



State of Georgia

## Department of Revenue

Legal Affairs & Tax Policy  
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Atlanta, Georgia 30345  
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Lynnette T. Riley  
Commissioner

Frank M. O'Connell  
Director

April 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] paid upon recording a security instrument with the Clerk of Superior Court, [REDACTED] on February 16, 2015. Parties are [REDACTED] (Borrower); [REDACTED] (Lender) w/MERS (Grantee)

Dear [REDACTED]

Although you failed to respond to the Department's two letters requesting additional information dated February 19, 2015, and March 19, 2015, respectively, 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. § 48-6-61 states, in pertinent part, that intangible recording tax is assessed at the rate of \$1.50 for each \$500.00 or fraction thereof of the face amount of the note secured by the recording of the security instrument. Further, every holder of a long-term note secured by real estate shall, within 90 days from the date of the instrument executed to secure the note, record the security instrument in the county in which is located the real estate conveyed or encumbered or upon which a lien is created to secure the note.

The security instrument at issue was recorded initially in [REDACTED] on November 25, 2014 [Deed Book [REDACTED] Page [REDACTED]]. No legal Protest was filed upon recording in compliance with O.C.G.A. § 48-6-76(a). Claimant's payment of intangible recording tax in the amount of [REDACTED] is therefore considered to be a voluntary payment.

[REDACTED]  
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Per a recorded copy of the instrument provided by the Clerk of Superior Court, [REDACTED] it established that Exhibit "A" [Deed Book [REDACTED] Page [REDACTED]] contained a legal description referencing a parcel of property located in [REDACTED].

The instrument was ultimately recorded under Protest in [REDACTED] where the (correct) subject real property is located, on February 16, 2015 [Deed Book [REDACTED], Page [REDACTED]], or eighty-eight days from the date of execution.

An "Opinion of the Attorney General" states:

Applicability of refund provisions. – Ga. L. 1937-38, Ex. Sess., p. 77, § 34 (see § 48-2-35), which authorizes a refund procedure whether paid voluntarily or involuntarily, applies only to taxes paid to the state and has no application to the recording tax. 1960-61 Op. Att'y Gen. p. 521.

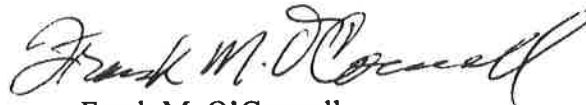
Intangible recording tax is an excise tax, not an ad valorem tax. It is paid for the privilege of filing a document to protect the note secured by the recording of the security instrument, and the fact that it is based on the value of the property is only ancillary. *Bankers Trust Co. v. Jackson*, 236 Ga. App. 490, 512 S.E.2d 378 (1999).

At the time of recording in [REDACTED] the collecting official complied with statutory law and Department regulations by collecting the proper amount of intangible tax due and payable on the instrument. 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]