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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY



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JUDGE

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July 2, 2015

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Re: Northeast Realty v. Borough of South Plainfield  
Block 550, Lot 4.01 (1001 Durham Avenue)  
Docket No. 001792-2015

Dear Counsel:

Defendant moved 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 contending that the Chapter 91 request was defective because (i) it was ambiguous as to the time periods for which the income and expense information was sought, and, (ii) it required supplemental information which asked for opinions rather than objective facts of the income or expenses.

The court agrees with plaintiff that the request was ambiguous, therefore, defective. The Borough's motion is denied for reasons more fully explained below.

## **FACTS**

Plaintiff (“Northeast”) owns the above captioned property (“Subject”) located in defendant (“Borough”). By letter dated October 1, 2014, the Borough’s assessor sent Northeast a Chapter 91 request by certified mail requesting it to submit the “appropriate” income and expense data on the attached form titled “Annual Statement of Income and Expenses for Income Producing Properties” (hereinafter “I&E Statement”). The letter sought a response within 45-days of the date of the letter or risk preclusion of an appeal “challenging the assessment of this property.” It also directed that the “Property Identification” portion of the I&E statement “must” be completed, and the “Supplemental Information Request” must be completed and signed. Included in the Chapter 91 request was a copy of the N.J.S.A. 54:4-34.

The I&E Statement was comprised of five parts. Part 1 sought information about the property’s “identification” and was left blank. Part 2 sought “property information.” Part 3 sought income information, which also required Schedule A be completed in this connection. Part 4 sought expense information. Part 5 was the certification and signature portion.

Schedule A had 11 columns, seeking information on each tenant. At the bottom of this schedule was the indication that “you can use Calendar, Fiscal or other acceptable year ending dates for this report.”

The Supplemental Information Request cited to “Chapter 91, Laws of N.J. 1979”, and listed eleven questions. Pertinent to this motion are the following:

1. Has the property had an appraisal done during the last three years?
2. If yes, supply a copy of the appraisal with the [I&E} return.
- ...
7. If you are not fully owner occupied, do you consider your current leases to be at fair market value?
8. If no explain why they are not at market value and/or what you feel the market rent should be.

9. What do you feel is the fair market value of your property?

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

On March 11, 2015, Northeast filed an appeal challenging the 2015 assessment. The Borough timely filed the instant motion.

Northeast timely opposed the motion asserting that the Chapter 91 request is non-complaint with N.J.S.A. 54:4-34 as it does not identify the year for which the I&E information is being sought nor does it mention the tax year for which the information will be used to set the assessment for the Subject. It also maintains that the Supplemental Information Request is unauthorized by law and is a disguised demand for discovery since it is patterned after the interrogatories used in local property tax appeals, which include request for expert reports/opinions.

The Borough's reply maintains that there is no obligation under N.J.S.A. 54:4-34 to explain anything in addition to the text of the statute, therefore, its inclusion of the statute suffices to adequately inform Northeast of the information sought, as does a cursory review of the forms attached to the Chapter 91 request.

### **ANALYSIS**

The purpose of the Chapter 91 request is to assist the assessor's collection of information for use in establishing value for an income producing property, which value is generally determined by the capitalization approach. Delran Holding Corp. v. Delran, 8 N.J. Tax 80, 83 (Tax 1985). The relevant statute 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." N.J.S.A. 54:4-34. 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 any information he or she has; and (ii) bar the property owner from appealing that assessment. Ibid.

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).

Since the financial information sought is used to ascertain the assessment of the property, "income data [must] be sought prior to setting assessments to be forwarded to the county boards." Westmark, supra, 12 N.J. Tax at 596; Delran Holding, supra, 8 N.J. Tax at 83 (financial information sought by the assessor is for prospective use, "to aid [the assessor] in determining, by way of the income approach the assessment to be levied"); Cassini v. City of Orange, 16 N.J. Tax 438, 449-50 (Tax 1997) (as the data was sought for year ending December 31, 1995 for use in setting the 1996 assessment, the Chapter 91 request was "improper and defective").

Although a Township has legitimate interest in timely collecting income/expense information for issuing an assessment that will "spare both a municipality and taxpayers from the costs of unnecessary litigation" nonetheless, since the taxpayer's loss of appeal rights is so "draconian," N.J.S.A. 54:4-34 is to be strictly construed against a township. Tri-Martin Assoc. II LLC v. City of Newark, 21 N.J. Tax 253, 260-61 (Tax 2004); J&J Realty Co. v. Tp. of Wayne, 22 N.J. Tax 157, 163-64 (Tax 2005). Therefore, as part of the 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, supra, 16 N.J. Tax at 447 (citations and quotations omitted). 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.

Here, the Chapter 91 request is ambiguous. It fails to identify anywhere, whether on the cover letter, I&E Statement, the Schedule attached to the I&E Statement, or the Supplemental Information Request, the year for which Northeast is required to furnish financial information. The notation on the Schedule that Northeast could “use” any form of accounting year, be it calendar, or fiscal, or “other acceptable year,” does not help in determining, nor does it provide any guidance as to *which* calendar or fiscal year is requested. Was it 2012? 2013? 2014? Additionally, nowhere is there any indication as to the year for which the assessment is to be determined, using the requested financial information. Although the instant motion is for tax year 2015, and from the instant motion one can infer that the information was requested for use in setting the assessment for tax year 2015, the hindsight inference does not cure the total lack of clarity as to the year for which Northeast was supposed to provide financial information. Permitting a taxpayer to use any accounting period but without specifying the year of the accounting period (e.g., 2012, 2013) does not alleviate the burden on a municipality to provide a clear and unambiguous Chapter 91 request. See Township of Phillipsburg v. ME Realty, L.L.C., 26 N.J. Tax 57, 67-68 (Tax 2011) (finding the Chapter 91 request for information for the “tax

year ending December 2008/2009" as being vague since it could either mean that the information was being sought for both tax years or for "indeterminable time in 2008 to (perhaps through) 2009".

The Borough argues that the inclusion of the text of N.J.S.A. 54:4-34 is sufficient to place Northeast on notice of what information is being sought. It relies upon James Dale Enterprises Inc. v. Township of Berkeley Heights, 26 N.J. Tax 117 (Tax 2011) which held that an assessor need not explain the penalty for failing to comply with the Chapter 91 request because a copy of N.J.S.A. 54:4-34 is sufficient and clear notice. Presumably, the Borough is arguing that just as in that case, here also the assessor's failure to identify the year for which income information is sought is irrelevant since the statute explains it all.

However, the statute does not spell out the financial period for which the assessor must seek information. Thus, where in James Dale, the attached statute put the property owner on notice of the penalties for failing to respond, Northeast here does not know for which year it should provide financial information. A plain (or even a painstaking) reading of the statute does not fairly provide the taxpayer with notice of which year's income and expense information should be provided, and the Borough's Chapter 91 request does not make it any clearer. Under the Borough's argument, since the statute mandates a response to the income information sought by the assessor, he or she need not define any time period in connection with the financial data. However, this argument ignores the precedent that financial data sought should be for a period prior to setting the assessment for a tax year.

"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. The taxpayer

should not bear the burden of divining the assessor's intent or purpose in sending a Chapter 91 request. Ibid. That holding squarely applies here.

The court finds that the Chapter 91 request is ambiguous thus defective since it failed to provide clear notice of the period for which the financial information was being sought, or the year for which the assessment was to be ascertained based on that information. These flaws suffice to deny the Borough's motion. Therefore it does not need to make any findings on Northeast's additional arguments that the Supplemental Information sought is invalid as being beyond the scope of the language and intent of N.J.S.A. 54:4-34.<sup>1</sup>

### **CONCLUSION**

For the aforementioned reasons, the Borough's motion is denied.

Very Truly Yours



Mala Sundar, J.T.C.

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<sup>1</sup> Other than simply asserting that the Supplemental Information Request is perfectly legal, the Borough does not address Northeast's contention that the sought-for valuation opinions and discovery-type documents (appraisal reports) are normally reserved for evidence in litigation, i.e., post Chapter 91 request, thus, in violation of the plain language of the statute.