

NJ Tax Court Ruling Dictates Caution for Buyers of Commercial Properties

Chapter 91 = Buyers Beware

Thomas J. Denitzio, Jr.

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Commercial real estate buyers are cautioned to update their due diligence checklists and their standard list of required seller representations following the New Jersey Tax Court's recent decision in *Yeshivat v. Borough of Paramus*, in which an existing property owner's real estate tax appeal was dismissed because the property's prior owner failed to respond to a pre-closing request from the tax assessor for income and expense information.

In the *Yeshivat* matter, under a statute referred to as "Chapter 91," the tax assessor sent a request for income and expense information to the owner of an income-producing property. The owner was given 45 days to respond. Six days after the request was sent, however, ownership of the property was transferred to a new owner, the plaintiff. Following the closing, the property ceased to be income-producing because the new owner was occupying the property.

Neither the prior owner nor the new owner responded to the Chapter 91 request. When the new owner subsequently filed a tax appeal, the municipality moved to dismiss the appeal for failure to respond to the request.

The new owner opposed the motion, arguing that dismissal was not appropriate for a number of reasons: the property was now owner-occupied; the Chapter 91 request had been sent only to the prior owner, and; the new owner was unable to comply with the tax assessor's request because the information was requested for a time period prior to the closing.

The Tax Court held that the failure of the prior owner to respond to a valid Chapter 91 request for income-producing property was a defect that 'runs with the land' and therefore barred the tax appeal of the subsequent

Attorneys

Thomas J. Denitzio, Jr.

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owner. The Tax Court refused to impose an obligation on the tax assessor to investigate all property transfers and then send a Chapter 91 request to subsequent owners. To the contrary, the Tax Court found that the property purchaser had an obligation to inquire about the assessment status to preserve its right to appeal.

For those purchasing commercial properties, following the Tax Court's advice concerning the nature and extent of pre-closing inquiry will avoid post-closing surprises in a subsequent tax appeal. In order to protect against the result in the *Yeshivat* case, purchasers of income-producing property should take the following actions:

- Contact the tax assessor in the municipality where the property is located to determine whether a Chapter 91 request has been sent with respect to the subject property; if so, determine when the request was sent and the deadline for providing a response; if a response was provided, obtain a copy of the request, the current owner's response and the date on which the response was received by the tax assessor.
- Include seller representations in the contract of sale confirming that the seller did not receive a Chapter 91 request or, if one was received, that the seller responded in a timely manner. Copies of the request and the seller's response should be produced and certified by the seller as true and complete copies thereof. The purchaser should also determine whether the seller's response was accurate as well as adequate under Chapter 91.

For additional information on property tax appeals or Chapter 91 requests, please contact the author of this Alert:

Thomas J. Denitzio

Co-Chair, Real Estate Department

TDenitzio@greenbaumlaw.com