



**Bart L. Graham**  
Commissioner

State of Georgia  
**Department of Revenue**

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

November 23, 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 August 24, 2009. Parties are [REDACTED] (Grantor) and Mortgage Electronic Registration Systems, Inc. (Grantee) w/ [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 Protest and Claim for Refund is approved in part and denied in part.

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. In this case, the date of execution of the Security Deed was April 1, 2009. The tax was not paid within 90 days and thus a bar to any action for collection on the instrument was automatically imposed pursuant to O.C.C.A. § 48-6-77(a).

The bar to collection was removed by the subsequent recording of the Security Deed, payment of the tax imposed under O.C.G.A. § 48-6-61, and the payment of interest and a penalty imposed under O.C.G.A. § 48-6-77. In this case, the ultimate recording of the instrument in [REDACTED] occurred on August 24, 2009, more than four months from the date of execution.

[REDACTED]  
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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.

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 11-8-.05 has been met.

Because the instrument was not recorded timely in conformance with O.C.G.A. § 48-6-61, however, it is my determination that penalty and interest is due with respect to the amount of intangible recording tax paid, totaling [REDACTED] that represents the "new money" advanced to Grantor. The Clerk of Superior Court is therefore ordered to retain the amount of [REDACTED] in intangible recording tax plus Penalty and Interest assessed based upon that amount only.

A copy of this determination is being provided to the Clerk of Superior Court, [REDACTED] so that the balance of the money collected and deposited into an escrow account per O.C.G.A. § 48-6-76(b) may be refunded to claimant according to law.

Sincerely,

  
Frank M. O'Connell

FOC/RJL/me

cc: Clerk of Superior Court, [REDACTED]