficiency or other action	45	79%
Cancelled the deficiency or other action	3	5%
Modified the deficiency or other action	9	16%

Breakdown of Determinations by Tax

Tax	Number	Percent
Sales	21	36%
Income	25	43%
Corp. Franchise	9	16%
Miscellaneous	3	5%
Total	58	100%

Average Elapsed Time

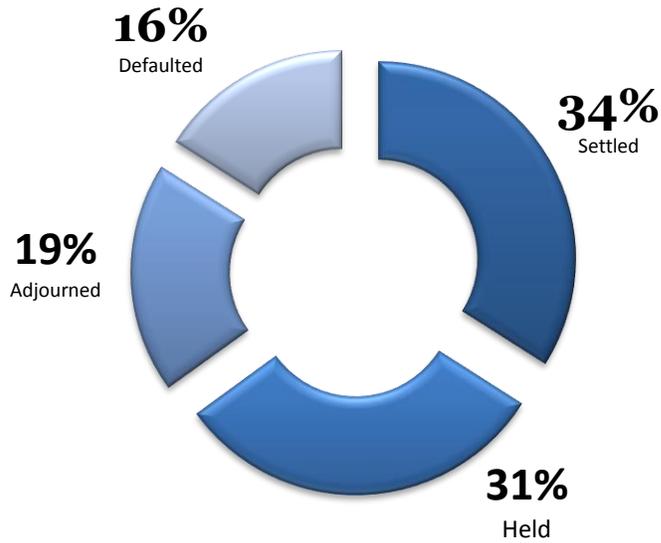
The average elapsed time between the later of the hearing date or the last brief date and the issuance of the determination was: Mean **5.25** months and Median **6** months.

SMALL CLAIMS HEARINGS

2013 - 2014 Inventory (Net Cases):		
Beginning Inventory		59
Add (+)		
	Cases Received	59
	Default Vacated	1
	Subtotal	60
Total Cases for Hearings		119
Deduct (-)		
	Petitions Withdrawn	8
	Closing Orders Issued	26
	Defaults	7
	Determinations Issued	19
	Subtotal	60
Ending Inventory		59

Analysis of Case Scheduling

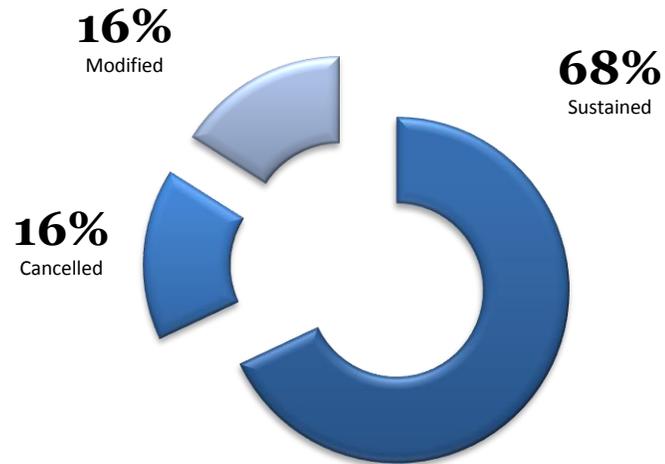
During the state fiscal year 2013 – 2014, **70** cases were scheduled for a small claims hearing before Presiding Officer. Of that total:



CASE SCHEDULING	NUMBER	PERCENT
Settled by parties before hearing	24	34%
Held and completed	22	31%
Adjourned before hearing	13	19%
Defaulted due to failure of one of the parties to appear	11	16%

Analysis of Determinations

Case Disposition: During the state fiscal year 2013 - 2014, the Presiding Officer issued **19** small claims determinations. Of that total:



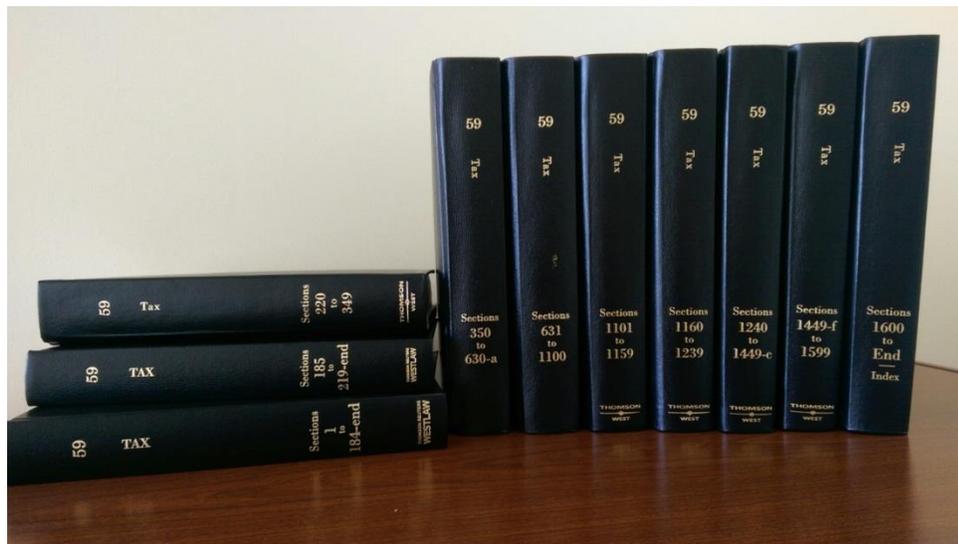
DETERMINATIONS	NUMBER	PERCENT
Sustained the deficiency or other action	13	68%
Cancelled the deficiency or other action	3	16%
Modified the deficiency or other action	3	16%

Breakdown of Determinations by Tax

Tax	Number	Percent
Sales	5	26%
Income	11	58%
Miscellaneous	3	16%
Total	19	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 **2.58** months and Median **2** months.

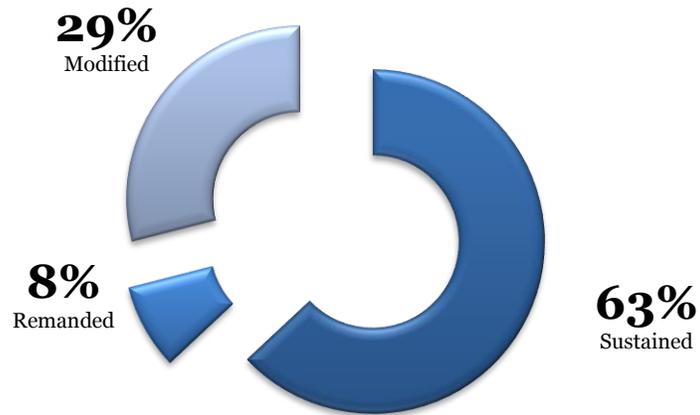


TAX APPEALS TRIBUNAL

2013 - 2014 Inventory (Net Cases):		
Beginning Inventory		
		53
Add (+)		
	Cases Received	40
	Subtotal	40
Total Cases for Hearings		
		93
Deduct (-)		
	Decisions Issued	24
	Settled	0
	Withdrawn	1
	Subtotal	25
Ending Inventory		
		68

Analysis of Decisions

Case Disposition: During the state fiscal year 2013 - 2014, the Tax Appeals Tribunal issued **24** decisions. Of that total:



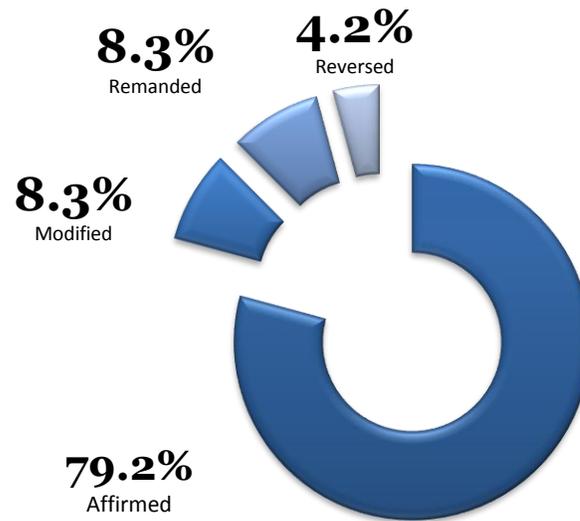
DETERMINATIONS	NUMBER	PERCENT
Sustained the deficiency or other action	15	63%
Modified the deficiency or other action	7	29%
Remanded the matter to the ALJ	2	8%

Breakdown of Decisions by Tax

Tax	Number	Percent
Income	13	54%
Sales	8	33%
Corporation Franchise	3	13%
Total (some cases involve more than one tax)	24	100%

Tribunal Disposition of ALJ Determinations

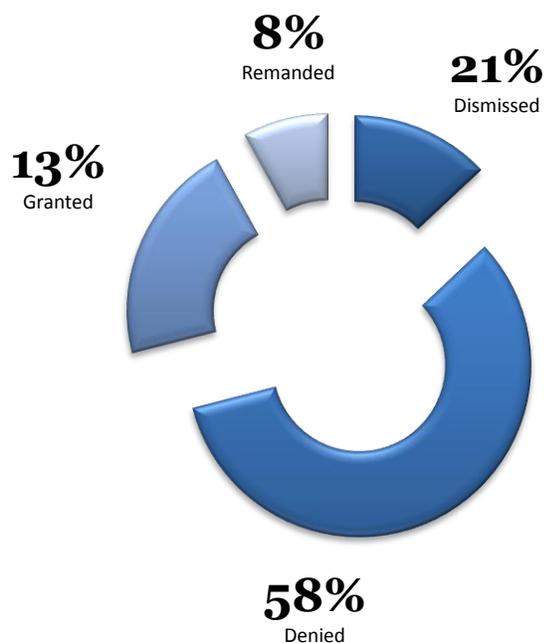
During the state fiscal year 2013 – 2014, the Tribunal issued **24** decisions reviewing determinations of Administrative Law Judges. Of that total:



DETERMINATIONS	NUMBER	PERCENT
Affirmed the ALJ determination	19	79.2%
Reversed the ALJ determination	1	4.2%
Modified the ALJ determination	2	8.3%
Remanded the matter to ALJ	2	8.3%

Tribunal Disposition of Petitioner Exceptions

During the state fiscal year 2013 – 2014, the Tribunal rendered **24** decisions with respect to exceptions filed by Petitioners. Of that total:



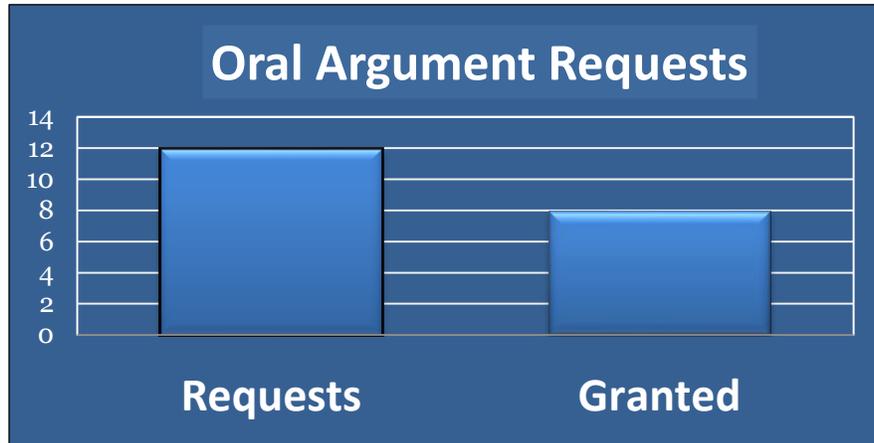
DETERMINATIONS	NUMBER	PERCENT
Granted Petitioner's exception	3	13%
Denied Petitioner's exception	14	58%
Dismissed Petitioner's exception	5	21%
Remanded the matter to ALJ	2	8%

Tribunal Disposition of Division Exceptions:

During the state fiscal year 2013 – 2014, the Tribunal rendered **1** decision with respect to an exception filed by the Division of Taxation. This decision rendered by the Tribunal involved a matter in which both parties filed an exception. The Tribunal granted part of the Division's exception in this matter.

Oral Argument Requests:

During the state fiscal year 2013-2014, the Tribunal granted oral argument in **67%** 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 **5.6** months and Median **5.7** months.

Judicial Review

During the state fiscal year 2013 – 2014, **7** Tribunal decisions were subject to judicial review as provided in article 78 of the New York’s Civil Practice Law and Rules.