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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY



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JUDGE

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Re: Wade Realty Co. v. Borough of South Plainfield  
Block 420, Lot 11.04 (235 St. Nicholas Avenue)  
Docket No. 002795-2015

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 did not oppose the motion.

The court however, finds the Chapter 91 request ambiguous and therefore defective. The Borough's motion is denied for reasons more fully explained below.

**FACTS**

Plaintiff ("Wade Realty") owns the above captioned property ("Subject") located in defendant ("Borough"). By letter dated October 1, 2014, the Borough's assessor sent Wade

Realty 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 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.”

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

On March 16, 2015, Wade Realty filed an appeal challenging the 2015 assessment. The Borough, on May 26, 2015, timely filed the instant motion.

Thereafter, on June 16, 2015 plaintiff filed a letter with the court advising that the plaintiff will not oppose the Borough’s motion and further waives its right to an Ocean Pines reasonableness hearing.

## 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 of 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 Wade Realty is required to furnish financial information. The notation on the Schedule that Wade Realty could “use” any form of accounting year, be it calendar, or fiscal, or “other acceptable year,” neither helps in determining, nor provides 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 Wade Realty 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”).

“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.

Although there was no opposition by plaintiff, the court nonetheless denies the motion. See e.g., Van Winkle v. Rutherford Borough, 12 N.J. Tax 290, 291 (Tax 1992) (even if unopposed, parties “cannot agree to have the court grant relief for which there is no authority”).

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.

**CONCLUSION**

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

Very Truly Yours



Mala Sundar, J.T.C.