



State of Georgia

Douglas J. MacSinnitie
Commissioner

Department of Revenue
Administrative Division – Office of Tax Policy
1800 Century Blvd., Suite 15311
Atlanta, Georgia 30345-3205
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Frank M. O'Connell
Director

August 6, 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 Junior Deed to Secure Debt and Security Agreement representing a refinance with the Clerk of Superior Court, [REDACTED] on April 19, 2012. Parties are [REDACTED] (Borrower) and [REDACTED] [REDACTED] as Administrative Agent ("Agent") on behalf of itself and other lenders (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 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 that your Protest and Claim for Refund in the amount of [REDACTED] is denied. The amount may not be refunded.

O.C.G.A. § 48-6-65 provides, in pertinent part, 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 that represents a refinancing by the original lender of unpaid principal on a previous instrument securing a long-term note secured by real estate if all intangible recording tax due on the previous instrument has been paid or the previous instrument was exempt from intangible recording tax.

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

[REDACTED]
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In order to be exempt from payment of the intangible recording tax on that part of the face amount of a new instrument which represents a refinancing of the unpaid principal balance on a previous instrument, three conditions must be met:

1. The borrower must be the original borrower.
2. The lender must be the original lender.
3. The original lender must own the note being refinanced.

With respect to the instant matter, the New Deed to Secure Debt that was recorded under Protest represents a refinance of an original long-term loan upon which intangible recording tax totaling [REDACTED] had been paid. The refinancing of \$300 million involved twelve participating lenders with each extending various amounts of long-term principal to the borrower. Of the twelve lenders, six were new participating lenders.

Because the participating lenders involved in the refinance are different from the group of participating lenders involved in the original loan, it cannot be said that the subsequent transaction was a refinancing by the "original lender" which is explicitly required under O.C.G.A. § 48-6-65(b) in order to be exempt from payment of further intangible recording tax. The Protest and Claim for Refund must therefore be denied.

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 O'Connell

FOC/RJL/me

cc: Clerk of Superior Court. [REDACTED]