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Commissioner

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

May 2, 2011

[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 instrument with the Clerk of Superior Court, [REDACTED] on August 18, 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. § 48-6-76(c) pursuant to the above-captioned matter. Your Protest and Claim for Refund, 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. § 48-6-60 Definitions, at (1), (2) and (3); defines a "Collecting officer," an "Instrument" or "security instrument," and a "Long-term note secured by real estate," respectively.

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 (a.k.a. the "First Security Deed") was November 3, 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 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 August 18, 2010, more than nine months from the date of execution.

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The instrument recorded under Protest meets the definition of a "security instrument" pursuant to O.C.G.A. § 48-6-60. With respect to a "Home Equity Conversion Second Security Deed" that had been recorded on December 18, 2009, which cited different named parties, the First Security Deed at issue here is considered to be a separate and distinct security instrument under the Code. Although the First Security Deed was presented to the Clerk's office for recording on May 3, 2010, it was not accompanied by payment of intangible recording tax. As of that date, penalty and interest were also due. O.C.G.A. § 48-6-61. The instrument was returned to your office by the Clerk of Superior Court on May 4, 2010.

When the instrument was again presented for recording under Protest on August 18, 2010, intangible recording tax plus penalty and interest were assessed by the Clerk of Superior Court. "All penalties imposed by law are part of the tax and are to be collected as such. The proceedings to collect the original tax, the tax constituted from penalties imposed, and the interest shall all be conducted in the same manner." O.C.G.A. § 48-2-42.

Accordingly, the Clerk of Superior Court, [REDACTED] interpreted the First Security Deed to be a long-term instrument subject to payment of intangible recording tax, plus imposition of penalty and interest when it was recorded under Protest on August 18, 2010. The Lender with respect to that instrument is [REDACTED]. It is not the Secretary of Housing and Urban Development. Therefore, the Protest and Claim for Refund must necessarily 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]