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THE TAX COURT COMMITTEE ON OPINIONS

METZ FAMILY LTD. PARTNERSHIP : TAX COURT OF NEW JERSEY
: DOCKET NO. 000877-2018
Plaintiff, :
v. :
TOWNSHIP OF FREEHOLD, :
Defendant. :

Approved for Publication
In the New Jersey
Tax Court Reports

Decided: June 28, 2018

John J. Coats for plaintiff
(Brach Eichler, L.L.C., attorneys).

Kevin A. MacDonald; Martin Allen for defendant
(DiFrancesco, Bateman, Kunzman, Davis, Lahrer & Flaum, P.C.,
attorneys).

SUNDAR, J.T.C.

This opinion addresses defendant’s motion to dismiss the above captioned complaint on grounds plaintiff failed to respond to the defendant’s assessor’s October 5, 2017 request for income and expense information under N.J.S.A. 54:4-34 (“Chapter 91”). Plaintiff, which received the request on or about October 10, 2018, concedes its non-response. However, it argues against dismissal of the complaint because the 45-day limit to respond was beyond November 1, the date for the submission of the assessor’s preliminary tax list, which date applies to counties whose board of taxation is participating in the Assessment Demonstration Program (“ADP”), such as Monmouth County where defendant (“Township”) is located.

The Township counters that the controlling date is May 5 of the tax year which is when the final tax list is submitted by assessors of taxing districts in ADP participating counties. Therefore, it contends, its Chapter 91 request is timely, thus, not defective.

For the reasons set forth below, the court finds that November 1 is the controlling date for taxing districts in ADP participating counties. Since the Township's Chapter 91 request was not sent 45 days prior to the November 1 preliminary tax list date, it was defective. Therefore, the Township's motion to dismiss the complaint is denied.

FACTS

On or about October 5, 2017, the Township's assessor mailed a Chapter 91 request to plaintiff by certified mail, return receipt requested, seeking the 2016 income and expense ("I&E") information for property owned by plaintiff. The request reproduced the Chapter 91 statute, and also advised plaintiff to respond if the property was owner-occupied, or if plaintiff did not own the property for all of 2016.

Plaintiff received the request on or about October 10, 2017. The 45-day response deadline was either November 18, 2017 (calculated from the date of the Chapter 91 request) or November 24, 2017 (calculated from the date of receipt of the Chapter 91 request). Plaintiff did not respond.

On February 16, 2018, plaintiff filed a direct appeal to this court challenging the 2018 assessment of \$6,331,200 imposed on its property by the Township's assessor. On the same day, the Township filed a counterclaim. On April 3, 2018, the Township filed the instant motion.

ANALYSIS

In Westmark Partners v. West Deptford Twp., 12 N.J. Tax 591, 596 (Tax 1992), this court held that an assessor "must request" I&E information under Chapter 91 "within time for it to be incorporated in his determination of the correct assessments to be submitted to the county board

by January 10 of the tax year.” Noting the legislative intent behind a Chapter 91 request, the court observed that “the Legislature obviously intended that the income data be sought prior to setting assessments to be forwarded to the county boards.” Ibid.

The court’s holding was based on the “chronology of the statutory events relevant” to imposing an assessment on real property. First, the assessor must determine the “full and fair value” of a property as of October 1 of the pretax year. Id. at 595 (citing N.J.S.A. 54:4-23). “After determining his October 1 taxable valuation, the tax assessor is then directed by N.J.S.A. 54:4-35” to prepare and file a tax list on January 10 of the tax year with the county board of taxation. Westmark Partners, 12 N.J. Tax at 595. The county board of taxation can thereafter “revise the list as it deems appropriate.” Id. at 596 (citing N.J.S.A. 54:4-46; 4-47). It then certifies “the corrected final assessment to the municipal tax collector on or before May 13 of the tax year.” Westmark Partners, 12 N.J. Tax at 596 (citing N.J.S.A. 54:4-55). After such certification, the list cannot be modified by either the assessor or tax collector “except as may be provided by law.” Westmark Partners, 12 N.J. Tax at 596 (citing and quoting N.J.S.A. 54:4-55).

Based on this statutory chronology, the court concluded that Chapter 91 requests sent after the January 10 date were defective because they “were not mailed within sufficient time for the assessor to receive from the taxpayer, within the 45-day statutory-response period allotted, the relevant data necessary to aid the assessor to determine the proper assessment of the property for the tax years involved.” Westmark Partners, 12 N.J. Tax at 597. See also 440 Route 17 Partners L.L.C. v. Borough of Hasbrouck Heights, 28 N.J. Tax 241, 246, 252 (Tax 2014) (“pursuant to N.J.S.A. 54:4-35 and Westmark” a Chapter 91 request sent November 29 of the pre-tax year was “defective” even if the tax list submission was delayed to “February 26” of the tax year “because the response would not be required by the deadline for submission of the assessment list”); John

Hancock Mut. Life Ins. Co. v. Wayne Twp., 13 N.J. Tax 417, 422 (Tax 1993) (rejecting an argument that a Chapter 91 request should be sent before the pre-tax year October 1 valuation date because “the assessment is not required to be completed until January 10 of the current tax year,” thus, “[t]o advance the purpose of” Chapter 91, the request “must be timely, so that upon its receipt, the assessor can utilize the information by January 10.”).

Here, the January 10 date does not apply because the Township is in an ADP participating county. In 2013, when the Legislature enacted the ADP law, see N.J.S.A. 54:1-101 to -104, it amended several provisions of the tax statutes relating to the statutory deadlines for establishing assessments and instituting appeals of local property tax assessments. See Sponsor’s Statement to S. 1213 21 (Jan. 23, 2012) (law “revises the statutory dates for the assessment of real property . . . to implement the [ADP’s] provisions concerning the re-scheduling of the assessment appeal process.”). Under the former system, appeal deadlines were April 1 or May 1 of the tax year, see, N.J.S.A. 54:3-21(a)(1), resulting in county board appeals being decided was the “end of July.” Sponsor’s Statement to S. 1213 at 21. Thus, successful appeals reduced assessments “late in the tax year,” eroding the “municipal tax base,” resulting in “under-collection of property taxes” needed to fund operations for the current year. Ibid.

To this end, new dates were proposed as follows: (1) November 1 of the pre-tax year for a “Certification of Preliminary Assessment;” (2) November 15 of the pre-tax year for mailing notices of assessment (also called Chapter 75 cards) instead of the “current date” of February 1 of the tax year; (3) January 15 for filing appeals, instead of the “current date” of April 1 of the tax year; (4) hearings of appeals in “February, March, and April” instead of “May, June, July;” of the

tax year; and, (5) May 5 of the tax year for submission of the tax list instead of the “current date” of January 10.” Id. at 21-22.¹

The submission of a preliminary tax list on or before November 1 of the pre-tax year was incorporated in the statute as follows:

In the case of a municipality located in a county . . . participating in the [ADP] . . . , the assessor shall determine the taxable valuations of real property as of October 1 in each year and shall complete the preparation of the preliminary assessment list by November 1, and the assessor shall appear on that date before the county board of taxation and shall file with the board a hard copy of the complete preliminary assessment list, or shall certify to the board, on forms promulgated by the . . . Division of Taxation . . . that the electronic file within the county’s MOD-IV tax system is his complete preliminary assessment list.

After all of the assessment appeals filed with the county tax board have been decided, the assessor shall complete the preparation of the final assessment list by May 5, on which date the assessor shall appear before the county board of taxation and shall file with the board his completed final assessment list, and a true copy of the final assessment list, which true copy shall be the assessor’s duplicate. The final assessment and the assessor’s duplicate shall include the assessments of personal property . . . and shall be examined, revised and corrected by the board as provided by law.

[N.J.S.A. 54:4-35(b).]

It is clear that the Legislature provided for two tax lists, a preliminary list due November 1 of the pre-tax year, and a final list, due May 5 of the tax year. This is in contrast to only one final tax list being due on January 10 of the tax year for taxing districts in non-ADP participating counties. See N.J.S.A. 54:4-35(a) (assessor to determine value as of October 1 of the pre-tax year,

¹ Other date changes were for submission of equalization tables; municipal, county, and school budgets to the county board of taxation, and the “Certified Tax Rates.” Sponsor’s Statement to S. 1213 at 21-22. The submission dates for the “Tax Duplicates” and “Tax Bills” remained the same (June 3, and June 14, respectively). Ibid.

and “complete the preparation of his assessment list by January 10 following,” which list can then be “examined, revised and corrected by the board as provided by law.”).

The issue is, thus, whether for purposes of Chapter 91, the assessor’s request must be sent in time so that a response is received before November 1 of the pre-tax year, as plaintiff contends, or, before May 5 of the tax year, as the Township contends. If November 1 of the pre-tax year is the applicable date, then the Chapter 91 request is defective since the 45-day response deadline was either November 18, 2017 (calculated from the date of the Chapter 91 request) or November 24, 2017 (calculated from the date of receipt of the Chapter 91 request). If it is May 5, the request is not defective.

The Township asserts that the May 5 date should be controlling because it is substantively the same as the January 10 date, since the latter date is when the assessor must submit the final tax list before the county board of taxation in non-ADP participating counties. It contends that this is a plausible construction because this court has acknowledged the possibility of late submission of tax lists when it stated “that a Chapter 91 request may be made on a later date if the . . . [county board of taxation] formally grants an extension of the deadline.” 440 Route 17 Partners, L.L.C., 28 N.J. Tax at 249, n.2. Here, in contrast, the Township argues, the statute itself extends the submission date for the final tax list to May 5 of the tax year.

The court is not persuaded. The issuance of a preliminary tax list is one of a series of steps legislatively imposed to achieve the acceleration of tax appeals, so that taxpayers are notified sooner of the assessment, appeals to the county board of taxation can be filed sooner, and judgements deciding the appeals can be issued by the county boards sooner, all with the ultimate intent that the taxes (or tax reductions) ensuing from the appeals are accurately predictable sooner, rather than after the municipal budgets are set. See Sponsor’s Statement to S. 1213 at 21 (“re-

scheduling of the property assessment appeal process to dates prior to the calculation of the local property tax rate” appropriate so that the “budgetary needs,” and “the true value of the tax base” needed to fund the budget were “accurate.”). It is incongruous to suggest that when the Legislature enacted N.J.S.A. 54:4-35, intending for assessments to be set earlier, and their concomitant validity adjudged earlier, the assessor somehow is not beholden to an earlier date to obtain I&E information via a Chapter 91 request, to assist him or her in setting those very assessments. Thus, the Township’s contention that the preliminary tax list required by N.J.S.A. 54:4-35(b) is materially different from, and is not substantively equivalent to, the final assessment tax list required under N.J.S.A. 54:4-35(a), for purposes of a Chapter 91 analysis, is meritless. The observation in 440 Route 17 Partners, L.L.C. that tax lists may not be necessarily final as of January 10 of the tax year, does not change this court’s finding. That case is factually distinct, and did not involve an analysis of the deadlines for municipalities in ADP participating counties for purposes of Chapter 91 requests.

Importantly, the statute’s requirement that the preliminary list must be revised and filed with the county board of taxation by May 5 is juxtaposed with requirement that this be done “[a]fter all of the assessment appeals filed with the county tax board have been decided.” See N.J.S.A. 54:4-35(b). A plain reading of the statutory language demonstrates that an assessor can change the preliminary tax list only to account for changes in assessments resulting from county tax board appeal judgments/settlements. This reading is supported by the legislative intent of the ADP, which among others, was to accelerate appeals process so that the municipal budgets are accurately and timely predicted. The May 5 date for submission of the final assessment list does not afford the assessor an opportunity to voluntarily, outside of county board appeals, change an assessment, such as, for instance, as the Township argues, due to receipt of a Chapter 91 response. Indeed,

under the Township's argument, it could not move to dismiss a timely filed petition before the county board of taxation due to a taxpayer's failure to comply with a Chapter 91 request, because the appeal would be decided before the response is received. The argument also tends to lend some credence to plaintiff's point that under these unique circumstances, the Chapter 91 information could not have likely been used to assist the assessor in setting a property's assessment.

Accepting the Township's argument would mean that the assessor would be free to also change the assessments resulting from judgments issued by a county board of taxation. Obviously this cannot be so. The argument would also mean that the Chapter 75 cards (issued under N.J.S.A. 54:4-38.1(b)) which are required to be mailed to taxpayers on or before November 15 of the pre-tax year would reflect only a tentative or estimated assessment, and would render the appeal instructions contained therein a fallacy. Moreover, appeals filed within the statutory deadlines of January 1 (or April 1 for direct appeals), would be rendered premature since taxpayers would not know the exact amount of assessments they are challenging. Such a construction would be equally incorrect. Cf. Ocean Pines, Ltd. v. Borough of Point Pleasant, 112 N.J. 1, 7 (1988) (without the requested I&E information, "any valuation prepared by the assessor would be at best an interim one, of use only until the taxpayer complies with the request for [I&E] information.").

The Township's reliance on New Plan Realty Trust v. Brick Twp., 23 N.J. Tax 225 (Tax 2006), in support of its argument that November 1 cannot be used for purposes deciding the timeliness of a Chapter 91 request, is misplaced. In that case, the court rejected an argument that Chapter 101 (L. 2001, c. 101) mandates Chapter 91 requests be submitted 45 days prior to November 1 of the pre-tax year in municipalities that are not conducting municipal-wide revaluations or have not applied for approval of a reassessment plan. The court reasoned that

Chapter 91 requests must be sent before January 10 of the tax year because assessments can be changed without the need for a compliance plan; the I&E information is not required to change assessments under a Chapter 101 compliance plan; and the Legislature was presumably “aware of the court-imposed requirement that under N.J.S.A. 54:4-34, assessors must send Chapter 91 requests out at least 45 days before January 10,” yet chose not to expressly “repeal or change this deadline” because it did not reference Chapter 91 when enacting Chapter 101. Id. at 231-32.

The ruling in that case is inapposite here. First, the reasons behind the enactment of Chapter 101 and the ADP law are distinct. Under Chapter 101, a compliance plan is required if all or part of a taxing district is under, or over-assessed, in violation of the principles of uniformity in taxation, or if the assessment of property comprising all or a part of the taxing district does not comply with the law and public interest will be promoted in its reassessment. See N.J.S.A. 54:4-23. Whereas, the ADP law is meant to achieve a “collaborative system of property assessment” between a county tax board’s administrator and the assessors within that county, using a uniform “more precise, technology-driven real property assessment process,” changing the “annual real property assessment calendar” to accommodate the “demands of the municipal budget calendar,” and reducing refunds for “successful property assessment appeals filed annually,” thus averting the negative impact upon “the local budget.” See N.J.S.A. 54:1-102.

Second, as pointed out by the court, a Chapter 101 compliance plan does not require use of I&E data, rather, the data relied upon is “sales data, assessments, ratios, and other statistics.” New Plan Realty Trust, 23 N.J. Tax at 231. Thus, the November 1 preliminary tax list under N.J.S.A. 54:4-35(b) is not analogous to a compliance plan. Finally, of note is the fact that the court was not analyzing N.J.S.A. 54:4-35(b), the statute at issue here, which specifically addresses counties participating in the ADP. For these reasons, the ruling in New Plan Realty Trust does not

persuade this court that the pre-tax year November 1 date cannot be used to decide the timeliness of a Chapter 91 request in a taxing district located in an ADP participating county.

The Township points to N.J.S.A. 54:4-38 as an example of statutory authority permitting an assessor to change assessments prior to filing the final assessment list, but after notices of assessment have been issued and the assessment list is made available for public inspection. This statutory provision, the Township argues, supports its position that the November 1 preliminary assessment list date is not controlling for purposes of sending timely Chapter 91 requests.

The argument is meritless. N.J.S.A. 54:4-38 requires assessors of a taxing district in non-ADP participating counties, to notify each taxpayer of the current and preceding year's assessment, and publicly advertise that the assessment list is available for inspection. This will allow a taxpayer to "confer informally with the assessor as to the correctness of the assessments, so that any errors may be corrected before the filing of the assessment list and duplicate." N.J.S.A. 54:4-38(a). Such notification must be accomplished "at least ten days before filing the complete assessment list," with a county board of taxation. Ibid. Thus, any errors in the assessment list may be corrected by the assessor prior to filing it on January 10 of the tax year. Thereafter, any changes in assessment require the assessor to notify the taxpayer by mail within 30 days. Ibid.

However, subsection (a) is not applicable to ADP participating counties. Ibid. (the statute applies "[e]xcept as provided in subsection b"). Rather, assessors of taxing districts in ADP participating counties must notify a taxpayer of the "preliminary" assessment "before filing the preliminary assessment list with the county board of taxation, so that the taxpayer can "ascertain" the assessment/s. See N.J.S.A. 54:4-38(b). Although when proposed, N.J.S.A 54:4-38(b) had provided that after notification of the preliminary assessment list, the assessor "thereafter . . . shall notify [the] taxpayer by mail within 30 days of any change to the assessment," see S. 1213 (2012),

this language was excluded from the statute when enacted. Thus, after the assessors of taxing districts in ADP participating counties send notices of the “preliminary assessment” to taxpayers by November 1 of the pre-tax year, they (or the county board of taxation) should “[t]hereafter, notify each taxpayer by mail within 30 days of any change to the assessment which has occurred as the result of a municipal-wide revaluation or reassessment of real property within the municipality.” N.J.S.A. 54:4-38(b) (emphasis added).²

Quite apart from the fact that the emphasized language shows that an assessor in an ADP participating county cannot change assessments “30 days thereafter,” except under the specified circumstances, the statute simply does not support the Township’s argument that the assessor can freely change assessments after submission of the preliminary list to the county board of taxation. When our courts have never considered the 30-day notice period in N.J.S.A. 54:3-38 as extending the January 10 date for purposes of determining the timeliness of a Chapter 91 request, there is no reason why this statute (or even N.J.S.A. 54:4-38(b)) should now be interpreted as implicitly or explicitly, extending the November 1 date for the exact same purpose, i.e., for determining the timeliness of a Chapter 91 request. The court thus rejects the argument that N.J.S.A. 54:4-38 exemplifies a statutory recognition of an assessor’s ability to change assessments, thus, of the flexibility of November 1 for purposes of determining the timeliness of a Chapter 91 request.

² See also N.J.S.A. 54:4-38.1, where for non-ADP participating counties, after mailing of the notices of assessment before February 1 of the tax year, the assessor or the county board of taxation shall “[t]hereafter . . . notify” a taxpayer of any “change to the assessment,” by mail within 30 days. A similar requirement is imposed for ADP participating counties, except the date for the notices of assessment is “on or before November 15 of the pretax year.” N.J.S.A. 54:4-38.1(b). Note that for both the non-ADP participating counties and for the ADP participating counties, an appeal from notices of assessment changes under N.J.S.A. 54:4-38.1(a) or (b), is authorized by N.J.S.A. 54:3-21(a)(1) and (a)(2).

The Township argues that assessors routinely change assessments up until the May 5 date, under the aegis of “correction of errors,” therefore, requiring assessors to adhere to a pre-tax year November 1 date will upset this practice, as well as the assessor’s discretion to set correct assessments. The court is aware that assessors file “assessor appeals” to effectuate “corrections” in assessments. However, this mechanism is employed for correcting assessments, and then only by submission of a formal tax appeal, not by a voluntary discretionary act by the assessor. See New Jersey Division of Taxation, Handbook for New Jersey Assessors, § 1102.01 (rev’d Aug. 2017) (“[a]fter the Tax List and Duplicate are filed with the County Board of Taxation, the assessor no longer has the authority to change the List,” but “may informally request the County Board change the Tax List prior to its formal certification by the Board,” and once the list is certified, any error in the tax list requires “the filing of a formal appeal to correct the error is needed.”) (citing N.J.S.A. 54:3-15; 4-55) (emphasis added).³ Nowhere in this Handbook are assessors advised that assessor appeals do not apply to ADP participating counties, or that an assessor can change/correct assessments after submitting the tax assessment list without approval of a county board of taxation. See also Westmark Partners, 12 N.J. Tax at 597 (rejecting a similar argument as lacking “merit” because the purpose of the Chapter 91 statute “is to assist the assessor, in the first instance, to make the assessment.”) (citations and internal quotation marks omitted).

Moreover, the fundamental theory underlying the Chapter 91 statute is that assessors need I&E information to assist them in setting the appropriate assessment for an income producing

³ N.J.S.A. 54:3-15 authorizes a county board of taxation to “view and inspect, so far as possible in all cases, the various assessed properties in the various taxing districts in the county, and make their revision and correction after such view and inspection.” N.J.S.A. 54:4-55 requires the county board to certify, by June 3 of the tax year, that “the corrected, revised and completed duplicates,” are “a true record of the taxes assessed,” and deliver the same to the tax collectors, after which “neither the assessor nor the collector shall make or cause to be made any change or alteration in the tax duplicate except as may be provided by law.”

property. See 440 Route 17 Partners, L.L.C., 28 N.J. Tax at 245. Corrections or modification via assessor appeals, of assessments already set, are not within the intent or scope of Chapter 91. See also Westmark Partners, 12 N.J. Tax at 596 (“the Legislature obviously intended that the income data be sought prior to setting assessments to be forwarded to the county boards”).

The Township notes that since plaintiff filed a direct appeal on February 16, 2018, thus had ample time to respond to the Chapter 91 request, it is disingenuous for plaintiff to challenge the request as being untimely. This argument misses the mark. First, plaintiff (or even the Township) is not barred from filing a petition with the county board of taxation by January 15 of the tax year even if the assessment is over \$1,000,000. See N.J.S.A. 54:3-21(a)(2) (a taxpayer or taxing district “may on or before” the later of April 1, or 45 days “from the date the bulk mailing of” of the Chapter 75 cards, file a direct appeal to the Tax Court, if the assessment “exceeds \$1,000,000.”) (emphasis added). Conversely, the statute does not bar the taxpayer from filing a direct appeal with the Tax Court on January 15 of the tax year. This means that I&E information must still be sought prior to the pre-tax year November 1 date so that the assessor may consider such information in imposing the initial assessment for an income-producing property. That the taxpayer can choose to file a direct appeal with the Tax Court on or before April 1 of the tax year does not change this analysis. Second, a taxpayer may be under the reasonable impression that having appealed the assessment, it is not obligated to respond to a Chapter 91 request that was meant to set the appealed assessment. Thus, the Township’s contention that its Chapter 91 request is timely based on the date of plaintiff’s appeal, is unavailing.

The Township reminds the court that recent precedent shows a marked intolerance for a taxpayer’s non-response, see Waterside Villas Holdings, L.L.C. v. Monroe Twp., 434 N.J. Super. 275 (App. Div. 2014), and plaintiff being such taxpayer, should not be able to turn the tables by

maintaining that the request was untimely. In the cited case, the higher court rejected excuses for non-response due to alleged confusion or mistake without the taxpayer's attempt to obtain some clarification in this regard. It held:

However, where the taxpayer receives a Chapter 91 request that it deems improper in some fashion, it may not simply ignore its statutory obligation to respond. Rather, the taxpayer must take action to challenge the request within the forty-five day statutory time limit, and to put the municipality on notice of its contention. In any event, the taxpayer cannot just sit by and do nothing until the assessment is finalized, as this taxpayer did, and thereafter seek to appeal the assessment by plenary review. Such conduct results in unnecessary expense, time and effort in litigation.

[Id. at 283] (citations and internal quotation marks omitted).

The court cautioned that,

Refusals on the part of taxpayers to cooperate with local property assessors cannot be tolerated by this court. Legitimate requests for information by assessors to prepare assessments are actions which should be encouraged by this court. Taxpayers frequently complain of local property tax assessors and their work. Here the taxpayer had an opportunity to supply to the assessor information pertinent to the assessor's work. It failed and refused to do so without any explanation, and its attitude in failing to even respond to the assessor's legitimate statutory request is inexcusable.

[Id. at 284] (citations and internal quotation marks omitted).

However, the court recognized that "legitimate requests" include those which are used "by assessors to prepare assessments." Ibid. (citation and internal quotation marks omitted). This is precisely what is wanting here, due to the timing of the Chapter 91 request. Indeed, the higher court noted that its holding does not extend to all situations, because before it was "not a case where the information was not requested in time to assist the assessor in making the assessment and to diminish the likelihood of litigation," in which case "the sanction required by Chapter 91 would not be available to the municipality." Id. at 284, n.5 (citations omitted).

In sum, based on the plain language of the relevant statutes analyzed herein, and the legislative history of the ADP law, the court finds persuasive plaintiff's contention that for taxing districts within the ADP participating counties, a Chapter 91 request is timely if the 45-day response period ends on or before November 1 of the pre-tax year. This would ensure that the I&E information can be used for, or can assist in the setting of assessments for income producing properties. While it is always advisable for taxpayers receiving a Chapter 91 request to respond in some fashion, even if to assert a total lack of comprehension as to the request, here, the defective request will not overcome the non-response such that the plaintiff is deprived of its opportunity to appeal the 2018 assessment. See e.g. 440 Route 17 Partners, L.L.C., 28 N.J. Tax at 246 (a Chapter 91 request not made within 45 days of the due date for the tax list submission is defective, thus, excuses "the taxpayer's non-response and preclude[es] dismissal of its complaint").

CONCLUSION

For the above reasons, the court denies the Township's motion to dismiss the complaint under Chapter 91.