

Don't Lose Your Tax Appeal Rights

By **John Garippa, Esq.**, as published by **GlobeSt.com - NJ Alert**, August 2009



Recent New Jersey case law has made it easier for assessors to thwart tax appeals filed by commercial property owners. One of the most potent weapons in the tax assessor's arsenal is the use of their power to request income and expenses associated with the taxpayer's property.

New Jersey law requires that on receipt of a written request from the assessor, every owner of income producing property in a taxing district must provide:

- A full and true account of the owner's name.
- The location of the real property.
- The income produced by the property.
- The expenses generated by the property.

In the event the taxpayer fails to timely respond to this request, any tax appeal filed by that owner for that tax year will be dismissed.

The statute imposes three strict obligations upon the assessor. First, the letter must include a copy of the text of the statute. Second, it must be sent by certified mail to the owner of the property. Third, the letter must spell out the consequences of failure to comply with the assessor's demand. The courts have strictly applied these standards to the tax assessor by indicating that the "government must speak in clear and unequivocal language where the consequence of non compliance is the loss of the right to appeal assessments."

In a recent case, the Tax Court of New Jersey faced the unusual issue of a property that historically produced income, but during the year in question, the property was vacated in order to make significant physical improvements. Thus, no income was produced by the property that year.

When the assessor sent the taxpayer a request for income and expense, the owner failed to respond. The taxpayer believed that no response was necessary because the property was owner occupied and non-income producing at the time of the request.

The Tax Court dismissed the taxpayer's appeal based on the New Jersey statute. The court concluded that this property never lost its character as income producing property. Temporary vacancies brought about by renovations are no different than the temporary loss of a tenant, or a tenant that has withheld rent. The flow of rental payments that ceased for the year in question was brought about by the taxpayer's business decision to renovate the income producing property.

Since the tax assessor previously recognized the property as income producing, and had received no response to her information request, she was left to formulate assessments for the property without economic data concerning the operation of the property. The assessor was unaware that the building was vacant and uninhabitable during the year in question, a factor that would have been important in developing the assessment.

For taxpayers, the lesson here shows that whenever there may be a doubt as to the status of a property, always respond to assessors' requests for income and expense data, called Chapter 91 requests. It's the only way to protect your right to a tax appeal. Appropriate responses can include explanations of major vacancies and ongoing renovations, thereby providing the assessor with valuable information for his use in developing assessments.



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