



State of Georgia

Department of Revenue

Legal Affairs & Tax Policy
1800 Century Blvd., N.E., Suite 13107
Atlanta, Georgia 30343
(404) 417-6649

Douglas J. MacSinnittie
Commissioner

Frank M. O'Connell
Director

February 27, 2014

[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 with the Clerk of Superior Court, [REDACTED] on November 27, 2013. Parties are [REDACTED] (Grantor) and [REDACTED] (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] 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.

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, a DOR Policy Statement holds that 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. (emphasis in original)

With respect to the instant Protest, per a "Cancellation Statement" filed and recorded in [REDACTED] [Deed Book [REDACTED], Page [REDACTED], the existing security instrument on record was formally canceled on December 16, 2013, due to the existing loan "having been paid in full." The "Cancellation Statement" was signed and witnessed on December 2, 2013.

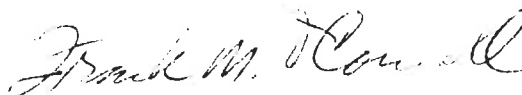
The instrument that was recorded under Protest on November 27, 2013, meets the definition of a long-term instrument secured by Georgia real property per § 48-6-60(3). Accordingly, the instrument recorded under Protest, which advanced an amount of long-term principal to the Borrower in the amount of [REDACTED], was subject to collection of full intangible recording tax at the statutory rate by the Clerk of Superior Court, [REDACTED]

Furthermore, [REDACTED] Grantee, does not qualify as an "original lender" for purposes of § 48-6-65 and Revenue Rule 560-11-8-.05. The original lender is [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]