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## N.J. property tax appeals: Avoiding chapter 91 pitfall

Owners of income producing property, who have already filed, or intend to file a property tax appeal, must be aware of a common, and often ignored, request for information by municipal tax assessors. In New Jersey, municipal tax assessors have authority to request income and expense information from the owners of income producing properties. The statute that grants this authority is N.J.S.A. 54:4-34, also known as "Chapter 91", and creates mandatory obligations on both the municipality and taxpayer.



Under the statute, tax assessors must comply with three requirements: (1) taxpayers must receive a proper written notice, using clear and unequivocal language; (2) taxpayers must be given a copy of the statute describing the consequences for noncompliance; and (3) the request must be

sent by certified mail. A tax assessor's failure to strictly adhere to the above requirements negates the Chapter 91 request, and alleviates a taxpayer from their obligations under the statute.

The taxpayer's obligations under the statute are compulsory as well. It is generally accepted that a taxpayer must respond to a tax assessor's request for an income and expense statement. The penalty for a taxpayer's failure to provide the requested information within forty-five (45) days, from the date of receiving the certified mail, is dismissal. However, the courts have created a "good cause" exception, which, if satisfied, may allow a taxpayer to continue to pursue an appeal on the property.

In order to satisfy their obligation to respond, a taxpayer has two options: (1) provide the income and expense information, or (2) notify the municipality, in writing, as to the reasons for noncompliance. Both of which must be done within forty-five (45) days of receipt of the certified letter.

Furthermore, it is imperative that recent purchasers of income producing property inquire with the previous owners as to whether a Chapter 91 request was received from the tax assessor, and if a response was made. Recent purchasers, who are unaware of a Chapter 91 request sent to the previous owners, have no defense from the severe sanction of dismissal. The Tax Courts consider a purchaser to "step into the shoes" of the seller and will impute knowledge of the Chapter 91 request, regardless of actual knowledge.

If a taxpayer's appeal is dismissed for failure to comply with the statute, taxpayers are not denied all relief from an unreasonable assessment, and still have an available remedy. The Courts have provided taxpayers with a right to a "reasonableness hearing".

The scope of a reasonableness hearing is sharply limited to an inquiry of whether the valuation could reasonably have been arrived at in light of the data available to the assessor at the time of the valuation.

The Tax Court will review two important factors of the assessor's valuation: (1) the reasonableness of the underlying data used by the assessor, and (2) the reasonableness of the methodology used by the assessor in arriving at the valuation.

Therefore, all income producing property owners, including apartment, industrial and other commercial property owners, who have already filed or intend to file an appeal, must be aware of these Chapter 91 requests. Property owners can preserve their right to challenge assessments by complying with these information requests. Property owners should simply attach a copy of the income and expense statement for the property to the assessor's form and returned within the time prescribed. By doing so, property owners can easily avoid having their appeals dismissed.

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