



NEW JERSEY REAL ESTATE JOURNAL

Real Estate Journal - Section B

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Recent Developments in New Jersey Tax Appeals and How They Affect You

As a follow up to last month's article on N.J.S.A. 54:4-34 ("Chapter 91"), owners of income producing property should be aware of recent developments relating to a municipal tax assessor's authority to request income and expense information. Briefly, under the N.J. statute, municipal tax assessors have a right to request income and expense information from the owners of income producing properties for use in determining an assessment on the property. To properly exercise their statutory right, 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 adhere to the above requirements negates the Chapter 91 request, and alleviates a taxpayer from their obligations under the statute.

However, a recent reported decision from the N.J. Appel-

late Division diminishes the significance of the certified mail requirement. In the case of *Towne Oaks at South Bound Brook v. Borough of*

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South Bound Brook the Appellate Division held that the third statutory requirement is satisfied if a tax assessor forwards a Chapter 91 request contemporaneously by certified mail and regular mail.

The taxpayer in this case owned and operated a four-story apartment building in the Borough of South Bound Brook.

The Borough's tax assessor attempted to serve taxpayer with a request for income and expense information. The tax assessor sent contemporaneous requests by certified mail and regular mail. The certified

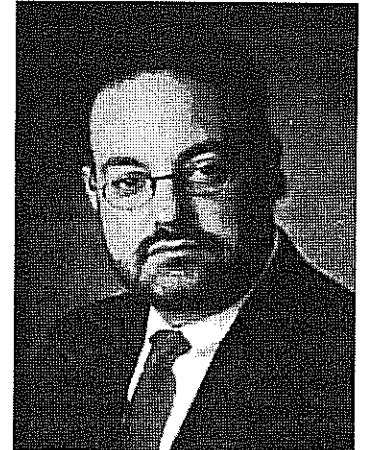
mail request was returned to the tax assessor as unclaimed. The regular mail was never returned.

Taxpayer argues that the statute requires certified mail as documentary proof of taxpayer's actual receipt and knowledge of the request, and regular mail does not satisfy the Statutory mandate. The Borough counter-argued, and the Appellate Court agreed, that the tax assessor met his statutory obligations by simply depositing the certified mail request.

Furthermore, the Appellate Court stated, actual receipt or knowledge of the request is not required. Notice of the Chapter 91 request will be presumed when the tax assessor contemporaneously sent regular mail that was properly addressed, contained sufficient postage, showed the proper return address, and was properly deposited with the post office.

What does this mean to you? As an owner of income producing property, actual receipt, or knowledge of a tax assessor's Chapter 91 request is not necessary.

Municipal tax assessors can



satisfy the certified mail requirement of N.J.S.A. 54:4-34 by simply sending requests by both certified and regular mail.

If certified mail is returned as unclaimed or undeliverable, but the regular mail is not returned, taxpayers may not claim lack of knowledge or receipt as a defense.

We have filed a Petition for Certification with the N.J. Supreme Court.

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