

Chapter 91 Alert

Pursuant to N.J.S.A. 54:4-34, municipalities may issue to owners of real property what is known as a “Chapter 91” request. This request seeks information pertaining to the taxpayer’s income and expenses for the real property so that the information can be used to assist the tax assessor to determine the following year’s tax assessment and whether the property is “income producing” (meaning generally that a fee is paid to the owner for the continuous and exclusive use of a specific portion of the land or buildings, i.e., rental income). All property owners receiving such a request are required to respond within 45 days.

If the owner of an income-producing property does not respond within 45 days, the assessor must reasonably determine the full and fair value of the property based on the information in his possession and that is available to him or her. In that event, the taxpayer loses his or her right to challenge the assessor’s valuation and assessment via a real property tax appeal. This sanction is described as an “appeal-dismissal sanction.” The effect of the appeal-dismissal sanction is to preclude appeals asserting claims for revaluation based upon the economic data withheld by the taxpayer. Data concerning the property’s income and expenses is often the most valuable information regarding the property’s value, and could warrant a lower assessment. However, if it is not produced by the owner of an income-producing property, it will not be considered as part of a tax appeal.

In the event that an appeal is dismissed for a failure to provide a timely response to a Chapter 91 request, the property owner still retains the right to challenge (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. Nevertheless, because the property owner no longer has the opportunity to rely upon the income and expense data that should have been provided to the tax assessor, it becomes much more difficult to successfully challenge the reasonableness of the valuation.

Although the appeal-dismissal sanction applies only to income-producing properties, a property owner that fails to respond to a Chapter 91 request runs the risk that the court will ultimately find the property to be income-producing. Thus, property owners believing that their properties do not qualify as income-producing should still respond in a timely fashion.

If you are contemplating a real property tax appeal and receive a Chapter 91 request, it is imperative that you notify your attorney as soon as possible to ensure compliance with the request. Timely compliance with a Chapter 91 request is critical to avoid the appeal-dismissal sanction and to increase the likelihood of a successful property tax appeal.

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