



Bart L. Graham  
Commissioner

State of Georgia  
**Department of Revenue**

Frank M. O'Connell  
Director

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November 30, 2010

[REDACTED]  
[REDACTED]  
[REDACTED]  
[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 Modification Agreement with the Clerk of Superior Court, [REDACTED] on September 8, 2010. Parties are [REDACTED] (Grantor) and [REDACTED] (Grantee)

Dear [REDACTED]

I have carefully considered your Protest and Claim for Refund of intangible recording tax penalty and interest per O.C.G.A. § 48-6-77(c) pursuant to the above-captioned matter. Your Protest and Claim for Refund, your letter dated August 30, 2010, and all accompanying 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. § 48-6-61 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 instrument was March 12, 2010. 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).

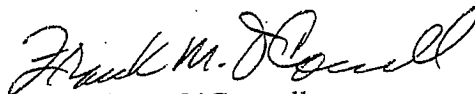
The bar to collection was removed by the subsequent recording of the instrument, payment of the tax imposed under O.C.G.A. § 48-6-61, and the payment of interest and a penalty imposed under O.C.G.A. § 48-6-77. In this case, the ultimate recording of the instrument in [REDACTED] occurred on September 8, 2010, almost six months from the date of execution.

[REDACTED]  
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Adequate follow-up procedures would have alerted you and allowed more than enough time for payment of the tax well within the 90-day period. That such due diligence could have prevented the assessment of the penalty, which was thus reasonably within the control of the taxpayer, tends to establish that the failure to pay the tax was not inadvertent.

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

cc: Clerk of Superior Court, [REDACTED]