



State of Georgia

Douglas J. MacSinnittie
Commissioner

Department of Revenue
Administrative Division - Office of Tax Policy
1800 Century Blvd., Suite 15311
Atlanta, Georgia 30345-3205
(404) 417-6649

Frank M. O'Connell
Director

June 15, 2011

[REDACTED]

Re: An 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 with the Clerk of Superior Court, [REDACTED] on March 7, 2011. Parties are [REDACTED] (Borrower) and [REDACTED] (Lender)

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 correspondence has been 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 September 18, 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 occurred on March 7, 2011, more than five-and-one-half months from the date of execution.

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

FOC/RJL/me

cc: Clerk of Superior Court, [REDACTED]