

**To:** New Jersey Law Revision Commission  
**From:** Kiersten Fowler  
**Re:** Four issues concerning N.J.S. 54:4-34 and N.J.S. 54:4-35, as articulated in *440 Rt 17 Ptrns LLC v. Borough of Hasbrouck Heights and Alcatel-Lucent, USA, Inc. v. Township of Berkeley Heights*  
**Date:** November 6, 2017

## MEMORANDUM

### Executive Summary

N.J.S. 54:4-34 and N.J.S. 54:4-35 apply to Chapter 91 Tax Assessment Requests. Those sections of the statute were considered in the recent cases of *440 Rt 17 Ptrns LLC v. Borough of Hasbrouck Heights*<sup>1</sup> and *Alcatel-Lucent, USA, Inc. v. Township of Berkeley Heights*<sup>2</sup>. The cases raised three issues.

#### *440 Rt 17 Ptrns LLC v. Borough of Hasbrouck Heights*<sup>3</sup>

In this 2014 case, the court addressed the following issue as a matter of first impression: “whether a defect exists in the Assessor’s Chapter 91 request, excusing the taxpayer’s non-response and precluding dismissal of its complaint, where the request is made 45 days before actual submission of the Assessment List, but less than 45 days prior to January 10.”<sup>4</sup> The court answered affirmatively, denying the defendant’s motion for dismissal because a defect per se did exist.<sup>5</sup>

#### *Alcatel-Lucent, USA, Inc. v. Township of Berkeley Heights*<sup>6</sup>

This case from 2016 addressed two issues concerning Chapter 91 requests: (1) if the words “false” and “fraudulent” indicate a legislative intent that the state of mind of the taxpayer is a prerequisite to proving violation of N.J.S. 54:4-34; and (2) if the appeal-preclusion granted under Chapter 91 applies to farmland in light of the Farmland Assessment Act. The Court held that the Legislative history gave little insight regarding the first question, but construed both words to require an intent based on the dictionary definitions of “false” and “fraudulent,” which both contain the word “intentional” or a variation of it.<sup>7</sup> The court posited that regarding Chapter

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<sup>1</sup> 28 N.J. Tax 241 (2014).

<sup>2</sup> 2016 WL 4729651 (2016) (this is an unpublished opinion).

<sup>3</sup> 28 N.J. Tax 241 (2014).

<sup>4</sup> *Id.* at 242-243.

<sup>5</sup> *Id.* at 245-246

<sup>6</sup> 2016 WL 4729651 (2016).

<sup>7</sup> *Id.* at \*13-\*14.

91 disclosures, the Legislature did not intend to carve out an exception for farmland, but that the appeal-preclusion penalty still only applies to income-producing property.<sup>8</sup>

### **Excerpts from the Relevant Statutes**

#### **N.J.S. 54:4-34**

Titled *Statement by owner; written request; refusal to render; valuation of property by assessor; denial of appeal; grounds*,<sup>9</sup> N.J.S. 54:4-34 reads in relevant part that:

Every owner of real property of the taxing district shall, on written request of the assessor, made by certified mail, render a full and true account of his name and real property and the income therefrom, in the case of income-producing property, and produce his title papers, and he may be examined on oath by the assessor, and if he shall fail or refuse to respond to the written request of the assessor within 45 days of such request, or to testify on oath when required, or shall render a false or fraudulent account, the assessor shall value his property at such amount as he may, from any information in his possession or available to him, reasonably determine to be the full and fair value thereof. No appeal shall be heard from the assessor's valuation and assessment with respect to income-producing property where the owner has failed or refused to respond to such written request for information within 45 days of such request or to testify on oath when required, or shall have rendered a false or fraudulent account. . . .<sup>10</sup>

#### **N.J.S. 54:4-35**

Titled *Period for completing taxable valuations; filing of assessment list and assessor's duplicate*,<sup>11</sup> N.J.S. 54:4-35 states in relevant part:

a. Except as provided in subsection b. of this section, the assessor shall determine his taxable valuations of real property as of October 1 in each year and shall complete the preparation of his assessment list by January 10 following, on which date he shall attend before the county board of taxation and file with the board his complete assessment list, and a true copy thereof, to be called the assessor's duplicate. . . .<sup>12</sup>

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<sup>8</sup> *Id.* at \*17-\*19.

<sup>9</sup> N.J.S. 54:4-34.

<sup>10</sup> *Id.*

<sup>11</sup> N.J.S. 54:4-35.

<sup>12</sup> *Id.*

## Discussion

*440 Rt 17 Ptrns LLC v. Borough of Hasbrouck Heights*<sup>13</sup>

400 Route 17 North in Hasbrouck Heights (“Plaintiff”) is an “income-producing commercial property that was assessed at \$2,229,100 for the 2014 tax year.”<sup>14</sup> A Chapter 91 request was sent by the Borough to the Plaintiff in order to obtain income and expense information so that the assessment could be validated.<sup>15</sup> The United States Post Office apparently did not receive this request until November 29, 2013<sup>16</sup> and Plaintiff did not receive it until December 2, 2013.<sup>17</sup> At that point, Plaintiff did not respond to the request because it was received “too late to allow for the entire 45-day response period under N.J.S.A. 54:4-34 to elapse prior to the January 10 deadline imposed by N.J.S.A. 54:4-35.”<sup>18</sup>

The Assessor asserts that he did not submit the Tax Assessment List until February 26, 2014 (rather than January 10<sup>th</sup>) because he received permission from Bergen County’s Board of Taxation for a late filing.<sup>19</sup> Therefore, Plaintiff would have been able to respond to the Chapter 91 request within 45 days and the Assessor could have made any necessary adjustments before his February submission.<sup>20</sup> Nothing in the record suggests that the public knew of the delayed filing, or its authorization by the Board of Taxation.<sup>21</sup>

Plaintiff filed a complaint that attacked the assessment of 440 Route 17 North and the Defendant countered by making a motion for dismissal.<sup>22</sup> The Defendant based its motion on the “Plaintiff’s failure to comply with a Chapter 91 request pursuant to N.J.S.A. 54:4-34.”<sup>23</sup> The Plaintiff contends that it is excused from responding to the Chapter 91 request because the Defendant did not strictly comply with the requirements set forth in N.J.S. 54:4-35.<sup>24</sup>

Ultimately, the Court held that the statutory language excuses tax-payers non-response and precludes dismissal of its complaint in situations “where a request is made 45 days before actual submission of the Assessment List, but less than 45 days prior to January 10.”<sup>25</sup> In coming

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<sup>13</sup> 2016 WL 4729651 (2016).

<sup>14</sup> 28 N.J. Tax 241, 242 (2014).

<sup>15</sup> *Id.* at 243.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 242.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 243.

<sup>25</sup> *Id.* at 246.

to this conclusion, the Court delved into the way courts have handled such situations in the past, finding that when a defective request exists

the statute's intention that taxpayers must assist the assessor in generating an assessment must give way to other important considerations, including that municipality acting in good faith, the duty to make a clear request, and "orderly procedure." In all these cases even though it would have served the "assist the assessor" purpose to dismiss the complaints, those other considerations precluded dismissal.<sup>26</sup>

The Court reasoned that a "municipality's failure to comply strictly with the terms of the statute violates the "square corners doctrine" and precludes application of the remedy it seeks, notwithstanding the taxpayer's failure to comply with the request...Because the requirements of the statute are mandatory on the taxpayer, the requirements for the municipality and the assessor must also be mandatory."<sup>27</sup> It is noted that no court has addressed whether the mailing date or date of receipt starts the 45-day clock for taxpayers, however, that was not relevant in this case since both dates fell after November 26<sup>th</sup>.<sup>28</sup>

*Alcatel-Lucent, USA, Inc. v. Township of Berkeley Heights*<sup>29</sup>

#### A. Facts and Procedural History

Lucent Technologies, Inc. ("Lucent") conveyed the title to the subject property to LTI NJ Finance LLC ("LTI") on June 29, 2001 to facilitate mortgage loan financing.<sup>30</sup> Simultaneously, "LTI entered into a twenty year 'transfer/leaseback' agreement with Lucent whereby Lucent was to be treated as the "beneficial owner."<sup>31</sup> Lucent and Alcatel merged in November 2006, and as a condition of the merger, the plaintiff established a wholly owned subsidiary, LGS Innovations, that performed services for the U.S. government.<sup>32</sup> LGS was sold in April 2014.<sup>33</sup> Lastly, LTI and Alcatel-Lucent merged and the lease between LTI and the plaintiff was terminated on September 9, 2013.

In 2013 the defendant's tax assessor sent a Chapter 91 request via certified mail return receipt.<sup>34</sup> However, the request was flawed in that its reference line stated "RE:

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<sup>26</sup> *Id.* at 248.

<sup>27</sup> *Id.* at 249.

<sup>28</sup> *Id.*

<sup>29</sup> *Alcatel-Lucent*, 2016 WL at \*1.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

Block \_\_\_\_\_, Lot \_\_\_\_\_”.<sup>35</sup> Additionally, the 2013 Chapter 91 request did not identify the date parameters for which information was being sought, but it did seek the “the current income and expense data.”<sup>36</sup>

In 2013, plaintiff’s corporate counsel issued a written response that stated the property was not income producing.<sup>37</sup> In June 2014, LTI submitted an Application for Farmland Assessment, Woodland Data Form, and detailed Forest Management Plan to the defendant’s tax assessor seeking farmland tax assessment for the 2014 tax year.<sup>38</sup>

In 2014, the defendant’s assessor sent another Chapter 91 request that contained the same flaws as the 2013 request.<sup>39</sup> In both March 2014 and March 2015, “plaintiff timely filed a Complaint with the Tax Court” challenging both the 2014 tax assessment of the subject property and also the 2014 farmland assessment denial notice for the subject property.<sup>40</sup> In response, Defendant filed motions seeking to dismiss all of Plaintiff’s complaints.<sup>41</sup>

Defendant argues dismissal is appropriate because Plaintiff failed to respond in any fashion to the 2014 Chapter 91 request and thus is precluded from advancing the causes of the 2015 Complaints as well.<sup>42</sup> Additionally, the Defendant accused Plaintiff’s Counsel’s June 13 letter as being a “false and fraudulent account.”<sup>43</sup>

## B. The Meaning of False or Fraudulent Account in Chapter 91

The Court asked if the Legislature contemplated “examination of a party’s mindset and intent, as a prerequisite for addressing whether a response constitutes a ‘false or fraudulent account’ under N.J.S.A. 54:4-34.”<sup>44</sup>

In relevant part, N.J.S. 54:4-34 states that: “no appeal shall be heard from the assessor’s valuation and assessment with respect to income producing property where the owner has failed or refused to respond to such written request for information within 45 days...or shall have rendered a false or fraudulent account...”<sup>45</sup>

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at \*2.

<sup>37</sup> *Id.* at \*2-\*3.

<sup>38</sup> *Id.* at \*3.

<sup>39</sup> *Id.* at \*4.

<sup>40</sup> *Id.* at \*3-\*4.

<sup>41</sup> *Id.* at \*5.

<sup>42</sup> *Id.* at \*6.

<sup>43</sup> *Id.* at \*5.

<sup>44</sup> *Id.* at \*12.

<sup>45</sup> *Id.* at \*13 (quoting N.J.S. 54:4-34).

Defendant strictly interprets the phrase “false or fraudulent” to mean something not true, erroneous or incorrect. Thus, defendant argues that when a property owner's response to a Chapter 91 request contains any inaccuracy, distortion or misrepresentation, no matter how insignificant, Chapter 91 requires dismissal, and the intent of the offering party is of no moment. Conversely, plaintiff interprets “false or fraudulent” as a deliberate and knowing act designed to deceive. Hence, in evaluating whether a response to a Chapter 91 request constitutes a “false or fraudulent account,” plaintiff argues the court should examine both the scope of the information submitted and the corresponding intent of the party in formulating the response.<sup>46</sup>

“In the taxation arena, when faced with an issue of statutory construction, the preferred ‘approach to [interpreting] the meaning of a tax statute is to give to the words used by the Legislature “their generally accepted meaning, unless another or different meaning is expressly indicated.” ...However, when the generally accepted meaning of a word or words are indeterminate, the courts ‘sole guidepost’ must be to effectuate the intent of our Legislature.”<sup>47</sup>

The Court looked to the plain language of the statute and at both *Black’s Law Dictionary* and *Webster’s II New College Dictionary* to see how false and fraudulent are defined.<sup>48</sup> Both definitions contained the word “intentional” and variation of it, leading the Court to infer that “a literal reading of the term ‘fraudulent’ signals a deliberate state of mind and actions intended to deceive another.”<sup>49</sup> The Court noted, however, that “the word ‘false’ may, but does not always require intentional conduct or implicate a party’s state of mind.”<sup>50</sup> Because it determined that “a plain reading of the statutory language provides no meaningful insight into resolution of the issue presented” the Court turned to “an examination of the legislative history of Chapter 91 to attempt to glean our Legislature's intent.”<sup>51</sup> The Court looked as well to dicta in an earlier New Jersey Supreme Court case.

After doing so, the Court explained that it was “not convinced that in enacting Chapter 91 our Legislature intended taxpayers to face the harsh appeal preclusion consequences when a timely, good faith response to a Chapter 91 request was furnished which inadvertently excluded, overstated or understated property or income and expense information.”<sup>52</sup>

### C. How Does Chapter 91 Intersect with the Farmland Assessment Act

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<sup>46</sup> *Id.* at \*13.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at \*13-\*14.

<sup>50</sup> *Id.* at \*14.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at \*15.

The final issue addressed by the Court was comprised of two parts: (1) “whether the information-seeking queries under N.J.S.A. 54:4-34 extend to owners of real property for which farmland assessment is, or may be sought,”<sup>53</sup> and (2) if these queries are applicable, “do the tax appeal-preclusion provisions under Chapter 91 bar consideration of a property owner’s complaint challenging denial of farmland assessment when no response to a request for data and information under N.J.S.A. 54:4-34 is furnished.”<sup>54</sup>

After a review of the statutory language, and relying on principals of statutory interpretation, the Court determined that N.J.S. 54:4-34 applies to both income-producing and non-income producing property.<sup>55</sup> The Court explained that the “owners of income-producing properties for which exemption is claimed have an obligation to respond to a Chapter 91 request, and the purpose of Chapter 91 with respect to exempt property is the same as it is with respect to property which is clearly taxable: ‘to afford the assessor access to fiscal information that can aid in valuing the property [and] ... to encourage compliance with the accounting requirement.’”<sup>56</sup>

The Court added, however, that this does not “inevitably translate into imposition of the appeal-preclusion penalties under Chapter 91 upon every property owner.”<sup>57</sup>

Thus, the owner of real property which may seek, and qualify for, preferential farmland assessment and which real property is not “income producing” will not suffer the appeal preclusion consequences by virtue of its failure to respond to a Chapter 91 request. Conversely, the owner of real property which generates profit or loss from agricultural activities that qualify for preferential farmland assessment, and simultaneously uses the property for non-agricultural income-producing ventures, will experience the Chapter 91 appeal-preclusion limitations resulting from a failure to timely respond to a request for income and expense information.<sup>58</sup>

### **Conclusion**

Staff seeks Commission authorization to conduct additional research and outreach in light of the issues addressed in *440 Rt 17 Ptrns LLC v. Borough of Hasbrouck Heights* and *Alcatel-Lucent, USA, Inc. v. Township of Berkeley Heights* in order to determine whether modification of the statutory language of N.J.S. 54:4-34 and N.J.S. 54:4-35, could be of assistance in interpreting and applying those statutes.

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<sup>53</sup> *Id.* at \*17.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at \*18.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*