



Bart L. Graham
Commissioner

State of Georgia
Department of Revenue

Suite 15300
1800 Century Boulevard
Atlanta, Georgia 30345
(404) 417-2100

April 29, 2009

[REDACTED]
[REDACTED]
Re: Intangible Recording Tax Protest and Claim for Refund per O.C.G.A. § 48-6-76(c) in the amount of [REDACTED] paid upon recording a Security Deed with the Clerk of Superior Court, [REDACTED] on February 20, 2009. Parties are [REDACTED] (Grantor) and [REDACTED] (Grantee)

Dear [REDACTED]

I have carefully considered your Protest and Claim for Refund of intangible recording tax per O.C.G.A. § 48-6-76(c) pursuant to the above-captioned matter. Your Protest and Claim for Refund plus all associated 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. § 48-6-60 sets forth "Definitions" as they relate to intangible recording tax. Paragraph Two defines an "instrument" or "security instrument" as any written document that conveys or creates a lien or encumbrance on real estate for the purpose of securing a long-term note secured by real estate. Paragraph Three defines a "Long-term note secured by real estate" as any note representing credits secured by real estate by means of mortgages, deeds to secure debt . . . or any other form of security instrument . . . when any part of the principal of the note falls due more than three years from the date of the note or from the date of any instrument executed to secure the note and conveying or creating a lien or encumbrance on real estate for such purpose."

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 tax is imposed on each instrument at a rate of \$1.50 per \$500.00 or fraction thereof of the face amount of the note secured by the instrument.

Ga. Comp. R. & Regs. r. 560-11-8-.05 Refinancing, provides 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

[REDACTED]
Page Two

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.

In the instant matter, the security instrument recorded on February 20, 2009, meets the definition of a long-term note secured by real estate. It cannot be said to represent a true "refinancing" of an existing instrument securing a long-term note secured by real estate, however, because the property being secured is materially different compared to the property secured by recording of a previous security instrument on December 7, 2006. Accordingly, intangible tax was properly assessed by the Clerk of Superior Court, [REDACTED] when a Security Deed referencing long-term principal in the amount of [REDACTED] was presented for recording on February 20, 2009. For that reason, therefore, 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.

Finally, this determination is being rendered without consideration as to whether real estate transfer tax was due and payable pursuant to a "Land Swap" agreement that was effectuated by recording of two PT-61 forms on July 31, 2007, and the subsequent recording of two Quit Claim Deeds between the identical parties on October 11, 2007.

Sincerely,



Bart L. Graham

BLG/RJL/mb

cc: Clerk of Superior Court, [REDACTED]