



State of Georgia

Douglas J. MacSinnittie  
Commissioner

## Department of Revenue

Frank M. O'Connell  
Director

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May 1, 2012

[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 Deed to Secure Debt with the Clerk of Superior Court [REDACTED] on December 27, 2010. 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.

Ga. Comp. R. & Regs. r. 560-11-8-.14 Exemptions, states: "Any mortgage, deed to secure debt, purchase money deed to secure debt, bond for title or any other form of security instrument is not subject to intangible recording tax where any of the following applies: (a) Where any of the following is a party: The United States, the State of Georgia, any agency, board, commission, department or political subdivision of either the United States or this state, any public authority, any non-profit public corporation, or any other publicly held entity sponsored by the government of the United States or this state. (b) Where any of the following is a Grantee: a federal credit union, a state of Georgia chartered credit union, or a church."

With respect to the instant matter, on the Protest form that was executed and recorded with the security instrument on December 27, 2010, in [REDACTED] it states that Grantor should be considered exempt from payment of intangible recording tax on the basis that it is a "non-profit corporation." Further, that Grantee should be considered because it is a church loan fund.

Based upon the documents provided, the security instrument recorded under Protest represents an original loan between the parties and not a "refinance". Because no applicable exemption exists in Regulation 560-11-8-.14(a) for a "non-profit corporation," Grantor's claim is dismissed on that basis. There is also no exemption afforded to a church when they are the Grantor-Borrower. Because Grantee-Lender [REDACTED] is a direct arm, and under the aegis of the Assemblies of God denomination, it is therefore found to be exempt pursuant to 560-11-8-.14(b). The Protest and Claim for Refund is therefore upheld on that basis. This determination applies only to the subject instrument recorded on December 27, 2010. It does not apply to any subsequent Amendments or Restatements of the Agreement between the parties.

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]