

TAX COURT OF NEW JERSEY

Joshua D. Novin  
Judge



153 Halsey Street, 12<sup>th</sup> Floor  
P.O. Box 47025  
Newark, New Jersey 07101  
Tel: (973) 645-4280 Fax: (973) 645-4283

NOT FOR PUBLICATION WITHOUT THE APPROVAL  
OF THE TAX COURT COMMITTEE ON OPINIONS

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Alex Paul Genato, Esq.  
Archer & Greiner, P.C.  
101 Carnegie Center, Suite 300  
Princeton, New Jersey 08540

Sandra Belli, Esq.  
DiFrancesco, Bateman, Coley, Yospin,  
Kunzman, Davis, Lehrer & Flaum, P.C.  
15 Mountain Boulevard  
Warren, New Jersey 07059

Re: Strategic Long Term Care of New Jersey at Berkeley Heights, LLC  
v. Township of Berkeley Heights  
Docket No. 004119-2015

Dear Counsel:

On September 24, 2015, this court issued an opinion addressing the Township of Berkeley Heights' ("defendant" or "taxing district") motion to dismiss the complaint of Strategic Long Term Care of New Jersey at Berkeley Heights, LLC ("plaintiff" or "taxpayer"), for failing to respond to defendant's assessor's request for income and expense information under N.J.S.A. 54:4-34, commonly known as Chapter 91 (L. 1979, c. 91).

The substance of taxpayer's opposition to the motion focused upon two issues: (i) the alleged improprieties and errors in defendant's Chapter 91 request, citing the improper capitalization of words and grammatical errors in the reproduction of N.J.S.A. 54:4-34; and (ii) the apparent vagueness and ambiguity in defendant's Chapter 91 request, including alleged

conflicting statements regarding the taxpayer's obligation to submit certain income and expense data. Stated differently, taxpayer argued that as a result of the lack of precision and clarity in defendant's Chapter 91 request, "good cause" existed for its failure to furnish a response.

Conversely, defendant argued that taxpayer failed to communicate, within forty-five days of receipt of the Chapter 91 request, any alleged confusion, challenges or problems which arose in responding to defendant's Chapter 91 request. Thus, defendant maintained that because taxpayer did not raise any issues with respect to the clarity and/or precision of the Chapter 91 request within the statutorily prescribed forty-five day time period, the taxpayer was precluded from raising those issues in opposition to defendant's motion.

In denying defendant's motion, this court concluded that despite taxpayer's failure to respond to defendant's Chapter 91 request, the request for income and expense information lacked the precision and clarity required to be objectively understood by the average owner of income producing property. Thus, the court declined to impose the appeal preclusion penalty against taxpayer for failing to respond to defendant's Chapter 91 request.

Defendant filed a motion for leave to appeal this court's September 24, 2015 opinion. On November 5, 2015, the Superior Court of New Jersey, Appellate Division, granted defendant's motion and summarily remanded the matter. The genesis of the remand centered on application of Waterside Villas Holdings, LLC v. Township of Monroe, 434 N.J. Super. 275 (App. Div.), certif. denied, 217 N.J. 589 (2014), to the instant matter.

As neither defendant's brief in support of the motion, nor taxpayer's brief in opposition to the motion addressed Waterside Villas Holdings, LLC, supra, following remand, the court invited defendant's counsel and plaintiff's counsel to submit briefs addressing its application. Defendant's counsel and plaintiff's counsel each availed themselves of the opportunity, and submitted

supplemental letter briefs to the court addressing application of Waterside Villas Holdings, LLC, supra, to this matter.

Taxpayer argues, in its supplemental brief, that the court's September 22, 2015 opinion was consistent with the holding in Waterside Villas Holdings, LLC, supra, requiring assessors to "clearly set forth the information being sought when that right [to Chapter 91 data] is exercised." 434 N.J. Super. at 282. The taxpayer maintains that the inquiry into whether a Chapter 91 request is defective requires the court to apply an objective test, measuring whether the request would be "understood by the average owner of an income producing property..." ML Plainsboro Ltd., supra, 16 N.J. Tax at 257. Taxpayer contends that if "there is room for reasonable doubt" that a typical income producing property owner would understand the request to include a certain kind of information, due process requires the court to afford the taxpayer an opportunity to be heard. Thus, due to the severity of the penalty imposed when a taxpayer fails to respond to a request for information under N.J.S.A. 54:4-34, if a Chapter 91 request does not speak in "clear cut" terms, the court must resolve all doubts in favor of the taxpayer.

In its supplemental brief, defendant argues that Waterside Villas Holdings, LLC, supra, requires a taxpayer to respond to that portion of the Chapter 91 request that is comprehensible, and communicate to the assessor the impropriety of that portion of the Chapter 91 deemed ambiguous, within the forty-five day statutory period. Correspondingly, the failure of a taxpayer to furnish a timely response to a Chapter 91 request precludes it from asserting a "good cause" exception to its statutory obligation.

After consideration of the tenets and principles expressed in Waterside Villas Holdings, LLC, supra, and for the reasons explained more fully below, the court grants defendant's motion to dismiss taxpayer's Complaint under N.J.S.A. 54:4-34, subject to a reasonableness hearing. See Ocean Pines, Ltd. v. Borough of Point Pleasant, 112 N.J. 1 (1988).

## **I. Findings of Fact**

In my initial decision in this matter, I made the following factual findings with respect to defendant's June 1, 2014 request for income and expense data (the "Chapter 91 Request"):

On June 1, 2014, defendant's municipal tax assessor mailed, by certified mail return receipt requested... 'a Chapter 91 request for income and expenses'. The Chapter 91 request... 'requested [the taxpayer] to submit... income and expense data on the enclosed forms.'

The Chapter 91 Request... states in pertinent part: 'You are respectfully requested to submit to this office income and expense data on the enclosed forms. You may submit a copy of the actual leases, rent rolls, and expense ledger; or use the enclosed forms in order to provide the requested information.'

Accompanying the Chapter 91 Request was a copy of N.J.S.A. 54:4-34, a form captioned 'Annual Statement of Business Income and Expenses Commercial Properties', a form captioned 'Instructions for Completion of Schedule A' and a rental schedule form captioned 'Schedule A'.

It is undisputed that the Chapter 91 Request was received by plaintiff. It is further undisputed that plaintiff did not respond to defendant's Chapter 91 Request.

Based on a further review of the submissions, and in light of the Appellate Division's Order remanding this matter, I find the following additional facts. The defendant's Chapter 91 Request states that "[t]his request is being made in accordance with N.J.S.A. 54:4-34" and demands that the "information requested must be submitted to this office within 45 days from the date of this letter." In concluding the June 1, 2014 letter, defendant's tax assessor states that "[i]f you have any questions regarding this request, or need clarification relating to the information sought, please contact this office."

Moreover, the Annual Statement of Business Income and Expenses Commercial Properties, transmitted with defendant's June 1, 2014 letter, is comprised of two pages which is divided into three parts. Part 1 seeks basic property information, including the block and lot,

property owner name, property owner address, property location, tenant name(s) and tenant address(es). Part 2 requests the recipient to indicate whether the property is “owner occupied” and if the property is owner occupied, makes inquiry into the business name, type of business, percentage of building occupied, “income”, and individual expense items, including insurance, electric, gas/oil, janitorial, snow removal, etc. Part 3 seeks to ascertain whether the “property [is] rented to another entity”, requests “a copy of all current existing leases”, and directs the recipient to “complete Schedule A”. Part 3 further demands the recipient state the “Percentage of Vacancy”, “Gross Base Possible Rental Income (total annual income from the rental of space assuming all space is 100% occupied)”, “Escalation Income (income received from tenants for reimbursement of such costs as insurance, taxes, utilities, etc. as specified in the lease)”, “Percentage Rent (income received attributable to percentage clauses in the lease)” and “Other Income (income received from concessions or related to the operation of property i.e. vending machines, parking fees, etc.).” Neither the June 1, 2014 cover letter, nor Part 2 or Part 3 of the Annual Statement of Business Income and Expenses Commercial Properties identify the time period for which such detailed information is being sought. No instructions are provided for completion of the Annual Statement of Business Income and Expenses Commercial Properties. The only instructions offered are found in the form captioned “Instructions for Completion of Schedule A”. This form directs the recipient to “[b]reak down each type of rental space that the property includes” and to “fill out each column for each unit.” Each Column in Schedule A seeks a different category of information including the “Type of Rental Space”, “Location”, “Unit of Rental”, “Square Feet”, “Base Annual Rent”, “Additional Rent”, “Percentage Rent”, “Escalation”, “Year Lease Began”, “Years Remaining” and “Year of Last Revision.” Similarly, the Instructions for Completion of Schedule A and the Schedule A do not identify the time period for which such information is being sought. The only reference to a time period for which

information is sought is located in the instructions for Column 5, which states that the “Base Annual Rent [is]...The current guaranteed rental being received.”

## **II. Conclusions of Law**

The legislative purpose underlying Chapter 91 is “to afford the assessor access to fiscal information that can aid in valuing the property....” Cassini v. City of Orange, 16 N.J. Tax 438, 444 (Tax 1997) (quoting SKG Realty Corp. v. Township of Wall, 8 N.J. Tax 209, 211 (App. Div. 1985)). See also Lucent Technologies, Inc. v. Township of Berkeley Heights, 405 N.J. Super. 257, 263 (App. Div. 2009), rev’d in part, aff’d in part, 201 N.J. 237 (2010); Ocean Pines, Ltd., supra, 112 N.J. 1 (1988). Chapter 91 exemplifies the public policy considerations “of having assessors formulate assessments by using information from the ‘best available source,’ the property owner.” Tower Center Associates v. Township of East Brunswick, 286 N.J. Super. 433, 438 (App. Div. 1996) (quoting Terrace View Gardens v. Dover Township, 5 N.J. Tax 469, 472 (Tax 1982), aff’d o.b., 5 N.J. Tax 475 (App. Div.), certif. denied, 94 N.J. 559 (1983)).

N.J.S.A. 54:4-34 provides:

Every owner of real property of the taxing district shall, on written request of the assessor, made by certified mail, render a full and true account of his name and real property and the income therefrom, in the case of income-producing property, and produce his title papers, and he may be examined on oath by the assessor, and if he shall fail or refuse to respond to the written request of the assessor within 45 days of such request, or to testify on oath when required, or shall render a false or fraudulent account, the assessor shall value his property at such amount as he may, from any information in his possession or available to him, reasonably determine to be the full and fair value thereof. No appeal shall be heard from the assessor's valuation and assessment with respect to income-producing property where the owner has failed or refused to respond to such written request for information within 45 days...or shall have rendered a false or fraudulent account...In making such written request for information pursuant to this section the assessor shall enclose therewith a copy of this section.

[N.J.S.A. 54:4-34.]

In response to concerns that property owners were “not subject to any penalty for not disclosing property income information”, the Legislature amended the statute in 1979 to add the last three sentences to N.J.S.A. 54:4-34. Lucent Technologies, Inc., supra, 201 N.J. at 246 (quoting Senate Revenue, Finance and Appropriations Committee, Statement to Senate Bill No. 309 (January 26, 1978)). To address what was perceived as “the shortcomings in the existing statute”, this amendment included “language imposing the obligation [on a taxpayer] to respond within forty-five days” to a request for property income and expense information. Id. at 247. Thus, Chapter 91 was fashioned to provide an elective mechanism for municipal tax assessors to evaluate a property’s economic records and to reasonably arrive at a fair assessment, thereby potentially “avoid[ing] unnecessary expense, time and effort” which may result in any ensuing local property tax appeal litigation. Ocean Pines, Ltd., supra, 112 N.J. at 7 (quoting Terrace View Gardens, supra, 5 N.J. Tax at 474-75).

As a result of the severe, appeal preclusion penalties which may be levied upon taxpayers, in enacting N.J.S.A. 54:4-34 the Legislature imposed strict obligations on municipal tax assessors to: (1) include a copy of the statutory text with the request for income and expense information; (2) forward the request, by certified mail, to the owner of the real property; and (3) explain in straightforward terms the consequences of failure to comply with the request, to wit, prohibiting the taxpayer's local property tax assessment appeal.

However, interpretation of N.J.S.A. 54:4-34 by our courts has taken two distinct paths. One line of cases has examined the obligations of the taxpayer to take some action in response to the request for information. See Ocean Pines, Ltd., supra, 112 N.J. 1; Terrace View Gardens, supra, 5 N.J. Tax 469; Waterside Villas Holdings, LLC, supra, 434 N.J. Super. 275; Tower Center Associates, supra, 286 N.J. Super. 433; Morey v. Borough of Wildwood Crest, 18 N.J. Tax 335, 340 (App. Div. 1999), certif. denied, 163 N.J. 80 (2000). The other view scrutinizes

the responsibility of the tax assessor to provide notice to a taxpayer of its statutory obligation. See ML Plainsboro Ltd. Partnership v. Plainsboro Township, 16 N.J. Tax 250, 257 (App. Div.), certif. denied, 149 N.J. 408 (1997); Summerton Shopping Plaza v. Manalapan Township, 15 N.J. Tax 173 (App. Div. 1995); SAIJ Realty Inc. v. Town of Kearny, 8 N.J. Tax 191 (Tax 1986); Cassini, supra, 16 N.J. Tax 438; Southland Corp. v. Township of Dover, 21 N.J. Tax 573 (Tax 2004); Town of Phillipsburg v. ME Realty, LLC, 26 N.J. Tax 57, 64 (Tax 2011).

The latter line of cases focus upon the obligation of the tax assessor to provide “clear and unequivocal notice of the specific information which must be submitted”, thereby affording taxpayers’ reasonable notice of their Chapter 91 obligations. ML Plainsboro Ltd. Partnership, supra, 16 N.J. Tax at 257. See also Cassini, supra, 16 N.J. Tax at 453 (the assessor “must utilize ‘clear and unequivocal language’”). In these cases the courts have observed that “[t]ax 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. Consequently, ‘the assessor’s request notice to the taxpayer must be clear cut.’” ML Plainsboro Ltd. Partnership, supra, 16 N.J. Tax at 257 (citations omitted). Therefore, a “property owner that receives a Chapter 91 request for which a response is impossible, or for which it is unclear what response is being sought, may not have its appeal dismissed for failure to timely respond to such a request.” Cassini, supra, 16 N.J. Tax at 453.

Conversely, the former series of cases underscores the statutory obligation of taxpayers to fashion a timely response to a Chapter 91 inquiry. Taxpayers must “take action to challenge the [Chapter 91] request within the forty-five day statutory time limit, and to put the municipality on notice of its contention.” Tower Center Associates, supra, 286 N.J. Super. at 438. A taxpayer cannot “simply ignore its statutory obligation to respond” under Chapter 91 and thereafter



pursue, without sanction, a local property tax appeal. Waterside Villas Holdings, LLC, supra, 434 N.J. Super. at 283. When the Chapter 91 request “is thought not to be ‘legitimate,’ in whole or in part, the taxpayer must do something to assert that contention before the assessment is imposed to avoid the statutory bar to appeal embodied in N.J.S.A. 54:4-34.” Id. at 284. Thus, absent evidence of “a good cause excuse made within the 45-day time period” a taxpayer must nonetheless respond to a Chapter 91 request “or be deprived of the opportunity to appeal their tax assessments.” Cassini, supra, 16 N.J. Tax at 444.

In reconciling the two lines of cases, this court observes that when a tax assessor’s request for income and expense information fails to comport with the statutory prerequisites or violates fundamental principles of fairness, taxpayers have been relieved from responding to the request. See ML Plainsboro Ltd. Partnership, supra, 16 N.J. Tax 250; Delran Holding Corp. v. Delran Township, 8 N.J. Tax 80 (Tax 1985); Westmark Partners v. Township of West Deptford, 12 N.J. Tax 591 (Tax 1992); Town of Phillipsburg v. ME Realty, LLC, supra, 26 N.J. Tax 57; Tri-Martin Associates II, LLC v. City of Newark, 21 N.J. Tax 253 (Tax 2004); Green v. East Orange, 21 N.J. Tax 324 (Tax 2004). Conversely, when a challenge is lodged to a Chapter 91 request deemed improper, unreasonable or overbroad our courts have been less yielding, dismissing local property tax appeals unless the taxpayer has timely asserted an objection and responded to that portion of the request not deemed improper. See Ocean Pines, Ltd., supra, 112 N.J. 1; Tower Center Associates, supra, 286 N.J. Super. 433; Waterside Villas Holdings, LLC, supra, 434 N.J. Super. 275; TMC Properties v. Wharton Borough, supra, 15 N.J. Tax 455.

In Ocean Pines, Ltd., supra, 112 N.J. at 8, our Supreme Court introduced a “two step analytical framework” for reviewing motions to dismiss under N.J.S.A. 54:4-34. TMC Properties, supra, 15 N.J. Tax at 463. In Ocean Pines, Ltd., supra, the property owner purchased a twenty-unit garden apartment complex on February 15, 1984. On March 26, 1984, the tax

assessor requested income and expense records from the property owner for the 1983 tax year. The owner received the assessor's request for financial and expense information, but failed to respond "apparently believing that its status as a recent purchaser exempted it from compliance." Id. at 4. Thereafter, the property owner filed a complaint challenging the local property tax assessment and the municipality moved to dismiss the complaint under N.J.S.A. 54:4-34. The property owner argued that "as a recent purchaser of the property, it did not have the income and expense records for the time period that preceded its purchase" and therefore, "good cause" existed for its failure to respond to the request for income and expense information. Id. at 5. In rejecting the property owner's arguments, the Court explained that "[i]t is apparent from the record that plaintiff made no attempt within the forty-five-day period to explain to the assessor why it could not comply with the request. Instead, plaintiff simply chose to ignore the notice." Id. at 8. Although the Court declined to express a view on whether the absence of financial and expense information would have constituted "good cause" under the statutory scheme, the Court unequivocally stated that "plaintiff's failure to respond in any fashion to the assessor's [Chapter 91] request precluded plaintiff from asserting a 'good cause' claim..." Id. at 9.

Thus, the Court endorsed the view that as a prerequisite to addressing the "good cause" exception in N.J.S.A. 54:4-34, the property owner was required to furnish a "response" to the request within the statutorily prescribed forty-five day time period. Ibid. See also TMC Properties, supra, 15 N.J. Tax at 461-462. Only after the court is satisfied that the property owner supplied the tax assessor with an adequate "response", must it address, on a case-by-case basis, whether the property owner's failure to provide financial and expense information constituted "good cause."

Similarly, in Tower Center Associates, supra, 286 N.J. Super. at 438, the Appellate Division addressed dismissal of a property owner's local property tax appeals as a result of its

failure to respond to the municipality's Chapter 91 requests. There, the tax assessor mailed Chapter 91 requests to the property owner on June 14, 1991 and June 12, 1992. Id. at 435. The requests sought income and expense information for the periods January 1, 1990 through December 31, 1990, and January 1, 1991 through December 31, 1991, including "all details of the lease be disclosed, such as expiration dates, options for renewal, fixed rents, tax escalator and maintenance clauses and specific identity of the area occupied." Ibid. The property owner received each of the financial and expense information requests and failed to respond. The property owner argued "the assessor's requests for information for both years were 'patently illegal and overreaching' and that it, therefore, did not have to respond." Id. at 436. In rejecting this argument, the Appellate Division concluded that "Chapter 91 provides a system for obtaining information necessary to establish the value of property for purposes of levying tax assessments. It may be that the scope of a request thereunder is too broad, or in some way infringes on the rights of the taxpayer, but the statutory requirement cannot be altogether ignored." Id. at 438. Although the court expressed some uncertainty as to the response a taxpayer must furnish "to challenge a request deemed improper", it categorically explained that a "taxpayer should undoubtedly respond to at least that part of the request not deemed improper and...seek relief as to the balance...following an unsuccessful endeavor to convince the assessor that the request must be modified." Ibid. (citations omitted).

In Morey v. Borough of Wildwood Crest, supra, the Appellate Division rejected the property owner's argument that their worsening health constituted "good cause" for failing to respond to the municipality's Chapter 91 request. 18 N.J. Tax at 340. In affirming the Tax Court's dismissal of the local property tax appeal, the court concluded that "total avoidance of the [Chapter 91] request during the forty-five day period...cannot be good cause. The taxpayer cannot 'altogether ignore' the assessor's request" and thereafter seek to maintain an action

challenging the local property tax assessment. Ibid. (quoting Tower Center Associates, supra, 286 N.J. Super. at 438).

Finally, in Waterside Villas Holdings, LLC, supra, the tax assessor mailed the property owner a Chapter 91 request on August 13, 2010. 434 N.J. Super. at 280. The request instructed the owner to “[u]nder [the] ‘Statement and Expenses’ [section of the form] enter your recent twelve months (January 1, 2009 through December 31, 2009) operational costs to the extent that such cost is actually paid by management.” Ibid. The property owner received the request on August 16, 2010 and did not respond. The property owner argued that “the assessor's request was not ‘clear and unequivocal’” and “asserted that a taxpayer is left to guess whether the assessor is looking for the most recent [twelve] months of information (August 2009-July 2010) or January to December 2009”. Id. at 281. The owner further asserted that the assessor’s “omission of the word ‘may’ in the copy of N.J.S.A. 54:4-34 [accompanying the request]... precluded relief under the statute.” Id. at 285. In rejecting the property owner’s arguments, the Appellate Division concluded that when a property owner receives a Chapter 91 request “that it deems improper in some fashion, it may not simply ignore its statutory obligation to respond.” Instead, the court recited with approval the holding in Tower Center Associates, supra, which states:

the taxpayer must take action to challenge the request within the forty-five day statutory time limit, and to put the municipality on notice of its contention. In any event, the taxpayer cannot just sit by and do nothing until the assessment is finalized, as this taxpayer did, and thereafter seek to appeal the assessment by plenary review. Such conduct results in ‘unnecessary expense, time and effort in litigation’.

[286 N.J. Super. at 438.]

Because the property owner “ignored a clear and proper Chapter 91 request for information”, the court found it unnecessary to address the second step of the Ocean Pines, Ltd. analysis, whether

“good cause” existed for the property owner’s failure to furnish financial and expense information. Waterside Villas Holdings, LLC, supra, 434 N.J. Super. at 284. Moreover, the court rebuffed the property owner’s claim that omission of the word “may” from the copy of N.J.S.A. 54:4-34, included with the assessor’s information request, rendered the Chapter 91 request defective. Instead, the court observed that if “an assessor provides property owners with a copy of the statute that omits ‘critical [and] substantive’ statutory provisions, principles of fair dealing” would preclude the assessor from seeking relief under the statute. Id. at 287 (quoting SAIJ Realty, supra, 8 N.J. Tax at 194). However, when the “omission is minor and inadvertent, [and] does not alter the substance of the statute, and does not prejudice the property owner”, the municipality is entitled to a dismissal under Chapter 91. Ibid. The “minor alteration” to N.J.S.A. 54:4-34, included with the information request, did not “obscure or omit any substantive provision” of the statute. Thus, the property owner was not entitled to equitable relief from Chapter 91.

Here, it is undisputed that taxpayer received defendant’s Chapter 91 Request. It is also uncontroverted that taxpayer did not furnish a response to defendant’s Chapter 91 Request, nor notify the assessor in writing of its difficulty in complying with the information request within the forty-five day statutory period. The taxpayer argues that the Chapter 91 Request was vague and ambiguous and failed to precisely identify the time period for which taxpayer was required to furnish income and expense data. However, no evidence was produced that taxpayer communicated or attempted to communicate such difficulties or confusion in completing the Chapter 91 Request to defendant’s assessor in writing within the forty-five day time period. The taxpayer had an obligation under N.J.S.A. 54:4-34 to, at the bare minimum, respond to those parts of the Chapter 91 Request which were not vague, imprecise and/or ambiguous, and seek clarity or reformation of the Chapter 91 Request from defendant’s assessor. See Tower Center

Associates, supra, 286 N.J. Super. at 438. The court concludes that Part 1 of the Annual Statement of Business Income and Expenses Commercial Properties was not vague or ambiguous, and sought basic property information including, the block and lot, property owner name, property owner address, property location, tenant name(s) and tenant address(es). Moreover, the Chapter 91 Request complied with the strict obligations of the statute: (1) forwarded by certified mail to the owner of the real property; (2) included a copy of the statutory text with the request for income and expense information (discussed infra); and (3) explained in straightforward terms the consequences of the taxpayer’s failure to comply. Thus, taxpayer’s failure to furnish a timely and adequate written response to defendant, pinpointing why it could not comply with the entirety of the Chapter 91 Request, precludes taxpayer from asserting a “good cause” exception to its statutory obligation. Ocean Pines, Ltd., supra, 112 N.J. at 9.

Finally, the court addresses taxpayer’s argument that the Chapter 91 Request contained irregularities and errors in the reproduction of N.J.S.A. 54:4-34, thereby precluding defendant from seeking relief under the statute. Specifically, taxpayer asserts that the following grammatical and syntax errors alter the substance of N.J.S.A. 54:4-34, to its prejudice:

<b>Line</b>	<b>Tax Assessor’s Enclosure</b>	<b><u>N.J.S.A. 54:4-34</u></b>	<b>Deviation from Statute</b>
2	Assessor	assessor	Improper Capitalization
3	there from	Therefrom	Different Phrase
4	Assessor	assessor	Improper Capitalization
5	Assessor	assessor	Improper Capitalization
7	Assessor	assessor	Improper Capitalization
8	Determined	Determine	Past Tense of Determine
9	Assessor	assessor	Improper Capitalization
12	false and fraudulent	false or fraudulent	“and” instead of “or”
12-13	County Board of Taxation	county board of taxation	Improper Capitalization
16	Assessor	assessor	Improper Capitalization

Under the statute, an assessor is required to enclose a copy of N.J.S.A. 54:4-34 with any request for income and expense information “to place the taxpayer on notice about the significant

consequences of failing to respond or of responding with information deemed to be false or fraudulent.” Lucent Technologies, Inc., supra, 201 N.J. at 247.

One of the core principles underlying the policy that government action is presumed valid, is the public expectation that an assessor will act scrupulously, correctly, efficiently and honestly in complying with statutory provisions and adhering to standards of fairness. See Lowe’s Home Ctr., Inc. v. City of Millville, 25 N.J. Tax 591, 604 (Tax 2010). Our Supreme Court has demanded that “government officials act solely in the public interest. In dealing with the public, government must ‘turn square corners’...[i]t may not conduct itself so as to achieve or preserve any kind of bargaining or litigational advantage over the property owner. Its primary obligation is to comport itself with compunction and integrity...” F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 426-27 (1985). The “[p]roper administration of our tax laws and the successful implementation of statutes [are] designed to...demand consistency and fairness from municipal officers in their dealings with property owners.” Lowe’s Home Center, Inc., supra, 25 N.J. Tax at 606. Legislative goals would be undermined if a municipality was permitted to exercise its duties inconsistent with the concepts of fundamental fairness. Ibid.

In carrying out their statutory duties under N.J.S.A. 54:4-34, assessors “must utilize ‘clear and unequivocal language’ to provide taxpayers with fair notice of their Chapter 91 obligations.” ME Realty, LLC, supra, 26 N.J. Tax at 64 (quoting Cassini, supra, 16 N.J. Tax at 453). The failure of a tax assessor to scrupulously observe its statutory obligation by omitting “‘critical [and] substantive’ statutory provisions, [would offend] principles of fair dealing preclud[ing] the assessor from seeking relief under the statute.” Waterside Villas Holdings, LLC, supra, 434 N.J. Super. at 287 (quoting SAIJ Realty, Inc., supra, 8 N.J. Tax at 197).

However, here the grammatical and syntax errors are inconsequential, consisting of the improper capitalization, improper spacing and the inadvertent substitution of the word “and” in

place of “or”. The errors cited by taxpayer do not render the copy of N.J.S.A. 54:4-34, transmitted with defendant’s Chapter 91 Request, incomprehensible or materially exclude any provision in the statute. The errors were “minor and inadvertent” and do not “alter the substance of the statute, and do[] not prejudice the property owner...” Ibid. Therefore, taxpayer is not entitled to equitable relief from N.J.S.A. 54:4-34 under the “square corners” doctrine.

**III. Conclusion**

For the above-stated reasons, the defendant’s motion to dismiss plaintiff’s Complaint is granted, subject to a reasonableness hearing. An Order reflecting this opinion will be simultaneously entered herewith.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'J. Novin', with a long horizontal line extending to the right.

Hon. Joshua D. Novin, J.T.C.