State of Georgia

Douglas J. MacGinnitie
Commissioner

Department of Revenue

Administrative Division – Office of Tax Policy
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Frank M. O'Connell
Director

September 16, 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 August 13, 2013. 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] is denied. The amount may not be refunded.

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, at (1), holds 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

[redacted]

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. At (a): The new instrument must contain a statement of what part of the face amount represents a refinancing of unpaid principal. This information must be disclosed on the face of the instrument or in the alternative may be submitted in the form of an affidavit indicating which part of the face amount represents a refinancing of unpaid principal.

An "Opinion of the Attorney General" holds as follows:

Taxation of renewed mortgage. – If a mortgage is renewed, based upon a previously recorded security deed, this is considered a new mortgage subject to an additional tax even though a new security deed is not taken. If a new security deed is taken and recorded, the tax is payable. 1975 Op. Att'y Gen. No. 75-125.

With respect to the instant Protest, per a "Cancellation of Deed to Secure Debt (Cancellation of Security Deed)" filed and recorded in [redacted], the original security instrument was formally canceled as of record on July 15, 2013, due to the existing loan "having been paid in full." The "Cancellation of Deed to Secure Debt" was signed and witnessed on July 10, 2013.

The instrument that was recorded under Protest on August 13, 2013, meets the definition of a long-term instrument secured by real estate per the *Code*. Accordingly, the instrument recorded under Protest, which advanced an amount of long-term principal to the Borrower in the amount of [redacted] was subject to collection of full intangible recording tax at the statutory rate by the Clerk of Superior Court, [redacted] 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.

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 may be filed in either the Superior Court of the county in which the instrument was recorded or in the Georgia Tax Tribunal no later than 60 days from the date of the denial, and served pursuant to law.

Sincerely,

Frank M. O'Connell

FOC/RJL/me

cc: Clerk of Superior Court, [redacted]