



State of Georgia

Department of Revenue

Legal Affairs & Tax Policy
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Lynnette T. Riley
Commissioner

Frank M. O'Connell
Director

December 10, 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 Deed with the Clerk of Superior Court, [REDACTED] on November 3, 2015. Parties are [REDACTED] (Grantor) and [REDACTED] (Lender) w/MERS (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 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 June 23, 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.

In this case, the date of execution of the security deed was June 2, 2014. The tax was not paid within 90 days and thus a bar to any action for collection on the instrument was automatically imposed pursuant to O.C.G.A. § 48-6-77(a). The bar to collection was removed by the

subsequent recording of the Security Deed in the correct county, payment of the tax imposed under O.C.G.A. § 48-6-61, and the payment of interest and a penalty imposed under O.C.G.A. § 48-6-77. In this case, the ultimate recording of the instrument in occurred on November 3, 2015 [Deed Book Page], more than seventeen (17) months 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).

Failure to exercise a degree of necessary diligence led to the failure to meet the statutory deadline. Adequate follow-up procedures would have alerted you and allowed more than enough time for payment of the tax well within the 90-day period. That such due diligence could have prevented the assessment of the penalty, which was thus reasonably within the control of the taxpayer, tends to establish that the failure to pay the tax was not inadvertent.

At the time of recording in the collecting official complied with statutory law and Department regulations by collecting the proper amount of intangible recording tax, penalty and interest 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, so that the money collected and placed 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,