

**New York City
Tax Appeals Tribunal
Annual Report
July 1, 2015 - June 30, 2016**

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NEW YORK CITY TAX APPEALS TRIBUNAL
ANNUAL REPORT 7/1/2015 – 6/30/2016

1. Introduction. This report is prepared pursuant to §168.f of the New York City Charter (Charter). The New York City Tax Appeals Tribunal (Tribunal) has jurisdiction over petitions filed by taxpayers protesting statutory notices issued by the Department of Finance (Department) for all non-property income and excise taxes, and annual vault charges administered by the City of New York (City).¹ This report covers the period from July 1, 2015 through June 30, 2016.

2. Purpose. The Tribunal is responsible for providing taxpayers and the Department with a fair, impartial, independent, efficient and knowledgeable forum in which to resolve protests of notices issued by the Department.

3. Organization. In 2007, the City Council amended the Charter putting both the Tax Appeals Tribunal and the Tax Commission (the agency charged with administrative review of Real Property Tax assessments) within the Office of Administrative Tax Appeals (L.L. 59 of 2007).

The Tribunal consists of two divisions: the Administrative Law Judge Division and the Appeals Division.

Administrative Law Judge Division. The President of the Tribunal appoints the Administrative Law Judges. The President of the Tribunal may designate one of the Administrative Law Judges to be the Chief Administrative Law Judge. Administrative Law Judges are authorized to conduct any hearing or motion proceeding within the jurisdiction of the Tribunal. Each Administrative Law Judge must be an attorney admitted to practice in New York State for at least five years and must become a resident of the City within 90 days of appointment.

¹ The New York City Sales and Use Tax and Personal Income Tax are administered by the New York State Department of Taxation and Finance and therefore, are not within the jurisdiction of the Tribunal.

As of June 30, 2016,² the Administrative Law Judges were:

Chief Administrative Law Judge	Anne W. Murphy
Administrative Law Judge	David Bunning
Administrative Law Judge	Sandra Rodriguez-Diaz

The Chief Administrative Law Judge is responsible for the day-to-day administration of the hearing function, both for formal hearings before Administrative Law Judges and small claims hearings before Presiding Officers. The support staff in the Administrative Law Judge Division handles petition intake and review, calendaring, and some word processing.

Appeals Division. The Appeals Division consists of three Commissioners appointed by the Mayor for staggered six-year terms. Each Commissioner must have been admitted to practice as an attorney in New York State for a minimum of ten years and have substantial knowledge and competence in the area of taxation. Each Commissioner must become a resident of the City within 90 days of appointment. One of the three Commissioners is designated by the Mayor to serve as President of the Tribunal during his or her term as a Commissioner. In addition to his or her duties as a Commissioner, the President is responsible for the overall administration and operation of the Tribunal. However, neither the President nor any Commissioner has any role with respect to specific cases pending before the Administrative Law Judge Division.

During the period covered by this report, the Commissioners of the Tribunal were:

President and Commissioner	Ellen E. Hoffman
Commissioner	Robert J. Firestone
Commissioner	Frances J. Henn

² Effective August 15, 2016, Alexander Chu-Fong joined the Tribunal as an ALJ.

Commissioner Hoffman's term expired on June 30, 2016.³ Commissioner Firestone's term expires on June 30, 2018. Commissioner Henn was appointed on May 2, 2016 to complete a term that expires on June 30, 2020.

In addition to the Commissioners, the Appeals Division includes a General Counsel and a secretary. The General Counsel, Mary E. Gallagher, works directly with the Commissioners and is responsible for assisting the Commissioners in the preparation of decisions, orders, notices and other legal documents. The General Counsel also coordinates all administrative aspects of the judicial and non-judicial functions of the Tribunal. The secretary for the Appeals Division handles exception intake and review, correspondence, calendaring and some word processing.

4. History. Prior to the establishment of the Tribunal, disputes between taxpayers and the Department were heard by the former Bureau of Hearings within the Department. The hearing officers only could issue recommended determinations for the signature of the Commissioner of Finance. Thus, although the Department was a party in all proceedings before the Bureau of Hearings, the Commissioner of Finance issued the final determination. Consequently, critics of the system noted that, at a minimum, there was a perception of unfairness. In addition, because the Department promulgated the regulations governing City taxes that were within the jurisdiction of the Bureau of Hearings, there were concerns that the Bureau of Hearings could not fairly and objectively review the validity or application of those regulations.

The Tribunal was created as an independent agency by §168 through §172 of the Charter in 1988. In 1992, the New York State Legislature expanded the Tribunal's jurisdiction to include all taxes administered by the City, other than the Real Property Tax. The 1992 legislation formed the Administrative Law Judge Division to replace the Department's Bureau of Hearings and created the current two-step process of hearings and appellate review.

5. Procedure. The Administrative Law Judges conduct formal hearings including related motions and small claims hearings as Presiding Officers. An Administrative Law Judge hears a case and issues a determination under his or her own name. An Administrative Law Judge

³ Commissioner Hoffman also serves as President of the Tax Commission for a term that expires on January 6, 2020.

determination is reviewed by the Tribunal Commissioners sitting as a panel if either the taxpayer or the Department files an exception to the Administrative Law Judge determination.

The Tribunal's rules include provisions governing the filing of petitions and exceptions and practice and procedure before the Administrative Law Judge Division and the Appeals Division. From time to time, the Tribunal convenes an Advisory Committee to assist in evaluating the adequacy and appropriateness of its regulations on practice and procedure. The committee includes practicing tax attorneys, tax accountants and representatives of the Department and the City Law Department. The Tribunal has undertaken a project to revise and update its current rules. The Advisory Committee will be enlisted to review and comment on proposed revisions.

Filing Petitions with the Administrative Law Judge Division. A case begins when a taxpayer files and serves a petition challenging a statutory notice issued by the Department. The petition is acknowledged by the Chief Administrative Law Judge. The Department, represented by the Tax and Bankruptcy Division of the Law Department, files an answer to the petition. Thereafter, the Administrative Law Judge assigned to the case holds a pre-hearing conference, at which time settlement is explored. If it appears that the case will proceed to hearing, an attempt is made to narrow the issues and encourage the parties to enter into a stipulation of facts.

Generally, the same Administrative Law Judge who presided over the pre-hearing conference conducts the hearing, receives evidence and issues a written determination within six months after the later of the completion of the hearing or the submission of briefs by the parties. This period may be extended by the Administrative Law Judge for an additional three months for good cause. The determination of the Administrative Law Judge includes a statement of the issues in the case, the relevant facts as found by the Administrative Law Judge based on the record, and conclusions of law. The determination is binding on both parties unless one or both of the parties requests a review of the determination by filing an exception with the Appeals Division of the Tribunal within 30 days after the issuance of the Administrative Law Judge's determination.

Filing Exceptions with the Appeals Division. If an exception is filed with the Appeals Division, the Commissioners will review the record of the hearing and any briefs submitted. They may grant oral argument on the request of either party, require oral argument if it is not requested by

either party, or decide the case without oral argument. The Commissioners will issue a written decision affirming, reversing or modifying the determination of the Administrative Law Judge, and/or remanding the case for additional proceedings. Each decision of the Commissioners includes a statement of the issues in the case, the relevant facts as found by the Commissioners based on the record and the Commissioners' conclusions of law. Commissioners' decisions must be rendered within six months after the latest of the date the exception is taken, the date briefs are filed by the parties or the date of the oral argument before the Commissioners.

Decisions issued by the Commissioners are final and binding on the Department. However, taxpayers may appeal a decision of the Commissioners by instituting an Article 78 proceeding with the Appellate Division, First Department, of the New York State Supreme Court within four months after the date of the Commissioners' decision.

Small Claims Proceedings. As an alternative to a formal hearing, if the amount in dispute is \$10,000 or less (not including penalties and interest) taxpayers have the right to opt for a small claims proceeding within the Administrative Law Judge Division. A small claims hearing is conducted informally by an Administrative Law Judge serving as a Presiding Officer. The Presiding Officer's determination is final and binding on both parties and cannot be appealed to the Appeals Division or to the courts. At any time before the conclusion of a small claims hearing, a taxpayer may discontinue the proceedings and request that the case be transferred to an Administrative Law Judge for a hearing and an appealable determination.

6. Additional Items. The Tribunal's website is located at www.nyc.gov/taxtribunal. The Tribunal's website contains the Tribunal's Rules of Practice and Procedure, the Tribunal's forms, a list of pending exceptions, recent decisions, determinations and orders, and a link to the New York Law School website where most published Appeals Division decisions and orders and Administrative Law Judge determinations are available in both a searchable and printable format.

When their Tribunal work allows, the Administrative Law Judges, Commissioners and the General Counsel (collectively Tribunal Attorneys) also are designated by the Tax Commission President to serve as hearing officers for Tax Commission matters, including not-for-profit

exemption applications. In 2016 almost 6000 Real Property Tax applications were reviewed by Tribunal Attorneys plus 122 not-for-profit exemption applications.⁴

Since 2012, the Department has asked the Office of Administrative Tax Appeals to conduct hearings on protests of penalties asserted for failure to file Real Property Income and Expense Statements with the Department. In 2016 the Office of Administrative Tax Appeals received 105 protests of such penalties.

⁴ Tax Commission productivity is tracked on a calendar year basis.

REVIEW OF JULY 1, 2015 - JUNE 30, 2016 INVENTORY

<u>ADMINISTRATIVE LAW JUDGE DIVISION</u>			
	ALJ	Small Claims	Totals
Opening Inventory	57	9	66
New Petitions Received	37	2	39
Petitions Reopened/Remanded	0	0	0
Transfers from Small Claims	0	0	0
Total Receipts	37	2	39
Default Determinations	0	0	0
Dismissal Determinations	4	1	5
Resolved by Order	8	0	8
Substantive Determinations	2	0	2
Transfers to Small Claims	0	0	0
Total Closures	14	1	15
Closing Inventory	80	10	90

<u>APPEALS DIVISION</u>	
Opening Inventory	8
Exceptions Filed by Taxpayer	1
Exceptions Filed by DOF	
Exceptions Closed by Decision	5
Exceptions Closed by Withdrawal	
Exceptions Closed by Stipulation of Discontinuance	
Closing Inventory	4

INVENTORY BY TAX TYPE

<u>ADMINISTRATIVE LAW JUDGE DIVISION</u>				
Tax	Open Inventory as of 06/30/15	Petitions Received 7/1/15- 6/30/16	Petitions Closed 7/1/15 – 6/30/16	Open Inventory as of 6/30/16
BANK/FINANCIAL CORP.	2	1	1	2
CIGARETTE				
COMMERCIAL MOTOR VEHICLE	1			1
COMMERCIAL RENT	3	1		4
FOREIGN AND ALIEN INSURANCE				
GENERAL CORPORATION	19	20	5	34
HOTEL ROOM OCCUPANCY				
REAL PROPERTY TRANSFER	27	10	5	32
RETAIL LIQUOR LICENSE				
UNINCORPORATED BUSINESS	10	4	1	13
UTILITY	3	3	2	4
UNSPECIFIED				
NO JURISDICTION	1		1	
TOTAL	66	39	15	90

INVENTORY BY TAX TYPE (cont'd)

<u>APPEALS DIVISION</u>				
Tax	Open Inventory as of 06/30/15	Exceptions Received 7/1/15- 6/30/16	Exceptions Closed 7/1/15 – 6/30/16	Current Inventory as of 6/30/16
BANK/FINANCIAL CORP.	1		1	
CIGARETTE				
COMMERCIAL MOTOR VEHICLE				
COMMERCIAL RENT				
FOREIGN AND ALIEN INSURANCE				
GENERAL CORPORATION	2	1	2	1
HOTEL ROOM OCCUPANCY				
REAL PROPERTY TRANSFER	3		1	2
RETAIL LIQUOR LICENSE				
UNINCORPORATED BUSINESS	1			1
UTILITY	1		1	
UNSPECIFIED				
NO JURISDICTION				
TOTAL	8	1	5	4

OUTCOME OF DETERMINATIONS

ADMINISTRATIVE LAW JUDGE DIVISION (Substantive Determinations Only)		
OUTCOME ON DOF NOTICE	7/01/15 – 6/30/16	10/01/92 – 6/30/16
DOF NOTICE SUSTAINED	1	113
DOF NOTICE MODIFIED		50
DOF NOTICE CANCELLED	1	60

APPEALS DIVISION		
OUTCOME ON DOF NOTICE	7/01/15 – 6/30/16	10/01/92 – 6/30/16
DOF NOTICE SUSTAINED	3	53
DOF NOTICE MODIFIED		15
DOF NOTICE CANCELLED	1	34
REMANDED OR DECIDED ON NON-SUBSTANTIVE GROUNDS	1	7

APPEALS DIVISION		
OUTCOME ON ALJ DETERMINATION	7/01/15 – 6/30/16	10/01/92 – 6/30/16
ALJ DETERMINATION/ORDER MODIFIED		17
ALJ DETERMINATION REVERSED	2	20
ALJ DETERMINATION SUSTAINED	2	67
MATTER REMANDED OR DECIDED ON NON-SUBSTANTIVE GROUNDS	1	5

OUTCOME OF DETERMINATIONS (cont'd)

APPEALS DIVISION		
OUTCOME ON EXCEPTIONS	7/01/15 – 6/30/16	10/01/92 – 6/30/16
TAXPAYER EXCEPTION GRANTED	0	11
TAXPAYER EXCEPTION GRANTED IN PART	0	5
TAXPAYER EXCEPTION DENIED	0	50
TAXPAYER EXCEPTION DISMISSED ON NON-SUBSTANTIVE GROUNDS	1	3
TAXPAYER EXCEPTION REMANDED TO ALJ DIVISION	1	2
DOF EXCEPTION GRANTED	2	9
DOF EXCEPTION GRANTED IN PART	0	6
DOF EXCEPTION DENIED	1	23