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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY



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JUDGE

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Re: Star Partner Enterprises Two L.L.C., v. Township of North  
Brunswick  
Block 140, Lot 62 (1055 Route 1)  
Docket No. 006513-2015

Dear Counsel:

This matter comes before the court on defendant's motion to dismiss plaintiff's 2015 property tax appeal for failure to respond to the tax assessor's request for financial information pursuant to N.J.S.A. 54:4-34 (commonly known as "Chapter 91 request"). Plaintiff opposed the motion, by letter brief only, contending that (a) the Chapter 91 request was ambiguous and unclear as to which "relevant documents" were requested; and (b) further contended that the assessor failed to include a full and true copy of N.J.S.A. 54:4-34 due to certain reproduction errors in the included copy of N.J.S.A. 54:4-34.

For the reasons more fully explained below the court rejects plaintiff's arguments, and grants defendant's motion.

## **FACTS**

Plaintiff ("Star") is the owner of property located at 1055 Route 1, designated as Block 140, Lot 62 ("Subject") in defendant, Township of North Brunswick ("Township").

On June 20, 2014, the Township's assessor sent a Chapter 91 request, with enclosures, to Star Partner, by certified mail, requesting a statement of income and expense information for the year ending December 31, 2013. Additionally, the request sought "any other relevant documents, such as: leases, rent rolls, ect (sic); including any land, cellular tower, billboard, or commercial pad rentals." (emphasis in original). The letter also informed Star Partner that the assessor's office could be contacted for any questions concerning the request.

The assessor certified that a printed copy of N.J.S.A. 54:4-34 was provided, and that the letter had been mailed via certified mail, return receipt requested. Appended to her certification was a copy of the letter request of June 20, 2014, a copy of N.J.S.A. 54:4-34, a copy of the form known as the Annual Statement of Income and Expenses for Income Producing Properties ("I&E Statement"), and a copy of the green card receipt, signed, and indicating the address on record for the owner of the Subject.

It is undisputed that the Chapter 91 request was received by Star. It is also undisputed that Star did not respond to the request.

On March 30, 2015, Star filed an appeal challenging the 2015 assessment. The Township timely filed the instant motion. Star opposed the motion alleging that the Chapter 91 request was ambiguous on two grounds. First, it argues that the letter request did not define the terms "relevant documents" and/or "ect," and that "it is unclear what response is being sought." Second, it

contends that the assessor failed to enclose a full and true copy of the statute pursuant to N.J.S.A. 54:4-34, due to the following omissions and errors, which alter the substance of the statute to its prejudice:

Line	Tax Enclosure	Assessor's	<u>N.J.S.A. 54:4-24</u>	Omissions/Deviations from Statute
1	district, shall		district shall,	Missing comma
3	Therefrom		Therefrom,	Missing comma
4-5	shall refuse		shall fail or refuse	Missing "fail or"
5-6	or testify		or to testify	Missing "to"
8	determine be		determine to be	Missing "to"
11	or testify		or to testify	Missing "to"
11	required to		required, or	Missing comma and "or"
12	County Board of Taxation		County board of taxation	Improper Capitalization
14	appears the		appears that the	Missing "that"
15	Such a written		such written	Additional "a"

The Township argues that Star failed to provide the court with any support, in the form of certifications/affidavits, regarding the alleged ambiguities (citing to an unpublished opinion Raymour Furniture Co. v. Town of Secaucus, Docket No. 000445-2011) (plaintiff failed to provide any proof, by way of certification or others, that it found a Chapter 91 request confusing or ambiguous).<sup>1</sup>

### **ANALYSIS**

N.J.S.A. 54:4-34 requires a property owner to "render a full and true account of" the property owner's "name and real property and income therefrom," if the property is "income-producing." Failure or refusal to respond within 45 days of the Chapter 91 request (i) allows the assessor to reasonably determine the property's "full and fair value" based upon from any information he or she has; and (ii) bar the property owner from appealing that assessment. Ibid.

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<sup>1</sup> A copy of the unpublished opinion was attached to defendant's reply in accordance with R. 1:36-3.

The purpose of a Chapter 91 request is so that an assessor can “secure as much information as possible to aid in ascertaining the fair market value of income-producing property.” Westmark Partners v. Township of Deptford, 12 N.J. Tax 591, 596 (Tax 1992). An assessor is allowed by law to have “access to fiscal information that can aid in valuing the property” and the law is aimed to “encourage compliance with the accounting requirement.” SKG Realty Corp. v. Township of Wall, 8 N.J. Tax 209, 211 (App. Div.1985).

Given the severity of the sanction of failing to provide a timely response to a Chapter 91 request, courts require a municipality to strictly adhere to the statutory requirements. Although a municipality has legitimate interests in timely collecting I&E information for issuing an assessment that will “spare both [it] and taxpayers from the costs of unnecessary litigation” nonetheless, since the taxpayer’s loss of appeal rights is so “draconian,” that N.J.S.A. 54:4-34 is to be strictly construed against the municipality. Tri-Martin Assoc. II L.L.C. v. City of Newark, 21 N.J. Tax 253, 260-61 (Tax 2004); J&J Realty Co. v. Township of Wayne, 22 N.J. Tax 157, 163-64 (Tax 2005).

Therefore, and as part of an assessor’s obligation, the Chapter 91 request must be framed in language that is both clear and unequivocal so that the taxpayer may understand its obligation to respond. Assessors “are experts in the field of real estate valuation . . . while the owners of income producing properties include not only substantial business enterprises . . . but also small business persons who may have difficulty reading complex and confusing forms and may lack ready access to legal advice.” Cassini v. City of Orange, 16 N.J. Tax 438, 447 (Tax 1997). Any “doubt” as to the “information sought by the assessor” will be construed in “favor the property owner given the consequences of non-compliance.” Ibid. See also Township of Phillipsburg v. ME Realty, L.L.C., 26 N.J. Tax 57, 67 (Tax 2011) (“when a Chapter 91 request is ambiguous as

to the information being sought, the courts have been more lenient and have allowed appeals to proceed” despite a non-response).

*(A) Failure to define the requested “relevant documents” and “ect”*

Star contends that the instant Chapter 91 request is ambiguous because it does not define or provide clarity as to what information was being sought when it asked for “relevant documents” and used the word “ect” in this regard. The court rejects this argument as meritless.

First, the term “relevant documents” was clarified by the words following it, which were examples of the same, viz., “leases, rent rolls, land cellular tower, billboard or commercial paid rentals.” Second, the assessor’s cover letter sought documents in conjunction with the undisputed information sought, namely, the Subject’s I&E data. The unambiguous nature of the information sought, i.e., the I&E data, is further explicated on the attached Statement which provided line by line delineation of the items for which answers were sought, and as the information pertained to tax year ending December 31, 2014. Third, Star has not presented any factual evidence, by certification or otherwise, whether and how the Chapter 91 request was confusing or failed to otherwise advise Star of its obligations in clear and unequivocal language. “Ect” is so patently a typographical error that even an unsophisticated non-corporate entity property owner would not be confused that it stood for “etc.”

Even if Star was allegedly thrown into a quandary as to what were the quality and quantity of the “relevant documents” and what “ect” stood for, it could have called the assessor for clarification. A taxpayer may not simply choose to ignore its statutory obligation. To the contrary, it “must take action to challenge the request . . . and to put the municipality on notice of its contention . . . [and] cannot just sit by and do nothing until the assessment is finalized.” Tower Center Assocs. V. Township of East Brunswick, 286 N.J. Super. 433, 438 (App. Div. 1996). See

also TMC Properties v. Borough of Whanton, 15 N.J. Tax 455, 463 (Tax 1996) (taxpayer must make sufficient responses within 45 days of the request and communicate plausible “good cause” basis for failure to provide information). Star chose not to respond instead of attempting to comply with its statutory obligation.

*(B) The Omissions in the Reproduction of N.J.S.A. 54:4-34*

Precedent is well-established that the strictures of Chapter 91 are not flouted if a municipality reproduces the statute in the Chapter 91 request as long as it is the entire statute being reproduced. See SAIJ Realty Inc. v. Township of Kearney, 8 N.J. Tax 191, 194, 197 (Tax 1986) (assessor must include a copy of N.J.S.A. 54:4-34 even if reproduced provided it does not differ from the statute); Pisani v. Township of Wayne, 13 N.J. Tax 412, 414-15 (Tax 1993) (since Chapter 91 request included a verbatim reproduction of the statute, taxpayer received fair notice of the statute’s requirements and consequences for failure to comply with the information request, which “alert[ed] the taxpayer of the repercussions of noncompliance”).

Star contends that the errors and omissions, detailed above, contained in the reproduced statute alter the very substance of the statute and therefore the Township is precluded for obtaining relief under the statute. The Township maintains the omitted words did not affect the meaning and/or purpose of the statute (citing to ADP of N.J. v. Township of Parsippany-Troy Hills, 14 N.J. Tax 372 (Tax 1994)).

A similar argument was made in Waterside Villas Holdings, L.L.C. v. Township of Monroe, 434 N.J. Super. 275 (App. Div. 2014) where the taxpayer contended that the Chapter 91 request was fatally flawed because the reproduced statute omitted the word “may” from the phrase “and he may be examined on oath by the assessor.” The higher court rejected this argument and found that where “the omission is minor and inadvertent, does not alter the substance of the statute,

and does not prejudice the property owner, the municipality is still entitled to a dismissal pursuant to N.J.S.A. 54:4-34.” 434 N.J. Super. at 287.

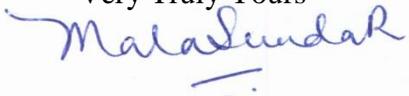
The court finds that the Appellate Division’s holding squarely applies here. The errors and/or omitted words do not obscure or substantively altered the substantive provisions of the statute in any objectively conceivable manner. The errors, as detailed above, are minor and inadvertent. A plain reading of the reproduced statute clearly puts the taxpayer on notice that the consequence for failing to respond is the loss of right to a tax appeal. This notice is at the heart of the statutory requirement to include N.J.S.A. 54:4-34 in the assessor’s request. Common sense juxtaposed with the context of the entire statute, its purpose and the specific purpose of its last sentence, would dictate that a comma or incorrect capitalization would not cause so great an incomprehension to a property owner that it was paralyzed from providing a response or seeking a clarification from the assessor. See also, SAIJ Realty, supra, that while a statute should be construed to effectuate its “every requirement,” it should not result in “great inconvenience or subversion of some important object of the act or would lead to an absurdity.” 8 N.J. Tax 191; A.B. v. Div. of Medical Assistance & Health Services, 407 N.J. Super. 330, 340 (App. Div. 2009) (“common sense should not be abandoned when interpreting a statute”); New Capitol Bar & Grill Corp. v. Div. of Employment Sec., 25 N.J. 155, 160 (1957) (“[t]he spirit of the legislative direction prevails over the literal sense of the terms”). In any event, Star’s brief is devoid of any reason of why or how these minor errors caused it to be prejudiced.

The court therefore finds that the Township’s Chapter 91 request complied with the statute, that Star unjustifiably failed to respond to the assessor’s Chapter 91 request, and that pursuant to N.J.S.A. 54:4-34, “no appeal shall be heard” from the assessment, except to the extent that a

plaintiff is entitled to a reasonableness hearing as set forth in Ocean Pines Ltd. v. Borough of Point Pleasant, 112 N.J. 1 (1988).

**CONCLUSION**

For the aforementioned reasons, the Township's motion is granted in part. An Order reflecting this opinion and providing Star the opportunity to seek a reasonableness hearing will be simultaneously entered.

Very Truly Yours  


Mala Sundar, J.T.C.