



State of Georgia

## Department of Revenue

Legal Affairs & Tax Policy  
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Lynnette T. Riley  
Commissioner

Frank M. O'Connell  
Director

February 2, 2015

[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] representing penalty and interest paid upon recording a security instrument with the Clerk of Superior Court, [REDACTED] on December 19, 2014. Parties are [REDACTED] (Grantor) 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 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." 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.

In this case, when the Third Modification was recorded on September 5, 2008, an extension of the maturity date by a full sixty months transformed what was a short-term deed into a long-term instrument subject to payment of intangible tax based upon the existing amount of principal loaned to the Grantor totaling [REDACTED]. Intangible tax was not assessed or collected, however, nor was a voluntary payment of the tax tendered by either the Grantor or Grantee. Date of execution of the Modification was June 9, 2008. Because the tax was not paid within ninety days of that date, a bar to any action for collection on the instrument was automatically imposed pursuant to O.C.G.A. § 48-6-77(a).

Subsequently the original lender, [REDACTED] failed with the Federal Deposit Insurance Corporation (FDIC) taking control of the loan, as receiver. Claimant [REDACTED] acquired the loan with the FDIC recording an "Assignment of Deed to Secure Debt" in [REDACTED] on [REDACTED] [Deed Book [REDACTED] Page [REDACTED]]. That document stated as follows:

"This assignment is made without recourse, representation or warranty, express or implied, written or oral, by the Federal Deposit Insurance Corporation as receiver for [REDACTED] Atlanta, Georgia. The loan secured by the Deed to Secure Debt, as assigned and modified, is conveyed 'as is' and 'with all faults,' without any representation or warranty whatsoever, including as to collectability, enforceability, value of collateral, ability of any obligor to repay, condition, fitness for any particular purpose merchantability or any other warranty, express or implied, by any person, including the FDIC or its officers, employees, agents or contractors."

An "Opinion of the Attorney General" states, in pertinent part, that "Transfer by assignment or otherwise of long-term notes secured by real estate . . . does not change the tax status of the instrument." 1963-65 Op. Att'y Gen. p. 511.

The bar to collection was removed upon recording of the instrument on December 19, 2014, with payment of the tax imposed under O.C.G.A. § 48-6-61, plus payment of interest and a penalty imposed under O.C.G.A. § 48-6-77(a). The Clerk of Superior Court, [REDACTED] complied with all statutory requirements by assessing and collecting all intangible tax-penalty-interest due and payable on the instrument. Accordingly, 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]