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QUESTIONS AND ANSWERS

Real Property Tax Appeal By David Wolfe, Esq. Skoloff and Wolfe, P.C.

What do New Jersey property owners need to know about assessors requests for income and expense information?

Don't Ignore Them: You're right to file a tax appeal hangs in the balance. Owners of commercial property in New Jersey need to have a fundamental understanding of N.J.S.A. 54:4-34, L. 1979 c. 91, commonly referred to as "Chapter 91." Otherwise, they risk losing their rights to obtain property tax relief. Chapter 91 authorizes Assessors to serve requests for income and expense information on owners of commercial property. Failure to respond to a Chapter 91 Request within 45 days will, in most circumstances, preclude a property owner from contesting its real property tax assessment.

The purpose of Chapter 91 is to enable assessors to obtain necessary information to correctly assess property in the first instance, thereby avoiding the unnecessary expense and effort of litigation. The Statute was amended to preclude courts from hearing appeals from property owners who (i) fail to respond to a Chapter 91 Request within forty five (45) days, or (ii) file a false or fraudulent Chapter 91 response with the Assessor. Although Chapter 91 appears straightforward, taxpayers who choose not to consult an attorney well versed in Chapter 91 case-law unnecessarily risk losing their right to file a tax appeal.

Because Chapter 91 imposes the ultimate sanction on property owners by depriving them of their right to appeal their



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taxes. Courts require assessors to comply with the Statute's basic requirements before imposing the Statute's ultimate sanction. However, the requirements placed on the Assessor are few and are easily satisfied. Assessors must serve Chapter 91 Requests via certified mail and must include a copy of the Statute with the requests.

Once Assessors satisfy the initial burden of complying with the statute's basic requirements, the statute is strictly construed against taxpayers because of the significant government interest at stake and the mandatory nature of the statute. The strict application of the statute against taxpayers can lead to some seemingly harsh results. For example, taxpayers can lose their right to appeal when the Chapter 91 request is arguably illegal or overreaching. See *Tower Center Assoc. v. Township of East Brunswick*, 286 N.J. Super. 433, 438 (App. Div. 1996). Similarly, taxpayers lose their right to appeal when a prior owner failed to make a timely response to a Chapter 91

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request. See ADP of New Jersey v. Parsippany-Troy Hills Tp., 14 N.J. Tax 372 (Tax 1994).

Assessors are required to serve Chapter 91 Requests at least forty five (45) days prior to October 10th and frequently serve the requests during the summer. Although some municipalities do not serve Chapter 91 Requests on an annual basis, property owners should expect to receive them when a municipality is undergoing a revaluation. Unfortunately, many meritorious tax appeals are dismissed because taxpayers fail to respond to an Assessor's Chapter 91 Request.

Attorneys who represent commercial property owners are often left to confront motions to dismiss based upon the failure of a taxpayer to respond to a Chapter 91 Request. Although a taxpayer will have an uphill battle, there are instances where a tax appeal may survive. For example, if it was impossible for the taxpayer to produce the requested information within forty-five days, the taxpayer can argue that it was not required to file a response with the Assessor. See *Cassini v. City of Orange*, 16 N.J. Tax 438, 453 (Tax Ct. 1997). Moreover, the

Statute contains a good cause exception to which taxpayers can look to defend against Chapter 91 motions. However, taxpayers must still provide some response to the Assessor "within the forty-five day time period and...communicat[e] to the assessor, in reasonable detail, a plausible basis for the taxpayer's inability to furnish the requested information." *TMC Properties v. Wharton Borough*, 15 N.J. Tax 455, 463 (Tax Ct. 1996).

In a recent decision, the Appellate Division held that taxpayers whose property is not "income producing" need not respond to an assessor's Chapter 91 request. See *H.J. Bailey Co. v. Neptune Tp.*, 399 N.J. Super. 381, 389 (App. Div. 2008). However, this does not mean that a property owner should not respond if it believes that its property is not income-producing. The Appellate Division, mindful that reasonable minds may differ on what constitutes income-producing property, noted that a property owner who fails to respond "runs the risk that the property will ultimately be found to be income-producing." *Id.* Whether a property is "income-producing" is a legal

question whose answer may not be consistent with the understanding of every taxpayer. For example, courts have held that a property leased to a related entity is nonetheless an "income producing property" for Chapter 91 purposes.

Property owners generally should respond to Chapter 91 requests, even if they appear to be deficient or improper. As soon the request is received, the property owner should carefully review it and arrange for the information to be provided within forty-five days. Moreover, in case a dispute arises as to whether a response was ever made, property owners should keep copies of their responses, and serve them by certified mail.

Chapter 91 law is still evolving, but one thing remains certain. Taxpayers who ignore Chapter 91 Requests will most likely lose their right to appeal. The sanction is severe and the case law is complex. Taxpayers must give Chapter 91 Requests the attention they warrant and should contact an attorney to ensure their rights are adequately protected.

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