



Department of Revenue
State of Georgia
1800 Century Center Bldg.
Suite 15300
Atlanta, Georgia 30345
(404) 417-2100

Bart L. Graham
Commissioner

April 23, 2004



RE: Protest and Claim for Refund of Intangible Recording Tax Paid Upon Recording a Security Deed Between [REDACTED] (Lender) and [REDACTED] And [REDACTED] (Borrowers); Request for Waiver of Penalties

Dear [REDACTED]

I have carefully considered your Protest and Claim for Refund of intangible recording tax paid in the amount of [REDACTED] plus penalties and interest assessed when you recorded a Security Deed between [REDACTED] (Lender) and [REDACTED] and [REDACTED] (Borrowers) on February 18, 2004. Your request has been considered based on the information provided in your Protest, Georgia Intangible Recording Tax and your Claim for refund, Georgia Intangible Recording Tax with all supporting documentation.

It is my determination that intangible recording tax was due when the security instrument representing a refinancing between the parties was recorded. It is my further determination that the penalties and interest that were assessed based on the untimely recording of the security instrument may not be waived.

O.C.G.A. 48-6-65 provides, in pertinent part, no tax shall be collected on that part of the face amount of a new instrument securing a long-term note secured by real estate which represents a refinancing by the original lender of unpaid principal of a previous instrument securing a long-term note secured by real estate if all intangible recording tax due on the previous instrument has been paid or the previous instrument was exempt from intangible recording tax.

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Department of Revenue Rule 560-11-8-.05 provides, in pertinent part, that intangible recording tax is not required to be paid on that part of the face amount of a new instrument securing a long-term note secured by real estate which represents a refinancing by the original lender and original borrower of unpaid principal of an existing instrument securing a long-term note secured by real estate still owned by the original lender, if the intangible recording tax was paid on the original instrument or the original holder of the instrument was exempt.

Mortgage Electronics Registration Systems, Inc. (MERS) was shown as the grantee on the original security instrument between the parties. The Terms and Conditions that are a part of the binding agreement between MERS and lenders who register loans on the MERS system requires that the lenders cause MERS to appear in the appropriate public records as the Mortgagee of Record. Since MERS was the Mortgagee of Record for the original security instrument and the mortgage had been assigned by [REDACTED] to them, it cannot be said that [REDACTED] is the original lender, who owned the mortgage at the time of refinancing. The requirement stated in Department of Revenue Rule 560-11-8-.05 was not met.

The assessment of penalties by the Clerk of Superior Court, [REDACTED] resulted from your failure to exercise due diligence by timely responding to the requests by the Clerk to pay the tax due between your initial presentation of the instrument for recording, their request dated December 31, 2003 and their request dated January 21, 2004.

Intangible recording tax, penalties and interest paid in the amount of [REDACTED] included in your request may not be refunded. A copy of this letter is being provided to the Clerk of Superior Court, [REDACTED] as their authority to disburse the amount being held in a special escrow account pending this determination.

Sincerely yours,



Bart L. Graham

BLG/JWM/jt

cc: Clerk of Superior Court, [REDACTED]