

**New York City
Tax Appeals Tribunal
Annual Report
July 1, 2005 - June 30, 2006**

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NEW YORK CITY TAX APPEALS TRIBUNAL
ANNUAL REPORT

This report is prepared pursuant to §168.f of the New York City Charter (the "Charter") as amended in 1992. That section provides that the Tax Appeals Tribunal shall "...collect, compile and prepare for publication statistics and other data with respect to its operations, and shall submit annually to the mayor a report on such operations, including, but not limited to, the number of proceedings initiated, the types of dispositions made and the number of proceedings pending."

I. INTRODUCTION. The Tribunal is an independent agency created by §168 through §172 of the Charter.¹ The Tribunal originally had jurisdiction to hear and determine appeals from determinations by the Commissioner of Finance relating to all excise taxes and charges administered by the City of New York, other than the Real Property Tax.² In 1992, the New York State Legislature expanded the Tribunal's jurisdiction to include all taxes administered by the City of New York, other than the Real Property Tax, and established a two-tier system for deciding cases. Since October 1, 1992, the Tribunal has had jurisdiction over petitions filed by taxpayers protesting statutory

¹Sections 168 through 172 were added at the General Election, held November 8, 1988.

²Excise taxes and charges include: commercial rent or occupancy tax, real property transfer tax, hotel room occupancy tax, and annual vault charge.

notices issued by the Commissioner of Finance for all non-property taxes, excise taxes, and annual vault charges³ administered by the City of New York. This report covers the period from July 1, 2005 through June 30, 2006.

Overview. The Tribunal, for administrative and budget purposes, is within the Department of Finance of the City of New York ("DOF"). However, the Tribunal's powers, functions, duties and obligations are separate from and independent of the authority of the Commissioner of Finance. (Charter §§168.a and 1504-a) 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. The Commissioners are appointed for six year terms. One of the three Commissioners is designated as President of the Tribunal by the Mayor and serves as such during his or her term. (Charter §168.b) 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.

³Pursuant to Subd. (a) par (D) added L.L. 47/1997 §1, eff. June 23, 1997 "no annual vault charge ... shall be imposed ... on or after June first, nineteen hundred ninety-eight."

Each Commissioner must possess substantial tax knowledge and competence in the area of taxation and have been admitted to practice as an attorney in the State of New York for at least ten years. (Charter §168.c) During the period covered by this report, the Commissioners of the Tribunal were:

President and Commissioner	Glenn Newman
Commissioner	Ellen E. Hoffman
Commissioner	Vacant

Commissioner Newman's term expires on June 30, 2008, Commissioner Hoffman's term expires on June 30, 2006, and the third term, vacant at the time, expires on June 30, 2010. During the period covered by this report, Arthur A. Strauss served as a Commissioner until his retirement in September, 2005 and Kalman Finkel served as a Commissioner until his retirement in July, 2005.

By statute, the former hearing officers of DOF's Bureau of Hearings were transferred to the Tribunal as Administrative Law Judges on October 1, 1992. The President of the Tribunal appoints all other Administrative Law Judges. Administrative Law Judges are authorized to conduct any hearing or motion procedure within the jurisdiction of the Tribunal subject to *en banc* review by the Commissioners of the Tribunal. (Charter §168.d) Each Administrative Law Judge must be an attorney admitted to practice in New York State for at least five years

or employed as a hearing officer in DOF as of September 30, 1992. The President of the Tribunal may designate one of the Administrative Law Judges to be the Chief Administrative Law Judge. The Administrative Law Judges are:

Chief Administrative Law Judge	Steven J. Gombinski
Deputy Chief Administrative Law Judge	Warren P. Hauben
Administrative Law Judge	Anne W. Murphy
Administrative Law Judge	Marlene F. Schwartz

Purpose. The Tribunal has the responsibility of providing taxpayers and DOF with a fair, impartial, efficient and knowledgeable forum in which to resolve their disputes.

Procedure. The adjudicatory function of the Tribunal involves the conduct of formal hearings by Administrative Law Judges, small claims hearings by Presiding Officers, and the review of Administrative Law Judge Determinations by the Commissioners upon the filing of exceptions by the taxpayer and/or the Commissioner of Finance.

History. Prior to the establishment of the Tribunal, disputes between taxpayers and DOF were heard by DOF'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 DOF 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, the fact that tax regulations which may have been at issue were promulgated by DOF, led to concerns that DOF could not fairly and objectively review the validity or application of those regulations in an adjudicatory proceeding.

Upon its creation in 1989, the Tribunal consisted only of an Appeals Division which heard appeals from determinations of the Commissioner of Finance relating to excise taxes and charges administered by the City of New York, other than the Real Property Tax. At its discretion the Tribunal could: (1) confine its review to the record established before DOF's Bureau of Hearings; (2) hear and determine any issues of fact *de novo*; or (3) remand to the Commissioner of Finance for further findings of fact. Regulations providing for rules of practice and procedure before the Tribunal were issued and became effective December 1, 1989. For determinations of the Commissioner of Finance issued after the Tribunal's creation but before October 1, 1992, when the new procedure became effective, a total of 84 petitions were filed with the Tribunal. As of June 30, 1999 all of these petitions were closed.

The establishment of the Administrative Law Judge Division, together with the expansion of the Tribunal's jurisdiction, on October 1, 1992, pursuant to chapters 808 and 809 of the Laws of 1992, constituted the final step in the formal separation of the adjudication of tax disputes from the administration of taxes. The Administrative Law Judge

Division replaced DOF's former Bureau of Hearings and the current two-step process of hearings and appellate review was instituted.

Under the present system, the Commissioners and Administrative Law Judges of the Tribunal are fully independent of DOF. An Administrative Law Judge hears a case and issues a determination under his or her own name.

The Tribunal's regulations 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. The regulatory framework for the orderly functioning of the new Tribunal was established through amendments to the original Tribunal regulations. The current regulations became effective December 12, 1992.

Administrative Law Judge Division. A case commences when a taxpayer files a petition challenging a statutory notice issued by the Commissioner of Finance. Generally, after the petition is acknowledged by the Chief Administrative Law Judge and answered by the Commissioner of Finance, 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.

If a case proceeds to hearing, generally the same Administrative Law Judge who presided over the pre-hearing conference conducts the trial, 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 to nine months by the Administrative Law Judge for good cause. The determination of the Administrative Law Judge sets forth the issues in the case, the relevant facts established by the parties and the conclusions of law relevant to the issues. 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 determination of the Administrative Law Judge.

Review of Determinations/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 sets forth the issues in the case, the relevant facts established by the record and the Commissioners' application of the law to the facts in the record. 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 rendered by the Commissioners are final and binding on DOF. 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.

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 impartial Presiding Officer who is experienced in tax matters and whose determination is final and binding on both parties. 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. Two of the Administrative Law Judges also serve as Presiding Officers.

Technical Support. The Tribunal is revising and expanding its Data Base Management System to more fully computerize its operations. When it is completed, the Tribunal will have a fully integrated system for tracking and calendaring cases from the time a taxpayer files a petition through the time proceedings are completed. The Tribunal previously completed a massive inventory project which reconciled its initial inventory of cases (which were on a list of open petitions provided by DOF after jurisdiction over these cases was transferred to the Tribunal on October 1, 1992) with the physical documents provided

by DOF.

In the fall of 1993, with the assistance of professional associations, the Tribunal appointed an Advisory Committee to assist in evaluating the adequacy and appropriateness of its regulations on practice and procedure. The committee is comprised of practicing tax attorneys, tax accountants and representatives of DOF and the New York City Law Department.

Organization.

The Appeals Division. The Appeals Division consists of three Commissioners, a General Counsel and a secretary. The General Counsel to the Tribunal, 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 Administrative Law Judge Division. The Administrative Law Judge Division is comprised of four judicial and several support positions. 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 judicial staff of the Division is comprised of the Deputy Chief Administrative Law Judge and two Administrative Law Judges, who also serve as Presiding Officers.

The support staff in the Administrative Law Judge Division handles Petition Intake and Review, Calendaring, and Word Processing.

New 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 current 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 and Orders are available in both a searchable and printable format.

Currently Determinations, Decisions and Orders published from 1995 until the present (and most of 1994) are available on that website.

Please Note: The sum of the percentages shown in any chart or table contained in pages 11 through 21 of this report may not total 100%, due to rounding.

DISPOSITION OF CASES - ADMINISTRATIVE LAW JUDGE DIVISION

A. JULY 1, 2005 - JUNE 30, 2006 INVENTORY

Beginning Inventory		60
Add:		
Petitions Received	45	
Petitions Reopened/Remanded	0	
Small Claims Transfers	<u>1</u>	
Subtotal		<u>46</u>
Total Petitions:		106
Deduct (Petitions Resolved by):		
Stipulations of Discontinuance	22	
Default Determinations	1	
Substantive Determinations	8	
Jurisdictional Determinations	1	
Dismissal Determinations	4	
Withdrawals by Taxpayers	9	
Small Claims Transfers	<u>1</u>	
Subtotal:		<u>46</u>
Ending Inventory:		<u>60</u>

B. ANALYSIS OF CLOSURES

1. BREAKDOWN OF CLOSED PETITIONS

<u>TAX</u>	10/01/92-06/30/05	07/01/05-06/30/06	<u>TOTAL</u> 10/01/92-06/30/06
ANNUAL VAULT CHARGE	45	0	45
BANK/FINANCIAL CORP.	60	0	60
CIGARETTE	7	5	12
COIN OPERATED AMUS. DEVICE	1	0	1
COMMERCIAL MOTOR VEHICLE	105	0	105
COMMERCIAL RENT	315	2	317
GENERAL CORPORATION	2643	6	2649
HOTEL ROOM OCCUPANCY	90	1	91
REAL PROPERTY TRANSFER	1103	12	1115
RETAIL LIQUOR LICENSE	17	0	17
UNINCORPORATED BUSINESS	1237	14	1251
UTILITY	180	2	182
UNSPECIFIED	12	0	12
NO JURISDICTION	<u>20</u>	<u>4</u>	<u>24</u>
TOTAL	<u>5835</u>	<u>46</u>	<u>5881</u>

2. OUTCOME OF SUBSTANTIVE DETERMINATIONS

During the period 10/01/92 through 06/30/2005, the Administrative Law Judge Division issued 175 substantive determinations which resolved 262 petitions. During the period 07/01/2005 through 06/30/2006, 6 substantive determinations were issued which resolved 8 petitions, one petition was resolved by a jurisdictional determination, four petitions were resolved by dismissal determinations and one petition was resolved by a default determination.

	10/01/1992 TO 06/30/2005		07/01/05 TO 06/30/2006		10/01/1992 TO 06/30/2006	
	SUBSTANTIVE DETERMINATIONS		SUBSTANTIVE DETERMINATIONS		SUBSTANTIVE DETERMINATIONS	
		PERCENTAGE		PERCENTAGE		PERCENTAGE
DOF ACTION SUSTAINED	87	49.71%	4	66.67%	91	50.28%
DOF ACTION MODIFIED	43	24.57%	2	33.33%	45	24.86%
DOF ACTION CANCELLED	<u>45</u>	<u>25.71%</u>	<u>0</u>	<u>0.00%</u>	<u>45</u>	<u>24.86%</u>
TOTAL	<u>175</u>	<u>100.00%</u>	<u>6</u>	<u>100.00%</u>	<u>181</u>	<u>100.00%</u>

3. BREAKDOWN OF SUBSTANTIVE DETERMINATIONS BY TAX

<u>TAX</u>	10/01/1992 TO 06/30/2005		07/01/2005 TO 06/30/2006		10/01/1992 TO 06/30/2006	
	SUBSTANTIVE DETERMINATIONS	PERCENTAGE	SUBSTANTIVE DETERMINATIONS	PERCENTAGE	SUBSTANTIVE DETERMINATIONS	PERCENTAGE
BANK/FINANCIAL CORP.	6	3.43%	0	0.00%	6	3.31%
CIGARETTE	1	0.57%	0	0.00%	1	0.55%
COMMERCIAL RENT	21	12.00%	1	16.67%	22	12.15%
GENERAL CORPORATION	54	30.86%	1	16.67%	55	30.39%
HOTEL ROOM OCCUPANCY	2	1.14%	0	0.00%	2	1.10%
REAL PROPERTY TRANSFER	39	22.29%	1	16.67%	40	22.10%
UNINCORPORATED BUSINESS	42	24.00%	2	33.33%	44	24.31%
UTILITY	<u>10</u>	<u>5.71%</u>	<u>1</u>	<u>16.67%</u>	<u>11</u>	<u>6.08%</u>
TOTAL	<u>175</u>	<u>100.00%</u>	<u>6</u>	<u>100.00%</u>	<u>181</u>	<u>100.00%</u>

C. BREAKDOWN OF OPEN PETITIONS BY TAX

<u>TAX</u>	<u>As of</u> <u>06/30/2005</u>	<u>PERCENTAGE</u>	<u>As of</u> <u>06/30/2006</u>	<u>PERCENTAGE</u>
BANK/FINANCIAL CORP.	1	1.67%	1	1.67%
CIGARETTE	6	10.00%	6	10.00%
COMMERCIAL RENT	1	1.67%	1	1.67%
GENERAL CORPORATION	11	18.33%	22	36.67%
HOTEL ROOM OCCUPANCY	3	5.00%	2	3.33%
REAL PROPERTY TRANSFER	16	26.67%	14	23.33%
UNINCORPORATED BUSINESS	19	31.67%	12	20.00%
UTILITY	2	3.33%	2	3.33%
NO JURISDICTION	<u>1</u>	<u>1.67%</u>	<u>0</u>	<u>0.00%</u>
TOTAL	<u>60</u>	<u>100.00%</u>	<u>60</u>	<u>100.00%</u>

III. DISPOSITION OF CASES - APPEALS DIVISION

A. ANALYSIS OF APPEALS DIVISION INVENTORY

1. EXCEPTIONS

For the period 7/1/05 through 6/30/06, **4** Exceptions were filed by Taxpayers. The Exceptions were filed with respect to **4** of the **6** Substantive Determinations issued by Administrative Law Judges during the period 7/1/05 through 6/30/06 (**67%**). **Three** Decisions were issued closing **3** Exceptions. **One** Stipulation of Discontinuance was "So Ordered" closing **1** Exception. The closing inventory of Exceptions as of 6/30/06 was **8**.

2. CROSS-EXCEPTIONS

For the period 7/1/05 through 6/30/06, **1** Cross-Exception was filed by the Commissioner of Finance. As of 6/30/06, **2** Cross-Exceptions, **1** filed by a Taxpayer and **1** filed by the Commissioner of Finance remain open.⁴

⁴The number of Cross-Exceptions closed does not affect the total number of Appeals Division closures for the period, as an Exception may still be open even though the Cross-Exception is closed. If both an Exception and Cross-Exception are filed, the case is counted as one closure when the entire case is finally closed.

B. ANALYSIS OF APPEALS DIVISION CLOSURES

	<u>7/1/05-6/30/06</u>	<u>10/1/92-6/30/06</u>
1. EXCEPTIONS:		
Closed by Decision	3	88 ⁵
Dismissed with Referral to the Administrative Law Judge Division	-	8
Closed by Order with Opinion	-	3
Closed by Stipulation of Discontinuance	1	28
Closed by Dismissal	-	4
Withdrawn by the Commissioner of Finance	-	4
Withdrawn by the Taxpayer	-	<u>3</u>
SUBTOTAL:	4	138
2. PETITIONS:⁶		
Closed by Decision	-	16
Closed by Stipulation of Discontinuance	-	9
Closed by Order of Dismissal	-	<u>24</u>
SUBTOTAL:	-	49
TOTAL:	4	187

⁵The number of exceptions "Closed by Decision" includes five exceptions closed by the issuance of two decisions. Thus, the number of decisions issued is 3 less than the total number of exceptions "Closed by Decision." See pp. 19 and 20.

⁶As of 6/30/99 all Petitions directly filed with the Appeals Division (under the procedures in effect prior to 10/1/92) had already been closed.

3. ANALYSIS OF APPEALS DIVISION CLOSURES BY TAX TYPE

<u>Tax</u> ⁷	Exceptions (A)		Petitions (B) ⁸		<u>TOTAL (A+B)</u>	
	<u>7/1/05- 6/30/06</u>	<u>10/1/92- 6/30/06</u>	<u>7/1/05- 6/30/06</u>	<u>10/1/92- 6/30/06</u>	<u>7/1/05- 6/30/06</u>	<u>10/1/92- 6/30/06</u>
BTX	1	4	-	-	1	4
CRT	-	13	-	7	-	20
GCT	1	47	-	17	1	64
HROT	-	2	-	-	-	2
RPTT	1	29	-	20	1	49
TLTT	-	-	-	1	-	1
UBT	1	35	-	2	1	37
UTX	<u>-</u>	<u>8</u>	<u>-</u>	<u>2</u>	<u>-</u>	<u>10</u>
TOTAL	4	138	-	49	4	187

⁷See p. 22 for the List of Abbreviations for Taxes.

⁸As of 6/30/99 all Petitions directly filed with the Appeals Division (under the procedures in effect prior to 10/1/92) had already been closed.

C. ANALYSIS OF COMMISSIONERS' DECISIONS

a. <u>Effect of Decision on Contested Deficiency</u>	7/1/05- 6/30/06	10/1/92- 6/30/06 ⁹
Deficiency or other action asserted by the Commissioner of Finance cancelled.	-	27 (32%)
Deficiency or other action asserted by the Commissioner of Finance sustained.	3 (100%)	41 (48%)
Deficiency or other action asserted by the Commissioner of Finance modified	-	11 (13%)
Remanded to the Administrative Law Judge for further proceedings.	-	2 (2%)
Exception dismissed	-	2 (2%)
Addressed procedural issue but not the merits	<u>-</u> 3	<u>2</u> (2%) 85
b. <u>Effect of Decision on Administrative Law Judge's Determination (To The Extent Challenged)</u>	7/1/05- 6/30/06	10/1/92- 6/30/06
Determination Modified	-	12 (14%)
Determination Reversed	-	15 (18%)
Determination Sustained	3 (100%)	53 (62%)
Determination Modified and Matter Remanded for Additional Proceedings	-	1 (1%)
Case Decided on Jurisdictional Grounds	-	3 (4%)
Order Modified	<u>-</u> 3	<u>1</u> (1%) 85

⁹See fn. 5 on p. 17.

c. 1) <u>Decisions from Exceptions Filed By Taxpayers</u>	<u>7/1/05- 6/30/06</u>	<u>10/1/92- 6/30/06</u> ¹⁰
Exception Granted	-	9
Exception Granted In Part and Remanded For Additional Proceedings	-	1
Exception Denied	3	42
Exception Dismissed as Untimely	-	2
Exception Granted in Part	<u>-</u>	<u>2</u>
SUBTOTAL:	3	56
 2) <u>Decisions from Exceptions Filed by Commissioner of Finance</u>		
Exception Granted	-	6
Exception Granted in Part	-	5
Exception Denied	<u>-</u>	<u>18</u>
SUBTOTAL:	-	29
 TOTAL:	 3	 85

¹⁰See fn. 5 on p. 17.

D. ANALYSIS OF EXCEPTIONS FILED DURING THE PERIOD 10/1/92-6/30/06¹¹

1. EXCEPTIONS FILED BY TAXPAYERS

	NUMBER OF ALJ DETERMINATIONS	NUMBER OF EXCEPTIONS ¹²	PERCENTAGE OF EXCEPTIONS TO DETERMINATIONS	NUMBER OF CROSS- EXCEPTIONS	PERCENTAGE
DOF ACTION SUSTAINED	91	58	64%	-	-
SPLIT DETERMINATION	45	23	51%	3 ¹³	7%
DOF ACTION CANCELLED	45	-	-	2	4%

2. EXCEPTIONS FILED BY COMMISSIONER OF FINANCE

	NUMBER OF ALJ DETERMINATIONS	NUMBER OF EXCEPTIONS	PERCENTAGE OF EXCEPTIONS TO DETERMINATIONS	NUMBER OF CROSS- EXCEPTIONS	PERCENTAGE
DOF ACTION SUSTAINED	91	-	-	-	-
SPLIT DETERMINATION	45	8	18%	11	24%
DOF ACTION CANCELLED	45	31	69%	-	-

¹¹For purposes of this analysis, a motion to reargue and two motions to vacate Tribunal decisions are not being treated as Exceptions.

¹²Twenty (20) additional Exceptions were filed by Taxpayers with respect to Jurisdictional Determinations, Default Determinations, and Orders issued by the Administrative Law Judge Division. Three additional Exceptions were filed with respect to two ALJ Determinations where DOF's action was sustained, but those Exceptions are not counted above because they related to Determinations as to which another Exception had already been filed.

¹³In a RPTT matter involving two taxpayers, each taxpayer filed a Cross-Exception. However, for purposes of preparing this analysis the two Cross-Exceptions will be treated as one.

INDEX OF TAX ABBREVIATIONS

<u>Name of Tax</u>	<u>Abbreviation</u>
Bank Tax	BTX
Commercial Rent or Occupancy Tax	CRT
General Corporation Tax	GCT
Hotel Room Occupancy Tax	HROT
Real Property Transfer Tax	RPTT
Taxicab License Transfer Tax	TLTT
Unincorporated Business Income Tax	UBT
Utility Tax	UTX

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