



Bart L. Graham
Commissioner

State of Georgia
Department of Revenue

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

June 24, 2010

[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 March 15, 2010. Parties are [REDACTED] (Grantor) and [REDACTED] (Grantee).

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 denied. The amount may not be refunded.

O.C.G.A. § 48-6-60 defines a "collecting officer" for purposes of the intangible recording tax.

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 22, 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.G.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 March 15, 2010, almost eleven months from the date of execution.

[REDACTED]
Page Two

Assessment of penalties and interest resulted, in part, from your failure to timely return the documents for recording after they were returned to you by the Clerk of Superior Court, [REDACTED] on April 30, 2009. As of that date, eighty-two (82) days remained for you to return the documents for recording with payment of intangible recording tax only. The documents were subsequently returned for recording, under Protest, almost eleven months later. That occurred on March 15, 2010. This resulted in the security instrument being recorded more than 90 days from the date of execution of the instrument.

Although, in your opinion, the Clerk of Superior Court's staff was negligent in not recording the security instrument when it was received, you had time to record the instrument timely in order to avoid assessment of penalty and interest. Failure to promptly return the security instrument to the Clerk of Superior Court, [REDACTED] represents lack of due diligence on your part. It cannot be said that failure to timely record the security instrument was through inadvertence or ignorance of the law. For this reason, your request for a refund of penalty and interest must be denied.

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 distributed according to law.

Sincerely,


Frank M. O'Connell

FOC/RJL/me

cc: Clerk of Superior Court, [REDACTED]