

Bart L. Graham
Commissioner

State of Georgia
Department of Revenue

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

August 19, 2009

[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 October 27, 2008. Parties are [REDACTED] (Borrower); [REDACTED] (Lender)

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, plus all associated documents were considered in the review. It is my determination that intangible recording tax was not due on the entire amount of the long-term note secured by real estate when the security instrument representing a refinance was recorded in [REDACTED] on October 27, 2008. Therefore, your Claim for Refund in the amount of [REDACTED] is upheld.

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 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 if the previous instrument was exempt from intangible recording tax.

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 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.

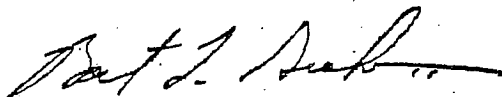
[REDACTED]
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In the instant matter, [REDACTED] has always been, and remains, the person considered the "legal owner" of the property being secured by the instrument. He was the only person listed on the Warranty Deed that formally conveyed the property. He is also the lone person listed on the PT-61 Form that was executed contemporaneously as part of the conveyance. [REDACTED] is not considered a legal owner of the subject property; her name is not found on the title to the property.

Therefore, [REDACTED] and [REDACTED] are considered to meet the definition of "original borrower" and "original lender" in the context of O.C.G.A. § 48-6-65 and Revenue Regulation 560-11-8-.05. The Protest and Claim for Refund in the amount of [REDACTED] must therefore be upheld.

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 refunded to [REDACTED] according to law.

Sincerely,



Bart L. Graham

BLG/RJL/mb

cc: Clerk of Superior Court, [REDACTED]