



State of Georgia

Department of Revenue

Suite 15300

1800 Century Boulevard

Atlanta, Georgia 30345

(404) 417-2100

July 27, 2009

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] paid upon recording a Security Deed with the Clerk of Superior Court, [REDACTED] on April 2, 2009. Parties are [REDACTED] (Borrower) and [REDACTED] (Lender)

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.

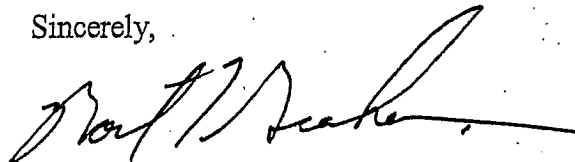
At (a), it states: "The new instrument must contain a statement of what part of the face amount represents a refinancing of unpaid principal. This information must be disclosed on the face of the instrument or in the alternative may be submitted in the form of an affidavit indicating which part of the face amount represents a refinancing of unpaid principal."

In the instant matter, the security instrument recorded on April 2, 2009, meets the definition of a long-term note secured by real estate. In contravention of 560-11-8-.05(a), you failed to disclose on its face for the benefit of the collecting officer a statement that it related to any prior security instrument on file in [REDACTED] No Deed Book and Page Number referencing a prior security instrument was provided. Nor was any statement given for the benefit of the collecting officer that indicated what the existing principal balance of the prior loan was as it relates to the new note that was executed with the lender. In the alternative, you also failed to submit an affidavit per 560-11-8-.05(a).

Accordingly, the security instrument was properly handled by the Clerk of Superior Court, [REDACTED] when it was presented for recording under Protest on April 2, 2009. The collecting officer properly assessed and collected intangible recording tax due in the amount of [REDACTED]. The protest and claim for refund must therefore 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]