RULES OF PRACTICE AND PROCEDURE OF THE NEW YORK CITY TAX APPEALS TRIBUNAL

§1-12 Hearings before administrative law judges.

(a) *Notice.*

(1) After issue is joined (see section 1-04 of these rules), the chief administrative law judge unit shall schedule the controversy for a conference as provided in subdivision (d) of section 1-04 of these rules.

(2) The parties shall be given at least 30 days' notice of the first hearing date, and at least 10 days' notice of any adjourned or continued hearing date unless the parties agree otherwise with the consent of the administrative law judge. A request by any party for a preference in scheduling will be honored to the extent possible.

(b) *Adjournment; default.* (1) At the written request of either party, made on notice to the other party and received at least 15 days in advance of the scheduled hearing date, an adjournment may be granted where good cause is shown. In the event of an emergency, an adjournment may be granted on less notice. Upon continued and unwarranted delay of the proceedings by either party, the administrative law judge shall render a default determination against the dilatory party.

(2) In the event a party or the party's representative does not appear at a scheduled hearing and an adjournment has not been granted, the administrative law judge shall, on his or her own motion or on the motion of the other party, render a default determination against the party failing to appear.

(3) Upon written application to the chief administrative law judge, a default determination may be vacated where the party shows a reasonable excuse for the default and a meritorious case.

(c) *Administrative law judge.* The hearing shall be conducted by an administrative law judge who is authorized to:

(1) administer oaths and affirmations;

(2) sign and issue subpoenas as provided in section 1-08 of these rules;

(3) regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of legal memoranda and other documents;

(4) rule upon questions of evidence; such rulings shall be deemed incorporated in the administrative law judge's determination for purposes of review by the tribunal commissioners; and

(5) render determinations after hearings.

(d) *Conduct of hearing*. (1) At the hearing, the parties may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in direct examination, impeach any witness regardless of which party first called the witness to testify, and rebut the evidence against them. A copy of a Federal or State determination relating to the issues may be received in evidence to show such determination. Affidavits as to relevant facts may be received, for whatever value they may have, in lieu of the oral testimony of the persons making such affidavits. Technical rules of evidence may be disregarded to the extent permitted by the decisions of the courts of this State, provided the evidence offered appears to be relevant and material to the issues. However, effect shall be given to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Upon a finding of good cause, the administrative law judge may order that any witness be examined separately and apart from all other witnesses, except those who are parties. The administrative law judge may, where the record appears unclear, ask questions of the parties or of witnesses for the purpose of clarifying the record.

(2) Where books, records, papers or other documents have been received in evidence, the substitution of a copy thereof may be permitted. Where original exhibits have been received in evidence, the party who offered such exhibits may be permitted to withdraw them after the determination of the administrative law judge or the decision of the tribunal commissioners is final.

(3) For purpose of expedition, stipulation and submission of evidence is encouraged, provided the interests of the parties will not be substantially prejudiced thereby. Although objections to a particular part of a stipulation should be noted therein the administrative law judge shall give consideration to any objection to irrelevancy of stipulated facts made at the hearing (see section 1-09 of these rules).

(4) The burden of proof shall be upon the party seeking relief as to each issue, except as otherwise provided by law.

(5) After the parties have completed the submission of the evidence, they may orally argue the applicability of the law to the facts. If the parties also wish to submit briefs, they may do so. Such briefs shall be filed under the following schedule in the absence of any different direction by the administrative law judge:

(i) the opening brief by the petitioner is due within 45 days of the conclusion of the hearing or the submission without hearing;

(ii) the answering brief by the commissioner of finance within 30 days thereafter; and

(iii) upon application to the administrative law judge, additional briefs may be filed by the parties based on a schedule determined by the administrative law judge. Each party shall serve a copy of its briefs on the other party.

The parties may also submit proposed findings of fact and conclusions of law. The proposed findings of fact shall refer whenever possible to the relevant pages of the transcript of hearing and exhibits.

A request for extension of time for filing any brief may be made to the administrative law judge prior to the due date and shall recite that the moving party has advised the other party and whether the other party objects to the motion. Delinquent briefs may be rejected by the administrative law judge.

(6) The hearing shall be stenographically reported. A transcript thereof shall be made available for examination at the offices of the tribunal or may be purchased pursuant to section 1-16 of these rules. If either party deems the transcript to be inaccurate in any material respect, the party shall promptly notify the administrative law judge and the other party, setting forth specifically the alleged inaccuracies. The administrative law judge shall specify the corrections to be made in the transcript, and such corrections shall be made a part of the record.

(e) *Determination.* (1) *Issuance of determination.* The administrative law judge shall review the evidence and render a written determination which shall contain findings of fact and conclusions of law. The administrative law judge shall render a determination within six months of completion of any hearing held on or after October 1, 1992, or the submission of briefs relating to such hearing, whichever is later. The administrative law judge may extend such six-month period, for good cause shown, to no more than an additional three months. The tribunal shall serve a copy of the determination on the petitioner, if appearing pro se, or the petitioner's representative, and the attorney of record for the commissioner of finance.

(2) *Effect of determination*. The determination of the administrative law judge shall finally decide the matters in controversy unless a party takes exception by timely requesting review by the tribunal commissioners (see section 1-13 of these rules). Determinations of administrative law judges shall not be considered precedent, nor shall they be given any force or effect in other proceedings in the tribunal.

(f) *Assignment of another administrative law judge.* Whenever it becomes impractical for an administrative law judge to continue the hearing, another administrative law judge may be assigned to continue with the case, unless it is shown that substantial prejudice to a party will result therefrom.