



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 28, 2012



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 February 13, 2012. Parties are [REDACTED] and [REDACTED] (Borrower) and [REDACTED] (Lender) w/MERS (Grantee)

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. . . ."

Although Mortgage Electronic Registration Systems, Inc. (MERS) was shown as the "grantee" on the security instrument representing a refinance between the parties, in this instance they cannot be said to be the "lender." In the instant matter, [REDACTED] has been the lender for both the original long-term security instrument, and the security instrument that represents a refinance between the parties which was recorded under Protest. The requirement stated in Department of Revenue Rule 560-11-8-.05 has been met.

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.

This ruling should not be construed as implying or inferring that the Clerk of Superior Court, [REDACTED] in discharging its statutory authority as the "collecting officer" pursuant to O.C.G.A. § 48-6-60(1), did not properly take into account that a Georgia Assignment of Security Deed was recorded on January 23, 2009, in Deed Book [REDACTED] Page [REDACTED]

Sincerely,



Frank M. O'Connell

FOC/RJL/me

cc: Clerk of Superior Court, [REDACTED]