



State of Georgia

Douglas J. MacSinnitie
Commissioner

Department of Revenue

Frank M. O'Connell
Director

Legal Affairs & Tax Policy
1800 Century Blvd., N.E., Suite 15107
Atlanta, Georgia 30345
(404) 417-6649

December 5, 2014

[REDACTED]

Re: An Intangible Recording Tax Protest per O.C.G.A. § 48-6-76(a) in the amount of [REDACTED] paid upon recording a security instrument with the Clerk of Superior Court, [REDACTED] on October 23, 2014. Parties are [REDACTED] (Grantor) and [REDACTED] (Lender) w/MERS (Grantee)

Dear [REDACTED]

Upon notification by the Clerk of Superior Court, [REDACTED] concerning your filing of an Intangible Recording Tax Protest as captioned above, a letter dated October 31, 2014, was mailed to you. The letter included a Claim for Refund form and stated that in order to "perfect" the Protest, the form must be filed no later than thirty days from the date the Protest was filed and intangible recording tax was paid.

Because no Claim for Refund was filed with the Department, Legal Affairs & Tax Policy contacted [REDACTED] Clerk of Superior Court, [REDACTED] to determine whether or not [REDACTED] office had received a timely filed Claim for Refund. That office confirmed that no Claim for Refund had been received.

O.C.G.A. § 48-6-76(c) states, in pertinent part, that a taxpayer who has made a payment under written protest may file at any time within 30 days after the date of the payment a claim for refund. . . .A copy of the claim shall be filed by the taxpayer within the 30 day period with the collecting officer or said officer's successor who collected the protested amount.

Ga. Comp. R. & Regs. r. 560-11-8-.16 Claim for Refund, at (3), states: "A taxpayer who files a Protest must file a Claim for Refund in order to 'perfect' the Protest. The Claim for Refund must be filed no later than thirty days from the date of the Protest. It may also be executed at the time the Protest is filed. The Claim for Refund shall be filed in triplicate with the Department of

[REDACTED]
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Revenue and sent to the address indicated on the Claim for Refund form. A fourth copy shall be filed with the collecting officer who recorded the instrument under Protest.”

Accordingly, because a Claim for Refund was not filed by the statutory deadline in compliance with O.C.G.A. § 48-6-76(c), your Protest is now *legally void*.

The Clerk of Superior Court, [REDACTED] is hereby authorized to remove the protested amount from the special escrow account into which it was legally deposited and distribute it according to law.

It may prove helpful for you to know that “Intangible taxes imposed on long term notes secured by real estate are excise taxes, not ad valorem taxes, since the taxes are paid for the privilege of filing a document to protect the note secured by the recording of the security instrument, and the fact that it is based on the value of the property is only ancillary.” *Bankers Trust Co. v. Jackson*, 236 Ga. App. 490, 512 S.E.2d 378 (1999).

Sincerely,


Frank M. O'Connell

FOC/RJL/me

cc: Clerk of Superior Court, [REDACTED]