



Bart L. Graham
Commissioner

State of Georgia
Department of Revenue

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

October 22, 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 representing a refinance with the Clerk of Superior Court, [REDACTED] on September 15, 2009. Parties are [REDACTED] and [REDACTED] (Borrower) and [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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In the instant matter, [REDACTED] and [REDACTED] qualify as an "original borrower"; [REDACTED] [REDACTED] qualifies as an "original lender." The fact that Mortgage Electronic Registrations Systems, Inc. (MERS) is captioned as "Grantee" on the face of the security instrument representing a refinance is not pertinent to this issue given that 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 all tax due was paid when the original security instrument was recorded, and that the amount of long-term indebtedness pursuant to the refinance between the parties has been reduced, no further tax should have been collected upon recording on September 15, 2009.

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]