



State of Georgia

Department of Revenue

Suite 15300

1800 Century Boulevard

Atlanta, Georgia 30345

(404) 417-2100

May 27, 2008

Bart L. Graham
Commissioner

[REDACTED]

Re: Intangible Recording Tax Protest and Claim for Refund per O.C.G.A. § 48-6-76(c) in the amount of [REDACTED] filed upon recording a Multi-County Security Deed with the Clerk of Superior Court, [REDACTED] on March 13, 2008. Parties are [REDACTED] (Grantor) and [REDACTED] (Grantee)

Dear [REDACTED]

I have carefully considered your intangible recording tax Protest and Claim for Refund per O.C.G.A. § 48-6-76(c) pursuant to the above-captioned matter. Your Protest and Claim for Refund, and your correspondence received on April 10, 2008, and April 21, 2008, with all accompanying documents were 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. § 48-6-61 provides in pertinent part that security instruments must be filed and the intangible recording tax paid no later than ninety days from the date of execution by the parties. The statute also provides that the face page of every security instrument must contain three things for the benefit of the collecting officer: the date of execution of the instrument, the maturity date of the note, and the principal amount of the note.

O.C.G.A. § 48-6-74 concerns distribution of revenues from intangible recording tax when real property is located in more than one county. The corresponding Department of Revenue Regulation is Ga. Comp. R. & Regs. r. 560-11-8-.08 Multi-County Property. That regulation states, as follows: At (1), ". . . the intangible recording tax shall be paid to the county in which the instrument is first recorded. The value of the real property located in each county *must be certified under oath by the holder of the note* presenting the instrument for recording." (emphasis added) At (2), "The collecting officer will then transmit to each of the other counties their proportionate share of the tax, including any interest and penalties received, based upon multi-

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plying the total tax, interest and penalties by the percentage of the value that the real property securing the instrument in that county bears to the value of all Georgia real property securing the instrument. The instrument and penalties shall be transmitted to the other counties in the same manner as the tax, including the original county withholding the same applicable percentage as a collection fee." At (3), "Once the deed to secure debt is recorded, the certification that the proper intangible recording tax has been paid entitles the holder to record the deed to secure debt in any other county of this state without payment of any further tax."

In the instant matter, a security instrument was recorded with the Clerk of Superior Court, [REDACTED] and intangible recording tax paid, on July 20, 2001. In addition to a failure to adhere to the guidelines set forth in § 48-6-61, the instrument did not conform to Regulation 560-11-8-.08, as nowhere did it indicate for the benefit of the collecting officer that it secured property located in multiple counties along with applicable values for each. As a direct consequence of those deficiencies, no intangible recording tax was ever distributed by [REDACTED]

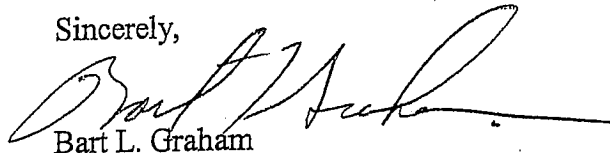
In an affidavit that accompanied the Protest on March 13, 2008, claimant admits a failure to record the instrument—either a copy of the recorded original evidencing that intangible tax had been paid or a counterpart—with the Clerk of Superior Court, [REDACTED]

When claimant sought to record the security instrument in [REDACTED] on February 27, 2008, the collecting officer rejected that attempt because nowhere in the instrument was it labeled as "Multi-County." It also failed to follow the procedure set forth in Regulation 560-11-8-.08 by certifying under oath the value of the real property located in each county. Not until fifteen (15) days later, on March 13, 2008, did claimant formally record the security instrument under Protest along with an affidavit plus payment of intangible recording tax, penalty, and interest.

It is due to claimant's clear and repeated failures to follow O.C.G.A. §§ 48-6-61 and Regulation 560-11-8-.08, plus a failure to exercise diligence that caused the delay in recording any type of security instrument in [REDACTED] for almost eighty (80) months. For those reasons, the Protest and Claim for Refund must be denied.

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]
Clerk of Superior Court, [REDACTED]