

TAX COURT OF NEW JERSEY

HAROLD A. KUSKIN
JUDGE



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NOT FOR PUBLICATION WITHOUT THE APPROVAL OF
THE TAX COURT COMMITTEE ON OPINIONS

November 5, 2007

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LEE S. HOLTZMAN, ESQ.
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33 Clinton Road—Suite 108
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RE: 20 West Washington LLC
v. Borough of Washington
Docket No. 005358-2007

Dear Counsel:

This letter constitutes my opinion with respect to defendant's motion to dismiss plaintiff's Complaint in this matter for failure to respond to an assessor's request for information sent pursuant to N.J.S.A. 54:4-34 (Chapter 91). For the reasons set forth below, I deny the motion.

The factual background to the motion is as follows. On October 19, 2006, defendant's assessor sent a Chapter 91 request for information addressed to "20 W. Washington, 473 Broadway Ste. 500, Bayonne, NJ 07002." The request complied with

requirements of the statute to the extent that it was sent by certified mail and included a copy of the statute. The request included a cover letter from the assessor and forms on which the income and expense information were to be set forth. The cover letter stated in relevant part as follows:

Dear Owner of Income Producing Property:

In accordance with N.J.S.A. 54:4-34, you are required to submit the appropriate Income and Expense data requested on the attached form for the tax year ending with December 31, 2005 for property located at 20 W Washington Ave and designated on the Municipal Tax Map as Block 23, Lot 4. Such information will be considered by this office in determining the assessment for the property for the 2005 tax year.

The address of the property at "20 W. Washington Ave." and the Block and Lot numbers were handwritten. The balance of the quoted language was preprinted. The letter was signed by defendant's tax assessor. The request was received at plaintiff's offices, and the certified mail return receipt signed by a then employee of plaintiff. Plaintiff did not respond within the forty-five day time period set forth in N.J.S.A. 54:4-34 or thereafter.

At the time the request was sent, plaintiff was the owner of property located at 9 West Church Street in the Borough of Washington and designated on the Borough Tax Map as Block 23, Lots 4, 5 through 7, and 7-01. Plaintiff contends that, because the letter from defendant's assessor misidentified the address of the property and indicated that information was being sought to determine a 2005 tax assessment, plaintiff was justified in failing to respond to the assessor's request that such failure should not be the basis for Chapter 91 relief limiting plaintiff's appeal as provided in Ocean Pines, Ltd. v. Point Pleasant Borough, 112 N.J. 1 (1988).

In interpreting N.J.S.A. 54:4-34, our courts have held that the assessor must comply strictly with the requirements of the statute and that in the absence of such compliance, no relief will be granted for failure to respond to an assessor's request for information. In ML Plainsboro Ltd. Partnership v. Township of Plainsboro, 16 N.J. Tax 250 (App. Div. 1997), the Appellate Division stated as follows:

Therefore, in determining whether a taxpayer is barred from appealing an assessment because it failed to respond adequately to a tax assessor's request for information pursuant to N.J.S.A. 54:4-34, the county board of taxation or the Tax Court must decide not simply whether the taxpayer's property is "income producing" but also whether the assessor's request would be understood by the average owner of an income producing property to require disclosure of the information which the taxpayer has allegedly withheld

Moreover, if there is room for reasonable doubt as to whether an average owner of an income producing property would understand an assessor's request to include a particular kind of information, the benefit of that doubt should be given to the taxpayer.

[Id. at 257 (citations omitted).]

In Cassini v. Orange City, 16 N.J. Tax 438 (Tax 1997), Judge Small, after citing ML Plainsboro, articulated principles similar to those set forth by the Appellate Division, stating as follow:

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. The government must speak in clear and unequivocal language where the consequence of noncompliance is the loss of the right to appeal assessments. The taxpayer should not bear the burden of divining the assessor's intent or purpose in sending a Chapter 91 request.

[Id. at 453.]

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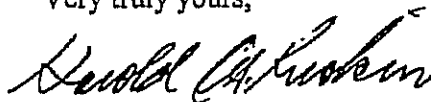
[Id. at 453.]

The request which is the basis for defendant's motion is confusing in two respects. First, the request identifies two properties as the subject matter of the request. One property, Block 23, Lot 4, is owned by plaintiff, but the other property, "20 W Washington Ave" is not owned by plaintiff and may not exist. Second, although the request seeks information relating to the tax year ending December 31, 2005, it also states that the information will be considered in setting the tax year 2005 assessment. At the time the request was sent, October 19, 2006, the 2005 assessment was history.

Based on the principles quoted above, I conclude that plaintiff should not be required to speculate as to the location of the property for which the assessor seeks information or as to the purposes for which the assessor seeks the information. A government official sending a request for information to a taxpayer must make the request understandable and accurate. See F.M.C. Stores Co. v. Morris Plains Bor., 100 N.J. 418, 426 (1985) (stating that the government must turn square corners in dealing with the public). The consequence of an assessor's sending a deficient and defective request for information is that no relief under N.J.S.A. 54:4-34 should be granted. The severe penalty for failure to respond to a Chapter 91 request should not be visited on a taxpayer that was sent a request such as the one in issue here.

Defendant's motion for relief under N.J.S.A. 54:4-34 is denied. Mr. Holtzman is hereby directed to submit a form of Order reflecting the denial of the motion. The Order should be submitted promptly pursuant to R. 4:42-1(c).

Very truly yours,



Harold A. Kuskin, J.T.C.

HAK:mr