

Guard your rights to a realty tax appeal

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The Record

Q. I own a commercial property that is currently vacant. Must I still complete the income and expense statement form requested by the tax assessor?

Many property owners lose their right to challenge their real property tax assessment by ignoring the annual request by their local tax assessor to complete an income and expense statement. This request is known as a Chapter 91 filing.

Unfortunately, many property owners either ignore the Chapter 91 request because they do not believe they own income-producing property or they fail to complete the income and expense statement properly. A common misconception is any income derived in order to be reportable must be between unrelated parties and must be an arm's length transaction. This is not correct. Chapter 91 applies to all properties whether residential or commercial, whether owner-occupied or tenanted, whether leased or totally vacant. The test is not the amount of income derived but rather whether the property is capable of deriving income. This means that if you have a vacant building and are served by the tax assessor with a Chapter 91 request, you must complete the income and expense statement and return it to the tax assessor within 45 days. I suggest you return the completed form by certified mail so that you have proof of compliance within the requisite time.

Another common misconception is if you own two entities and one owns the property and another leases the property then there is no need to complete the Chapter 91 filing.

Simply because the two entities may be related or the rent being paid is not "market rate" and the transaction is not arm's length does not serve as an exemption for a Chapter 91 request.

A further mistake often encountered is a property owner failing to include income from all sources. Income derived from cell antennas, parking leases, ATMs, food-service concessions, bank kiosks and other relatively small service providers must be included on the Chapter 91 request.

In these difficult economic times, don't lose your ability to reduce your real property taxes. Complete and file your Chapter 91 response in a timely manner, otherwise the municipality can seek to dismiss any subsequent tax appeal you file.

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