



Bart L. Graham
Commissioner

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

January 16, 2008



Re: Intangible Recording Tax Protest and Claim for Refund per O.C.G.A. § 48-6-76 in the amount of [REDACTED] paid upon recording a security instrument representing a refinance with the Clerk of Superior Court, [REDACTED] on March 7, 2007. Parties are [REDACTED] (Borrower) and [REDACTED] (Agent for itself et al.)

Dear [REDACTED]

I have carefully considered your Protest and Claim for Refund of intangible recording tax per O.C.G.A. § 48-6-76 pursuant to the above-captioned matter. Your Protest and Claim for Refund, your letters dated March 12, 2007, March 27, 2007, and May 24, 2007, plus all associated documents were considered in the review. It is my determination that your Protest and Claim for Refund in the amount of [REDACTED] is denied. The amount may not be refunded.

O.C.G.A. § 48-6-65 provides, in pertinent part, that 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 that represents a refinancing by the original lender of unpaid principal on 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.

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 which represents a refinancing between the original lender and original borrower of unpaid principal of an existing instrument 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.

In order to be exempt from payment of the intangible recording tax on that part of the face amount of a new instrument which represents a refinancing of the unpaid principal balance on a

[REDACTED]
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previous instrument, three conditions must be met:

1. The borrower must be the original borrower.
2. The lender must be the original lender.
3. The original lender must own the note being refinanced.

In the matter under Protest, an original long-term instrument was executed on November 17, 2004, between Borrower ("Grantor") and [REDACTED] ("Grantee"). Prior to that date, on October 4, 2004, both Grantor and Grantee entered into a "Senior Facilities Agreement" worth [REDACTED] and a "Mezzanine Facility Agreement" worth [REDACTED] with a number of different lenders. Total amount of original principal advanced was [REDACTED]. Date of recordation for the security instrument was December 6, 2004. Thus, those various agreements were established prior to both the date of execution and date of recording. [REDACTED] (hereinafter [REDACTED] was listed as "Grantee" and "Agent" on the original instrument. [REDACTED] contributed to the original principal amount in the form of five different loan shares as part of the syndications. [REDACTED] cumulative responsibility of the original principal amount of [REDACTED] was [REDACTED]. It was one of fifteen different participating lenders.

Subsequently, a new instrument was executed on March 1, 2007, and recorded on March 7, 2007, between Grantor and [REDACTED] as agent for Lenders and Lender Counterparties (in such capacity, "Grantee"). This represented a refinancing of the entire face amount of the debt of unpaid principal totaling [REDACTED]. For this instrument, the number of participating lenders was different than the original group; there were a total of eight lenders, of which five were new participating lenders.

Because the participating lenders involved in the refinance were different from the group of participating lenders involved in the original loan, it cannot be said that the subsequent transaction was a refinancing by the "original lender," which is explicitly required under O.C.G.A. § 48-6-65(b) in order to be exempt from payment of further intangible recording tax.

A copy of this determination is being provided to the Clerk of Superior Court, [REDACTED] so that the money collected and deposited into an escrow account per O.C.G.A. § 48-6-76(b) may be distributed according to law.

Sincerely,


Bart L. Graham

BLG/RJL/mb

cc: Clerk of Superior Court, [REDACTED]