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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY



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BY ELECTRONIC MAIL

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Re: J.Y.K. Inc. v. Township of Howell
Block 78.10, Lot 26
Docket No. 008393-2013

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 request pursuant to N.J.S.A. 54:4-34 ("Chapter 91 request"). Plaintiff ("Taxpayer") contends that the Chapter 91 request was ambiguous because it reproduced the statute with errors such as missing commas, periods, hyphens, or alphabets, or incorrect capitalization, therefore, the motion should be denied. The court finds that although the mistakes are inconsequential, the plain language

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of the statute requires that the “assessor shall enclose . . . a copy of this section” along with the Chapter 91 request. The copy of the statute, by whatever means reproduced, should simply be that, “a copy of th[e] section” nothing more, nothing less. Therefore, the motion to dismiss the complaint is denied.

FACTS

Plaintiff (“J.Y.K.”) is owner of property located at 4650 U.S. Highway 9, designated as Block 78.10, Lot 26 (“Subject”) in defendant Howell Township (“Township”).

By letter dated June 5, 2012, the Township’s assessor sought the income and expense information from J.Y.K. for the period January 1, 2011 to December 31, 2011. The Chapter 91 request was addressed to “JYK Inc., 621 West 55 St., New York NY, 10019,” the property owner’s address of record. The mailing included, (1) a cover letter with the Subject’s information and explanation of the Chapter 91 request and consequences of a failure to respond, (2) a separate sheet which reproduced N.J.S.A. 54:4-34, and (3) the form known as the Annual Statement of Income and Expenses for Income Producing Properties (“Income & Expense Statement”).

The return receipt, or “green card,” shows the delivery address as the same pre-printed label indicating the Subject’s location, block and lot number, and owner’s address of record. The green card indicates a date of delivery of June 8, 2012. No response was received by the assessor.

FINDINGS

N.J.S.A. 54:4-34 requires that when a Chapter 91 request is made, the assessor must “enclose . . . therewith a copy of” N.J.S.A. 54:4-34. The statute reads as follows:

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 of such request or to testify on oath when required, or shall have rendered a false or fraudulent account. The county board of taxation may impose such terms and conditions for furnishing the requested information where it appears that the owner, for good cause shown, could not furnish the information within the required period of time. In making such written request for information pursuant to this section the assessor shall enclose therewith a copy of this section.

The legislative history which amended N.J.S.A. 54:4-34 to include the requirement that a copy of the statute be “enclose[d] therewith” does not explain the quoted terms. Rather, it indicates that the entire amendment was primarily intended to address the concern that property owners faced absolutely no consequences for failing to respond to a Chapter 91 request, and could appeal the assessment with information unavailable to assessors who are thereby unprepared to defend the assessment. Thus, the amendment provided that property owners would be precluded from appealing an assessment if they failed to respond to an income/expense information request. See Statement to Sen. No. 309 (1978); Statement, Sen. Rev., Fin. & Approp. Comm. (Jan. 26, 1978) (noting that the bill allows the assessor “access” to income/expense information so as to be “properly prepared to argue the appeal” and the 45-day time limit is required for “an orderly procedure”).

The central and essential purpose of the statute’s inclusion in the information request is to provide property owners full and fair notice of the statute’s requirements and consequences of non-compliance. Lucent Techs. Inc. v. Township of Berkeley Heights, 201 N.J. 237, 247 (2010) (“[a]lthough not specifically addressed in the legislative history, the inclusion of th[e]

requirement [to enclose a copy of the statute] served 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”). See also Hastings Plaza v. Township of Washington, 17 N.J. Tax 165, 172 (Tax 1998) (purpose of including a copy of the statute is “so that a taxpayer will understand the response required and the consequences of a failure to respond”).

Because the consequences of non-compliance with a Chapter 91 request are drastic (inability to challenge the assessment unless unreasonable), courts have required a strict compliance by the assessor of the Chapter 91 requirements. See SAIJ Realty Inc. v. Township of Kearney, 8 N.J. Tax 191 (Tax 1986) (assessor must include a copy of N.J.S.A. 54:4-34 with his income/expense information request). However, reproducing the statute within the request is not barred unless it differs from the statute. Id. at 194, 197. See also 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”).

Here, the Chapter 91 request included a reproduction of the statute on a separate page. Taxpayer argues that the reproduction included several typographical errors, therefore, it is fatal to the Township’s motion. It highlights the following deviations and/or omissions from the statute incorporated by the Township’s assessor in its Chapter 91 request:

Line	Tax Assessor’s Enclosure	<u>N.J.S.A. 54:4-24</u>	Omissions/Deviations from Statute
1	Shall	shall,	Missing comma
2	certified mail	certified mail,	Missing comma
3	there from	Therefrom	Space between “there” and “from”
9	income producing	income-producing	Missing hyphen
11	Count	County	Misspelled, capitalized “C”

12	Board of Taxation	board of taxation	Capitalized “B” and “T”
13	With	Within	Misspelled, different word
14	info ration	Information	Misspelled, different word
15	Section	section.	Missing period

Taxpayer relies upon the court’s recent decisions in Fairfield Develop. c/o 46 Auto Imports v. Borough of Totowa, 2013 N.J. Tax LEXIS 20 (Tax Ct. Sep. 30, 2013) and Schweighardt v. Borough of Totowa, 2013 N.J. Tax LEXIS 20 (Tax Ct. Sep. 30, 2013), which held that the defendant’s Chapter 91 requests were deficient because the assessor failed to render an exact reproduction of the statute. There were additions (the word “tax” before “assessor”) and omissions, and the court noted that “[w]hile the changes to the statute in the present cases were minor, the assessor failed to follow the clear and simple requirement set forth in the plain meaning of N.J.S.A. 54:4-24.” In so concluding, the court disagreed with ADP of New Jersey, Inc. v. Township of Parsippany-Troy Hills, 14 N.J. Tax 372 (Tax 1994), where the court granted the taxing district’s motion to dismiss the complaint pursuant to N.J.S.A. 54:4-34 despite the erroneous omission of 14 words in the text of the statute. The court noted that an assessor is not allowed to “modify” the language of the statute, “even” if it “may serve to clarify the statute’s meaning or increase its readability” and that “the court should not be put in the position to have to evaluate the intent and effect of modified statutory language.” Fairfield Develop., supra.

Taxpayers often justify a total non-response by claiming that the request was so vague or ambiguous that compliance was no reasonable. Cassini v. City of Orange, 16 N.J. Tax 438, 447-49, 451-52 (Tax 1997). However, the more predominant line of cases hold 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. Id. at 444-46, 450-51. 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. Township of Phillipsburg v. ME Realty, L.L.C., 26 N.J. Tax 57, 67 (Tax 2011) (citations omitted).

Here, the reproduced statute contained only punctuations and typographical errors. Common sense, juxtaposed with the context of the purpose of the entire statute and the specific purpose of its last sentence, would dictate that a comma or incorrect capitalization would not cause so great an incomprehension to an owner of income producing property (especially if the requests are received annually) that it was paralyzed from providing a response or seeking a clarification from the assessor. The court in SAIJ Realty noted 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.” SAIJ Realty, supra, 8 N.J. Tax at 195. See also 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”).

Nonetheless, the complaint should not be dismissed. When the Legislature requires an act to be executed, which is simply including a copy of the law, it requires strict compliance. Thus, the court has deemed the failure to include a copy of the statute with a Chapter 91 request as a failure to strictly comply with the requirements of the N.J.S.A. 54:4-34. See SAIJ Realty, supra. Precedent establishing a strict compliance of the statutory requirements by an assessor, combined with the plain language of the mandate in the statute, does not permit an exercise of discretion by having this court analyze the quantity or quality of the errors in the reproduced statute.

CONCLUSION

For the foregoing reasons, the Township'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 denied.

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

Very truly yours

A handwritten signature in blue ink that reads "Mala Sundar". The signature is written in a cursive, flowing style.

Mala Sundar, J.T.C.