

A Quiet Place: NYC Tribunal Report Highlights Appeal Problems

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In this installment of Noonan's Notes, Noonan and Harkins review the New York City Tax Appeals Tribunal's annual report for fiscal 2024 and highlight some of its interesting aspects in light of the tribunal's recent administrative law judge staffing challenges.

There's been a flurry of reporting over the past few months about the goings on (or lack thereof) at the New York City Tax Appeals Tribunal. A previous installment of this column reported on the problems taxpayers and practitioners face at the tribunal: a lack of judges in the Administrative Law Judge Division and the resulting backlog of cases.¹ A short time after that column installment, in *Gresham Investment Management*, one taxpayer took matters into its own hands and sued the city in federal court, alleging that the action was

¹Timothy P. Noonan and Open Weaver Banks, "NYC's Tax Appeals Tribunal: Have the Wheels of Justice Stopped Turning?" *Tax Notes State*, Apr. 28, 2025, p. 217.

necessary because of the lack of judges in the city's appeals system.²

Then, with little fanfare, in July the tribunal released its latest annual report, which covers July 2023 to June 2024.³ Although these types of reports typically come and go with little notice, we think this one merits some attention, in light of the tribunal's recent issues and those of the city's tax appeal system generally.

Background

The tribunal is separated into two distinct divisions: the ALJ Division and the Appeals Division. The annual report addresses each division separately.

The annual report is mandated by the city charter, and it requires the tribunal to:

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.⁴

As explained in the annual report, the ALJ Division is responsible for conducting any hearings or motion proceedings within the tribunal's jurisdiction. This division is supposed to be staffed by a chief ALJ, with three ALJs rounding out the roster. However, as the annual report notes, as of July 1, 2023, there was only one

²Complaint, *Gresham Investment Management LLC v. Niblack*, No. 1:25-cv-4651 (S.D.N.Y. June 3, 2025).

³Tax Appeals Tribunal of the City of New York, "July 1, 2023-June 30, 2024 Annual Report" (undated).

⁴New York City Charter, section 168(f).

ALJ to go along with the chief ALJ. Since then, as another installment of this column pointed out, the tribunal has found itself with no ALJs at all — not even a chief.⁵ This caused all work at the tribunal to grind to a halt, resulting in taxpayers having no means of obtaining relief.

The situation became so bad that, as noted above, on June 3 the taxpayer filed its complaint in *Gresham* in the U.S. District Court for the Southern District of New York. Normally, the Tax Injunction Act would prevent a plaintiff from bringing a case concerning state or local taxes before a federal court when there was a “plain, speedy and efficient remedy” available at the state or local level.⁶ In this case, however, the plaintiff argued that it had filed its petition with the tribunal “nearly two years ago and there is no ALJ to hear or decide the matter; the case currently remains unassigned.”⁷ The plaintiff also noted that a motion for summary determination had been filed on April 30 but that there was no ALJ to hear or decide the motion.⁸ Unfortunately, although these arguments to avoid the TIA seem compelling, we won’t have the opportunity to find out how compelling they are because on July 22 the *Gresham* plaintiff voluntarily withdrew its complaint.⁹

Regardless, and perhaps spurred on by *Gresham*, the tribunal recently appointed John J. Mulligan, who comes from the New York City Department of Finance (DOF), to serve as chief ALJ.¹⁰ However, as of the time of this writing, there are still no other ALJs at the tribunal.¹¹ Furthermore, as far as we can tell, even though Mulligan is now in place, cases are not moving at the tribunal. Although we applaud the city for

finding a chief ALJ, tribunal staffing is still woefully insufficient, and taxpayers who cannot obtain a resolution to their issues are ultimately paying the cost.

Regarding the appellate level, the Appeals Division is staffed by three commissioners who are appointed to staggered six-year terms. The tribunal’s report notes that as of July 1, 2023, the commissioners were Frances J. Henn, who, before her retirement on February 2, 2024, was the president of the tribunal; Neil Schaier, who replaced Henn as president of the tribunal and whose current term expires on June 30, 2028; and Robert J. Firestone, whose term expires on June 30, 2030.¹² The newest commissioner is Vlad Frants.¹³

The Report

Beyond detailing the background and staffing of the tribunal, the main purpose of the annual report is to provide “statistics and other data with respect to its operations.”¹⁴

Those statistics are somewhat disconcerting.

ALJ Division

Looking at the ALJ Division, and as outlined in Table 1,¹⁵ the total inventory of cases basically stayed the same from the end of fiscal 2023 to the end of fiscal 2024, even though there were only 21 new petitions filed in 2024. That means 75 percent of the cases remained in the ALJ Division — and that was when at least two judges were working (the chief ALJ and one other ALJ).

Among the 21 cases that were closed, about half were dismissals, defaults, or transfers, and of the 75 total cases in the ALJ inventory, there were only four — count ‘em, four — substantive determinations. It is easy to anticipate that in the fiscal 2025 report the number of unresolved cases will skyrocket because there are still no ALJs working at the tribunal, creating a backlog that will likely take years to resolve.

⁵Noonan and Banks, *supra* note 1.

⁶28 U.S.C. section 1341. The full language of the statute says, “The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.”

⁷Complaint, *Gresham Investment Management*, No. 1:25-cv-4651, at para. 29.

⁸*Id.*

⁹Perry Cooper, “Brokerage Firm Drops Lawsuit Over Shortage of NYC Tax Judges,” *Bloomberg Tax*, July 23, 2025; Emily Hollingsworth, “Federal Suit Highlighting Judge Shortage at NYC Tribunal Is Withdrawn,” *Tax Notes State*, Sept. 1, 2025, p. 635.

¹⁰NYC Tax Appeals Tribunal, “Administrative Law Judge Division” (last visited Aug. 20, 2025); “John J. Mulligan,” LinkedIn (last visited Aug. 25, 2025).

¹¹NYC Tax Appeals Tribunal, *supra* note 10.

¹²Tax Appeals Tribunal report, *supra* note 3.

¹³NYC Tax Appeals Tribunal, “Appeals Division” (last visited Aug. 20, 2025).

¹⁴New York City Charter, section 168(f).

¹⁵The tables in this article are created using data from Tax Appeals Tribunal report, *supra* note 3.

Table 1. ALJ Inventory

	Fiscal 2024	Fiscal 2023
Beginning Inventory	75	73
Cases Received	21	19
Total Cases for Hearing	96	92
Default Determinations	3	0
Dismissal Determinations	5	7
Resolved by Order	6	8
Substantive Determinations	4	2
Transfers to Small Claims	1	0
Total Closures	19	17
Closing Inventory	77	75

Table 2 summarizes the results in decided cases for fiscal 2023 and fiscal 2024. The results are, well, not good. First, there were only three decided cases over the entire 2024 fiscal year. What's more, taxpayers lost every single one!

Table 2. Outcome of DOF Notice

	Fiscal 2024	Fiscal 2023
DOF Notice Sustained	3	2
DOF Notice Modified	0	0
DOF Notice Cancelled	0	0

For what it's worth, in one of the few cases that have come out of the ALJ Division in the fiscal year ending June 2025 — so an item for next year's report — one was a resounding taxpayer victory. This case reflected an aggressive position the city was taking in an unincorporated business case.¹⁶

Appeals Division

The next section of the report outlines all the cases that came out of the Appeals Division . . . well, all one of them. (See Table 3.) Of course, this is simply a direct result of the backlog at the ALJ Division. The Appeals Division is charged with the

¹⁶ *Matter of A&E Television Networks LLC*, TAT(H) 20-32(UB) (N.Y.C. Tax App. Trib. 2024); see also Noonan, "A Rare NYC UBT Decision, and a Big Taxpayer Win," Noonan's Notes Blog (July 16, 2024); Christopher Jardine, "New York City Tribunal Allows A&E's Debt Interest Expense Deduction," *Tax Notes State*, July 15, 2024, p. 185.

review of ALJ Division cases, so if there are no cases reaching a conclusion, there's not much to do! As shown in Table 3, the division started fiscal 2024 with two cases, took in two "exceptions" (appeals filed from the ALJ Division), dismissed one case, and ended the year with an inventory of three cases. Moreover, throughout fiscal 2024, the Appeals Division did not issue one substantive decision. And since June 2024, no further decisions have been issued by the Appeals Division.

Table 3. Appeals Division Inventory

	Fiscal 2024	Fiscal 2023
Beginning Inventory	2	3
Exceptions Filed by Taxpayers	2	2
Exceptions Filed by DOF	0	0
Exceptions Closed by Substantive Decision/Order	0	2
Exceptions Closed by Withdrawal	0	0
Exceptions Closed by Stipulation of Discontinuance	0	0
Exceptions Closed by Dismissal	1	1
Closing Inventory	3	2

We hope that once the tribunal is fully staffed at the ALJ level, more cases will be decided, which in turn will generate more appeals with more written opinions.

Conclusion

The statistics in the report demonstrate that not much took place at the tribunal in fiscal 2024. And we know that trend continued in fiscal 2025 (and seems to be continuing as fiscal 2026 begins).¹⁷ Although the hiring of Mulligan is a step in the right direction, much more needs to be done. The city must prioritize hiring qualified ALJs so that taxpayers have a meaningful avenue to seek relief. Until that happens, it is only a matter of time before another plaintiff-taxpayer attempts to secure relief via the court system. ■

¹⁷ New York City Tax Appeals Tribunal, "Recent Decisions, Determinations, and Orders" (last visited Aug. 22, 2025).