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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY



Mala Sundar  
JUDGE

R.J. Hughes Justice Complex  
P.O. Box 975  
25 Market Street  
Trenton, New Jersey 08625  
Telephone (609) 943-4761  
TeleFax: (609) 984-0805

[taxcourttrenton2@judiciary.state.nj.us](mailto:taxcourttrenton2@judiciary.state.nj.us)

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**BY ELECTRONIC MAIL**

Paul Tannenbaum, Esq.  
Zipp & Tannenbaum, L.L.C.  
16 Gatzmer Avenue  
Jamesburg, New Jersey 08831

Martin Allen, Esq.  
DiFrancesco Bateman et al. P.C.  
15 Mountain Boulevard  
Warren, New Jersey 07059

Re: Medical Freehold, L.L.C. v. Township of Freehold  
Block 69.05, Lot 36.01  
Docket No. 007445-2013

Dear Counsel:

This is the court's opinion with respect to defendant's motion to dismiss the above-captioned complaint for plaintiff's failure to respond to income and expense information requests pursuant to N.J.S.A. 54:4-34, more commonly known as a "Chapter 91" request. Plaintiff opposed the motion claiming that receipt of the Chapter 91 request was defective as it incorrectly computed the 45-day response deadline as beginning from the date of the Chapter 91 request as opposed to the date of receipt of the request. Plaintiff also contended that the request was vague and confusing because it did not identify the property clearly.

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The court finds that regardless of whether the 45-day deadline begins to run from the date the Chapter 91 request, the date of its mailing by certified mail, or the date of its receipt by the taxpayer/property owner, the plaintiff's failure to respond is not justified. Plaintiff did not allege or argue whether or why it could not have possibly complied with the defendant's request to provide income/expense information, or that the information sought by defendant was improper or invalid. Additionally, the request's use of identification letters "B" and "L" in conjunction with numbers, commonly understood as the relevant Block and Lot numbers, as well as the use of the abbreviation "Loc" in conjunction with the word "Property" commonly understood to mean Property Location, does not render the request vague or confusing to justify plaintiff's non-response. Therefore, the defendant's motion is granted subject to plaintiff's right to a reasonableness hearing.

## **FACTS**

The flowing facts are undisputed.

By letter dated August 10, 2012, defendant ("Township") requested plaintiff (addressed in the letter as "Property Owner") to provide income and expense information pursuant to Chapter 91 with respect to the property identified as "New B: 69.09 L:36.01" with a street address of "303 W. Main St." referencing the "Property Loc." The request contained a recitation of the statute, N.J.S.A. 54:4-34. It asked that plaintiff provide information regarding its income and expenses for 2011 on an attached statement, which was to be returned to the address indicated at the bottom of the request, "no later than September 25, 2012." The request also noted that if "your property is owner-occupied" for all or any portion of 2011, it should be so indicated on the attached income and expense statement and returned "by the return date."

The request was mailed by certified mail on August 9, 2012 (a day before the August 10, 2012 date noted on the Chapter 91 request). Plaintiff received the same August 14, 2012. Plaintiff did not respond to the request.

### **ANALYSIS**

N.J.S.A. 54:4-34 requires an owner of income producing property to “render a full and true account” of income from such property in response to a “written request of the assessor, made by certified mail.” However, a return receipt need not accompany the certified mailing. Green v. City of East Orange, 21 N.J. Tax 324, 334 (Tax 2004). The assessor must also include a copy of the statute with the written request. N.J.S.A. 54:4-34. Failure or refusal to provide a response, or provision of a “false or fraudulent” response, within 45 days “of the” Chapter 91 request, bars the property owner from challenging the property’s assessment. Ibid. (emphasis added). A non-responding property owner is nonetheless entitled to a reasonableness hearing. Ocean Pines, Ltd. v. Borough of Point Pleasant, 112 N.J. 1, 15-16 (1988).

“The 45-day response period fixed in the statute was deemed ‘necessary to provide for an orderly procedure.’” Carriage Four Associates v. Township of Teaneck, 13 N.J. Tax 172, 177 (Tax 1993) (quoting Senate Revenue Finance and Appropriations Committee, Statement to Senate Bill 309 (1978)).

There are no cases wherein the key issue was the interpretation of the statutory term “of the request” in connection with the 45-day response period, and whether this term means 45 days from the date of the request or the date of service of the request, and if date of service controls, whether it is the date of mailing by the assessor’s office, or the date of receipt by the taxpayer/property owner. An examination of the precedent relative to the interpretation of the term “45 days of the request” indicates that although the date of the request, date of delivery (i.e.,

mailing date), or date of receipt of the request is mentioned in the factual background, the cases have not definitively ruled which date controls. See e.g. ADP of New Jersey, Inc. v. Township of Parsippany-Troy Hills, 14 N.J. Tax 372, 375-77 (Tax 1994) (dealing with notice to a successor owner but noting that the Chapter 91 request sought a response within 45 days of the “date of the” request, which was also the mailing date); Hastings Plaza v. Township of Washington, 17 N.J. Tax 165 (Tax 1998) (where response to Chapter 91 request was sent 69 days from mailing date of the request, it is untimely even if received before the January 10 deadline for submission of the assessment list to the county board); Morey v. Borough of Wildwood Crest, 18 N.J. Tax 335, 337 (App. Div. 1999) (mentioning in the factual background that the request mailed September 12, 1997 seeking a response “on or before October 27, 1997,” thus 45 days from the mailing date and taxpayers who received the request September 13, “did not respond in any way from September 13 through October 27, 1997”), certif. denied, 163 N.J. 80 (2000); Green, supra, 21 N.J. Tax at 330 (computing the end of the 45-day response period of October 21, 2002 by using the presumed date of receipt of September 6 as the start date, but ruling on the central issue that the Chapter 91 request was unclear due to incorrect or absent property identification numbers and designation); Westmark Partners v. Township of Deptford, 12 N.J. Tax 591, 593-94 (noting that the Chapter 91 requests required a response within 45 days “from the date this letter is received”). Cf. Hackensack v. Rubinstein, 37 N.J. 39, 47 (1962) (“[w]hen interpreting . . . statutes authorizing service of notice by mail, courts have generally held service complete upon mailing if the envelope is properly addressed and contains sufficient postage. This is true whether the question involved service by registered mail”<sup>1</sup> or ordinary mail) with Westmark, supra, 12 N.J. Tax at 597 (“an assessor’s chapter 91 demand should be made

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<sup>1</sup> The term “registered mail” is defined to include “certified mail.” N.J.S.A. 1:1-2.

within sufficient time for the taxpayer to utilize the full 45-day response period allotted to it under the statute . . . ”) and J. L. Muscarelle, Inc. v. Township of Saddle Brook, 14 N.J. Tax 453, 476 (Tax 1995) (Hamill, J.T.C. concurring) (“chapter 91 income requests must be sent before an assessment is finalized, in fact at least 45 days before that date because the statute allows a taxpayer 45 days to respond”).

The issue here is whether the specification of a response date in the request, which is 3 days later if computed with reference to plaintiff’s receipt of the same, renders the request “defective” such that plaintiff’s failure to respond in any manner is justifiable. The court finds no such justification is present here.

There are two line of cases, the first and more predominant one being that “absent a good cause excuse made within the 45-day time period,” the taxpayer must provide a sufficient response or lose the right to appeal. Cassini v. City of Orange, 16 N.J. Tax 438, 444-46, 450-51 (Tax 1997). The second one (with fewer cases) hold that a “defective” or unclear/confusing request requires no response. Id. at 447-49, 451-52. Thus, “when challenging the scope of a Chapter 91 request, taxpayers must affirmatively assert their objection, . . . [h]owever, when a Chapter 91 request is ambiguous as to the information sought, the courts have been more lenient and have allowed appeals to proceed” despite a non-response. Town of Phillipsburg v. ME Realty, L.L.C., 26 N.J. Tax 57, 67 (Tax 2011) (citations omitted).

Here, plaintiff’s failure to respond is not justified. The statute requires a response within 45 days “of the” Chapter 91 request. The Township’s request included this language because it reproduced this statute verbatim, in its request. While the statute is not clear as to whether the 45-day response period begins to accrue on the date of the request, on the date of its mailing or on the date of its receipt by the taxpayer as indicated on the return receipt card, the assessor is

not required to interpret the statutory term “of the” for purposes of computing the 45-day period. Additionally, the Township cannot predict how long it will take for the request to be received by the taxpayer. Therefore, the inclusion of the deadline of September 25, 2012, which is 45 days from the date of the request of August 10, 2012, does not make the request defective or misleading.

Nor can plaintiff credibly claim to be confused as to the time to respond such that it could not comply with the information sought in the Chapter 91 request. Whether the response was due September 25 or three days later on September 28, 2012, it is undisputed that plaintiff received the request much before those dates. There is no allegation or argument that as of either of those dates, or even as of the August 14, 2012 date of receipt, plaintiff could not possibly have been in possession of the 2011 income/expense information sought by the Township. Even if plaintiff was confused about the dates such that it was incapacitated in its decision to provide a response, it could have easily contacted the assessor’s office at the contact information which was clearly (and in fairly large font) provided in the Chapter 91 request. See Morey, supra, 18 N.J. Tax at 340 (lack of response due to alleged illness unpersuasive since “how difficult would it have been to call the assessor and explain the problem?”). Cf. Hastings Plaza, supra, 17 N.J. Tax at 173 (“no basis in the language, history or purpose of N.J.S.A. 54:4-34 to permit taxpayers to disregard the express forty-five day time limit in the statute and obtain refuge in the argument that adequate information was eventually provided on a date, prior to January 10, selected by the taxpayer”).

The court is also unconvinced that the request was confusing as to the property identification, thus excusing plaintiff’s non-response. Plaintiff claims that a layperson would simply not understand what the letters “B,” “L,” or the abbreviation “Property Loc” appearing on

the address label on the request represented (which identical address label also appears on the certified mailing receipt and the return request receipt). The court finds that the use of “B” for Block, “L” for Lot and “Property Loc” for Property Location on the request is not confusing or misleading in terms of property identification. Property owners (even of residential property, and who do not receive a Chapter 91 requests) are well aware that real property in New Jersey is identified as a numbered block and a numbered lot, and property tax bills and assessment notices, generated by the Township contain these numbers. While it may be credible to maintain that a notice from the assessor’s office reciting just the numbers, without more, is confusing, see e.g. Green, supra, 21 N.J. Tax at 332 (finding that the numbers without any other identification, cannot be clearly understood as the Block and Lot numbers, causing the request to be confusing to a “layperson”), the court is not persuaded that a property owner is ignorant as to what the “B” before a number or the “L” before a number on a Chapter 91 request from the Township’s assessor’s office, indicates.

Even assuming that plaintiff is befuddled by the letters “B,” and/or “L,” the request also contained the subject property’s street address (303 W. Main Street) which would assist the plaintiff to recognize the property being addressed in the Chapter 91 request. The court is not persuaded that the plaintiff is confused because this address is identified as “Property Loc” and plaintiff does not know what “Loc” stands for. Plaintiff does not dispute that “303 W. Main St.” is correct. It does not maintain that this not the address of the property. It did not allege ignorance of the existence or ownership of the property. To repeat, if plaintiff was in such a quagmire of doubt, it had sufficient time to contact the assessor’s office and seek clarification.<sup>2</sup>

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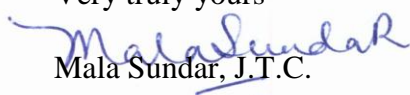
<sup>2</sup> If N.J.S.A. 54:4-34 is read literally, the burden of identifying the taxpayer’s name and property is upon the property owner because the statute requires the owner to “render a full and true account of his name and real property and the income therefrom,” upon written request for such information from the assessor. Nonetheless, due

In sum, while a property owner’s appeal will not be dismissed when it “receives a Chapter 91 request for which a response is impossible, or for which it is unclear what response is being sought,” nonetheless, the owner “should [not] ignore the Chapter 91 requests, even where they are improper” because until a court has determined the propriety of the request, the owner “run[s] the risk of dismissal.” Cassini, supra, 16 N.J. Tax at 453. Thus, “[p]roperty owners should heed the advice of [TMC Properties v. Borough of Wharton, 15 N.J. Tax 455, 463 (Tax 1996) that a taxpayer make “a sufficient response” to a Chapter 91 request], and communicate problems with compliance within the 45-day statutory period, preferably in writing.” Cassini, supra, 16 N.J. Tax at 453. See also Morey, supra, 18 N.J. Tax at 339 (“declin[ing] to overrule TMC Properties and Hastings Plaza” that taxpayers must comply with their obligation to provide a response to a Chapter 91 request, and not automatically resort to allegations that the request is defective therefore a response is unnecessary).

**CONCLUSION**

For the foregoing reasons, defendant’s motion to dismiss the above-captioned complaint for failure to respond to a Chapter 91 income and expense request pursuant to N.J.S.A. 54:4-34 is granted. Plaintiff has the right to request a reasonableness hearing pursuant to Ocean Pines, supra, 112 N.J. at 15-16.

An Order reflecting this memorandum opinion will be entered by the court and accompany this opinion.

Very truly yours  
  
Mala Sundar, J.T.C.

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to second line of cases which impose “a greater burden on the assessor than the property owner” by requiring the assessor to strictly comply with the statutory requirements, Cassini, supra, 16 N.J. Tax at 446, courts have focused upon, and carefully examined the wording in the requests, to ensure that a property owner does not inappropriately face the harsh consequences of dismissal of the owner’s appeal.