



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

February 21, 2013

[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 December 28, 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 accompanying documents were considered in the review. It is my determination that your Claim for Refund in the amount of [REDACTED] is denied. The amount may not be refunded.

O.C.G.A. § 48-6-65(b) 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, which represents a refinancing by the original lender of unpaid principal on a previous instrument if all intangible recording tax due on the previous instrument has been paid or the previous instrument was exempt and 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 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 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.


[REDACTED]
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It is the policy of the Department of Revenue that when an original lender sells, transfers, or assigns a mortgage after closing the original loan, an exemption of the outstanding principal balance of the loan from intangible recording tax may not be granted, even if the original lender later reacquires the loan. In the instant matter, the borrower and original lender [REDACTED] consummated and recorded two separate long-term security instruments. The first instrument was recorded on November 1, 2004, in [REDACTED] and the second instrument on May 3, 2006, in [REDACTED]. Full intangible recording tax was paid upon recording of each instrument. On those same dates, the original lender assigned each loan to Fannie Mae. Subsequent to recording of the subject security instrument under Protest on December 28, 2012, in [REDACTED] the refinancing lender, [REDACTED] assigned that loan to Fannie Mae [REDACTED]. Your Claim for Refund is denied because the refinancing did not meet the criteria for an exemption from the tax.

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.

Please be advised that any taxpayer whose Protest and Claim for Refund is denied, in whole or in part, has the right to bring an action for refund of the amount so claimed and not approved against the collecting officer who received the payment and recorded the instrument. The action must be filed in the Superior Court of the county in which the instrument was recorded under Protest or in the Georgia Tax Tribunal no later than 60 days from the date of the denial.

Sincerely,


Frank M. O'Connell

FOC/RJL/me

cc: Clerk of Superior Court, [REDACTED]