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Commissioner

State of Georgia
Department of Revenue
Administrative Division - Tax Law & Policy
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Frank M. O'Connell
Director

August 25, 2010

[REDACTED]

Re: Claim for Refund of Real Estate Transfer Tax pursuant to O.C.G.A. § 48-6-7(a) in the amount of [REDACTED] Paid upon recording a Limited Warranty Deed with the Clerk of Superior Court, [REDACTED] on September 30, 2009. Parties are [REDACTED] (Grantor); [REDACTED] (Grantee)

Dear [REDACTED]

I have carefully considered your Claim for Refund of real estate transfer tax pursuant to the above-captioned matter. Your Claim for Refund plus accompanying documents were all considered in the review. It is my determination that your Claim for Refund in the amount of [REDACTED] is denied. The amount may not be refunded.

O.C.G.A. § 48-6-1 provides, in pertinent part, that real estate transfer tax is imposed on each deed, instrument, or other writing by which any lands, tenements or other realty sold is granted, assigned, transferred, or otherwise conveyed when the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrance existing prior to the sale and not removed by the sale) exceeds \$100.00.

O.C.G.A. § 48-6-2(a) provides a list of exemptions from payment of real estate transfer tax.

Two valid, additional exemptions not found in the latter Code section are listed along with the others on the website of the Georgia Superior Court Clerks' Cooperative Authority (GSCCCA). Thumbnail descriptions for each are provided along with guidance concerning the electronic submission of a PT-61 form preparatory to recordation of a transfer-conveyance of property. The two additional exemptions are:

[REDACTED]
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Corporate Merger – Deeds transferring title from the old Corporation to the new Corporation as part of a merger.

Corporation to Corporation – Deeds conveying interest only when there is a Corporate Dissolution.

In the instant matter, claimant states the latter exemption applies to the conveyance of property recorded on September 30, 2009. Although the PT-61 filed and recorded failed to include an exemption in “Section C – Tax Computation”, and tax totaling [REDACTED] was paid to the Clerk of Superior Court, [REDACTED] claimant states: “We subsequently discovered that we were not required to pay a transfer tax because we fell under an exemption for entities that dissolve and must transfer the property to a newly formed legal entity.” In a letter to the State Revenue Commissioner dated May 14, 2010, claimant stated: “There was no consideration paid for the property and property ownership was merely transferred to a newly formed legal entity with the same member/owner.” Claimant also provided a copy of O.C.G.A. § 14-11-602. Dissolution.

As captioned above, the property at issue was conveyed to [REDACTED] (“Grantee”). Per the Corporations Section of the Georgia Secretary of State’s website, [REDACTED] “Entity Creation Date” is given as September 23, 2009, or seven days prior to recording of the conveyance-transfer.

It is a fundamental rule that exemptions are construed narrowly against the taxpayer and in favor of the tax. Unless the entity claiming the exemption falls precisely within the exemption granted in every respect, the exemption does not apply.

Department of Revenue policy concerning a Corporate Dissolution has always followed the old federal documentary stamp tax. That is, the corporate entity (“sub”) that is dissolving must convey-transfer its assets back to the “Parent Corporation.” The Department’s policy does not allow a conveyance-transfer of assets forward to any newly formed entity or corporation.

Accordingly, based upon the Department’s consistent and long-held policy, there is no basis under prevailing Georgia law for this claim to be approved. Therefore, the Claim for Refund in the amount of [REDACTED] must necessarily be denied.

For informational purposes only, a copy of this decision is being provided to the Clerk of Superior Court, [REDACTED]

Sincerely,


Frank M. O'Connell

FOC/RJL/me

cc: Clerk of Superior Court, [REDACTED]