



State of Georgia

Douglas J. MacGinnitie
Commissioner

Department of Revenue
Administrative Division - Office of Tax Policy
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Frank M. O'Connell
Director

March 13, 2012

[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 security instrument representing a refinance with the Clerk of Superior Court, [REDACTED] on January 13, 2012. Parties are [REDACTED] (Borrower) and [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 based on your request and accompanying documentation that your claim for refund in the amount of [REDACTED] be upheld.

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. The tax is imposed on each instrument at a rate of \$1.50 per \$500.00 or fraction thereof of the face amount of the note secured by the instrument.

O.C.G.A. § 48-6-65(b) provides 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 which represents a refinancing by the original lender of unpaid principal on a previous instrument securing a long-term note secured by real estate if:" at (2)(A) "The new instrument contains a statement of what part of its face amount represents a refinancing of unpaid principal on the previous instrument. . . ."

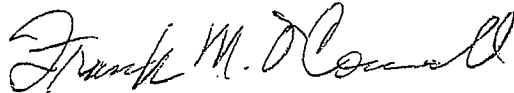
Ga. Comp. R. & Regs. r. 560-11-8-.05 Refinancing, provides that intangible recording tax is not required to be paid on the face amount of a new instrument securing a long-term note secured by real estate which represents a refinancing by the original lender and original borrower of unpaid principal of an existing instrument securing a long-term note secured by real estate, 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.

In the instant matter, as the surviving spouse, [REDACTED] qualifies as an original borrower. It is important to note that the Clerk of Superior Court, [REDACTED] was well within her statutory authority as the collecting officer to request a certified copy of [REDACTED] death certificate. Although it was not provided to her at the time of recording, a copy of it was provided to this office upon request.

Accordingly, based upon both Georgia statutes and Department regulations, [REDACTED] qualifies as an original borrower. Because the requirement of Original Borrower and Original Lender have been met, the Claim for Refund should be upheld with the protested amount of [REDACTED] refunded to the claimant.

The Clerk of Superior Court, [REDACTED] is hereby directed to refund to claimant the protested amount that is currently being held in an escrow account under authority of the statute.

Sincerely,


Frank O'Connell

FOC/RJL/me

cc: Clerk of Superior Court, [REDACTED]