



State of Georgia

Douglas J. MacSinnitt
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

May 31, 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 April 27, 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. . . ."

[REDACTED]

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. Although Mortgage Electronic Registration Systems, Inc. (MERS) is captioned as "Grantee" on the original security instrument they are not the Lender. The Lender with respect to both the original instrument and the instrument representing a refinance is [REDACTED]

Accordingly, based upon both Georgia statutes and Department regulations, the requirement of Original Borrower and Original Lender have been met. Therefore, 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]