



Bart L. Graham
Commissioner

State of Georgia
Department of Revenue
Administrative Division – Tax Law & Policy
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Frank M. O'Connell
Director

November 25, 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] filed with the Clerk of Superior Court, [REDACTED] on June 29, 2009. Parties are [REDACTED] and [REDACTED] (Grantor) and Mortgage Electronic Registration Systems, Inc. (Grantee); [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 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 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 that was presented for recording on June 29, 2009, they cannot be said to be the "lender." In the instant matter, [REDACTED]

[REDACTED]
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[REDACTED] has been the de facto lender dating back to a security instrument recorded on May 9, 2006. Consequently, the requirement stated in O.C.G.A. § 48-6-65 and Department of Revenue Rule 560-11-8-.05 has been met.

A copy of this decision is being provided to the Clerk of Superior Court, [REDACTED] so that the protested amount may be refunded to claimant from the special escrow account into which it was deposited according to law.

Sincerely,


Frank M. O'Connell

FOC/RJL/me

cc: Clerk of Superior Court, [REDACTED]