

**New York City
Tax Appeals Tribunal
Annual Report
July 1, 2014 - June 30, 2015**

TABLE OF CONTENTS

Introduction Page 1

- **Organization**
- **History**
- **Purpose**
- **Procedure**
- **Administrative Law Judge Division**
- **Appeals Division**
- **Small Claims Proceedings**
- **Additional Items**

Disposition of Cases..... Page 11

- **Administrative Law Judge Division**

Disposition of Cases..... Page 16

- **Appeals Division**

NEW YORK CITY TAX APPEALS TRIBUNAL ANNUAL REPORT

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) is an independent agency created 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 of New York (City), other than the Real Property Tax, and established a two-tier system for deciding cases. As a result, the Tribunal has had jurisdiction over petitions filed by taxpayers protesting statutory notices issued by the Department of Finance (Department) for all non-property taxes, excise taxes, and annual vault charges administered by the City. This report covers the period from July 1, 2014 through June 30, 2015. In 2007, the City Council amended the New York City Charter putting both the Tax Appeals Tribunal and the Tax Commission (the agency charged with administrative review of Real Property Tax assessments established by the Department) within the Office of Administrative Tax Appeals (L.L. 59 of 2007).

2. Organization. The Tribunal consists of two divisions: the Administrative Law Judge Division and the Appeals Division. The Appeals Division consists of three Commissioners appointed by the Mayor for staggered six-year terms.

Appeals Division. Each Tribunal 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. One of the three Commissioners is designated by the Mayor to serve as President of the Tribunal during his or her term as a Tribunal 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	Glenn Newman
Commissioner	Ellen E. Hoffman
Commissioner	Robert J. Firestone

Commissioner Newman's term expired on June 30, 2014. He retired from City service as of June 1, 2015.

Commissioner Hoffman's term expires on June 30, 2016 and Commissioner Firestone's term expires on June 30, 2018.

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 Tribunal 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.

Administrative Law Judge Division. The President of the Tribunal appoints the Administrative Law Judges. 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. The President of the Tribunal may designate one of the Administrative Law Judges to be the Chief Administrative Law Judge. The Administrative Law Judges as of June 30, 2015 were:

Chief Administrative Law Judge	Anne W. Murphy
Administrative Law Judge	Jean Gallancy-Wininger
Administrative Law Judge	David Bunning

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 word processing.

3. History. Prior to the establishment of the Tribunal, disputes between taxpayers and Department were heard by Department's former Bureau of Hearings. Those hearing officers were not empowered to issue determinations but only to draft recommended determinations for the signature of the Commissioner of Finance. Thus, although the Department was always one of the parties in such proceedings, it was the Commissioner of Finance who issued the determination. Critics of the system noted that, at a minimum, there was a perception of unfairness. In addition, because the regulations governing City taxes within the jurisdiction of the Bureau of Hearings were promulgated by Department, there were concerns that the Bureau of Hearings could not fairly and objectively review the validity or application of those regulations. The expansion of the Tribunal's jurisdiction, on October 1, 1992 completed the formal separation of the adjudication of tax disputes from the administration of taxes. The Administrative Law Judge Division replaced the Department's Bureau of Hearings and the current two-step process of hearings and appellate review was instituted.

4. 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.

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. Administrative Law Judge Determinations are reviewed by the Commissioners sitting as a panel if the taxpayer and/or the Department files an exception to the Administrative Law Judge Determination.

The Tribunal's current rules include provisions for the filing of petitions, hearing practices and procedure before an Administrative Law Judge and appeal procedures regarding exceptions to the Appeals Division from determinations issued by the Administrative Law Judges. 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 New York City Law Department.

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 and the Department, represented by the Tax and Bankruptcy Division of the New York City 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.

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 or request oral argument. The Commissioners will then issue a written decision either affirming, reversing or modifying the determination of the Administrative Law Judge, 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. Tribunal 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. Taxpayers, however, may appeal the 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 Tribunal Commissioners' decision.

Small Claims Proceedings. As an alternative to a formal hearing, if the amount in dispute is \$10,000 or less (not including penalty 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 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.

In addition to their work on Tribunal matters, when time allows, the Administrative Law Judges, Commissioners and the General Counsel (Tribunal attorneys) are designated by the Tax Commission President to serve as hearing officers for Tax Commission matters, including not-for-profit exemption applications. In 2015¹ over 8,000 Real Property Tax applications were reviewed by Tribunal attorneys plus 183 not-for-profit exemption applications. Beginning in 2012, the Department 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 2015 the Office of Administrative Tax Appeals received 75 protests of such penalties.

¹Tax Commission data is tracked on a calendar year basis.

DISPOSITION OF CASES - ADMINISTRATIVE LAW JUDGE DIVISION²

JULY 1, 2014 - JUNE 30, 2015 INVENTORY

Beginning Inventory		58
Add:		
Petitions Received	44	
Petitions Reopened/Remanded	-	
Small Claims Transfers	-	
Subtotal	<u>44</u>	
Total Petitions:		102
Deduct (Petitions Resolved by):		
Default Determinations	3	
Dismissal Determinations	5	
Resolved by Order	20	
Substantive Determinations	7	
Small Claims Transfers	<u>0</u>	
Subtotal:		<u>35</u>
Ending Inventory:		<u>67</u>

² The sum of the percentages shown in the charts or tables below may not total 100% due to rounding.

ANALYSIS OF CLOSURES
CLOSED PETITIONS BY TAX

<u>TAX</u>	07/01/14-06/30/15	<u>TOTAL</u> 10/01/92-06/30/15
ANNUAL VAULT CHARGE	0	45
BANK/FINANCIAL CORP.	2	66
CIGARETTE	1	29
COIN OPERATED AMUSEMENT DEVICE	0	1
COMMERCIAL MOTOR VEHICLE	2	153
COMMERCIAL RENT	3	327
FOREIGN AND ALIEN INSURANCE	0	1
GENERAL CORPORATION	8	2752
HOTEL ROOM OCCUPANCY	0	95
REAL PROPERTY TRANSFER	8	1239
RETAIL LIQUOR LICENSE	0	17
UNINCORPORATED BUSINESS	3	1291
UTILITY	6	195
UNSPECIFIED	0	12
NO JURISDICTION	<u>2</u>	<u>34</u>
TOTAL	<u>35</u>	<u>6257</u>

OUTCOME OF SUBSTANTIVE DETERMINATIONS

	07/01/14 TO SUBSTANTIVE DETERMINATIONS	6/30/15 PERCENTAGE	10/01/1992 TO SUBSTANTIVE DETERMINATIONS	6/30/15 PERCENTAGE
DOF ACTION SUSTAINED	2	40.00%	112	50.68%
DOF ACTION MODIFIED	0	0.00%	50	22.62%
DOF ACTION CANCELLED	<u>3</u>	<u>60.00%</u>	<u>59</u>	<u>26.70%</u>
TOTAL	<u>5</u>	<u>100.00%</u>	<u>221</u>	<u>100.00%</u>

SUBSTANTIVE DETERMINATIONS BY TAX

<u>TAX</u>	07/01/2014 TO SUBSTANTIVE DETERMINATIONS	06/30/2015 PERCENTAGE	10/01/1992 TO SUBSTANTIVE DETERMINATIONS	06/30/2015 PERCENTAGE
BANK/FINANCIAL CORP.	1	20.00%	8	3.62%
CIGARETTE	0	0.00%	4	1.81%
COMMERCIAL MOTOR VEHICLE	0	0.00%	1	0.45%
COMMERCIAL RENT	1	20.00%	27	12.22%
GENERAL CORPORATION	1	20.00%	62	28.05%
HOTEL ROOM OCCUPANCY	0	0.00%	3	1.36%
REAL PROPERTY TRANSFER	1	20.00%	52	23.53%
UNINCORPORATED BUSINESS	1	20.00%	51	23.08%
UTILITY	<u>0</u>	<u>0.00%</u>	<u>13</u>	<u>5.88%</u>
TOTAL	<u>5</u>	<u>100.00%</u>	<u>221</u>	<u>100.00%</u>

OPEN PETITIONS BY TAX

<u>TAX</u>	<u>As of 06/30/2015</u>	<u>PERCENTAGE</u>
BANK/FINANCIAL CORP.	2	3.03%
CIGARETTE	0	0.00%
COMMERCIAL MOTOR VEHICLE	1	1.52%
COMMERCIAL RENT	3	4.55%
FOREIGN AND ALIEN INSURANCE	0	0.00%
GENERAL CORPORATION	19	28.79%
HOTEL ROOM OCCUPANCY	0	0.00%
REAL PROPERTY TRANSFER	27	40.91%
UNINCORPORATED BUSINESS	10	15.15%
UTILITY	3	4.55%
NO JURISDICTION	<u>1</u>	<u>1.52%</u>
TOTAL	<u>66</u>	<u>100.00%</u>

DISPOSITION OF CASES - APPEALS DIVISION

July 1, 2014 - June 30, 2015 APPEALS DIVISION INVENTORY

Beginning Inventory	3
Add:	
Exceptions filed by taxpayers	5
Exceptions filed by Department	3
Subtract:	
Exceptions closed by decision	1
Exceptions closed by withdrawal	1
Exceptions closed by stipulation of discontinuance	1
Closing Inventory	8

ANALYSIS OF APPEALS DIVISION CLOSURES

7/1/14-6/30/15

10/1/92-6/30/15

EXCEPTIONS:

Closed by Decision	1	107
Dismissed with Remand to the ALJ Division	-	9
Closed by Order with Opinion	-	4
Closed by Stipulation of Discontinuance	1	30
Closed by Dismissal	-	7
Withdrawn by the Commissioner of Finance	1	7
Withdrawn by the Taxpayer	<u>-</u>	<u>3</u>
TOTAL:	3	167

APPEALS DIVISION CLOSURES BY TAX TYPE

<u>Tax</u>	<u>Exceptions</u>	
	<u>7/1/14-6/30/15</u>	<u>10/1/92-6/30/15</u>
BANK	-	6
COMMERCIAL RENT	1	16
GENERAL CORPORATION	-	51
HOTEL ROOM OCCUPANCY	-	3
NON JURISDICTIONAL	-	1
REAL PROPERTY TRANSFER	1	38
TAXICAB LICENSE TRANSFER	-	-
UNINCORPORATED BUSINESS	1	41
UTILITY	<u>-</u>	<u>11</u>
	3	167

ANALYSIS OF COMMISSIONERS' DECISIONS

<u>Effect of Decision on Department's Notice³</u>	<u>7/1/14-6/30/15</u>	<u>10/1/92-6/30/15</u>
Notice cancelled	-	33
Notice sustained	1	50
Notice modified	-	15
Remanded to the ALJ Division	-	2
Exception dismissed	-	2
Addressed procedural issue but not the merits	<u>-</u>	<u>2</u>
TOTAL	1	104 ⁴

<u>Effect of Decision on ALJ's Determination</u>	<u>7/1/14-6/30/15</u>	<u>10/1/92-6/30/15</u>
Order Modified	-	1
Determination Modified	-	16
Determination Reversed	-	18
Determination Sustained	1	65
Determination Modified and Matter Remanded	-	1
Case Decided on Jurisdictional Grounds	<u>-</u>	<u>3</u>
TOTAL	1	104

³ A notice includes a notice of disallowance of a refund or assertion of a deficiency,

⁴ The total number of decisions is less than the number of exceptions closed by decision because one decision closed multiple exceptions.

Decisions on Exceptions Filed By Taxpayers

	<u>7/1/14-6/30/15</u>	<u>10/1/92-6/30/15</u>
Exception Granted	-	11
Exception Granted in Part	-	5
Exception Granted In Part and Remanded	-	1
Exception Denied	1	50
Exception Dismissed as Untimely	-	<u>2</u>
	SUBTOTAL:	69

Decisions on Exceptions Filed by Department

Exception Granted	-	7
Exception Granted in Part	-	6
Exception Denied	-	<u>22</u>
	SUBTOTAL:	35
	TOTAL:	104