



Bart L. Graham
Commissioner

State of Georgia
Department of Revenue

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

October 21, 2009

[REDACTED]

Re: Protest and Claim for Refund of Intangible Recording Tax per O.C.G.A. § 48-6-76(c) in the amount of [REDACTED] paid upon recording a Security Deed pursuant to a refinance with the Clerk of Superior Court, [REDACTED] on February 26, 2009. Parties are [REDACTED] (Grantor) and Mortgage Electronic Registration Systems, Inc. (Grantee); [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 copies of all associated documents were considered in the review. It is my determination that your Claim for Refund in the amount of [REDACTED] is upheld. The amount may be refunded by the Clerk of Superior Court, [REDACTED].

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.

Ga. Comp. R. & Regs. r. 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.

[REDACTED]
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Although Mortgage Electronic Registration Systems, Inc. (MERS) was shown as the "grantee" on the security instrument representing a refinance between the parties, they cannot be said to be the "lender." In the instant matter, [REDACTED] has been the lender for both the original long-term security instrument, and the security instrument that represents a refinance. The requirement stated in O.C.G.A. § 48-6-65 and Department of Revenue Rule 560-11-8-.05 has been met. Further, because no "new money" was advanced as part of the refinance between the parties, because all tax due had been paid when the original instrument was recorded, the security instrument recorded under Protest on February 26, 2009, was not subject to payment of additional 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 refunded to the claimant according to law.

Sincerely,


Frank M. O'Connell

FOC/RJL/me

cc: Clerk of Superior Court, [REDACTED]