



State of Georgia

Department of Revenue

Legal Affairs & Tax Policy
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Atlanta, Georgia 30345
(404) 417-6649

Lynnette T. Riley
Commissioner

Frank M. O'Connell
Director

December 23, 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 June 12, 2015. Parties are [REDACTED] (Borrower) 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. § 48-6-65 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 Refinancing 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.

With respect to the instant Protest, as confirmed by the Clerk of Superior Court, [REDACTED] a a "Satisfaction of Mortgage" filed and recorded in [REDACTED] on October 7, 2011, in Deed Book [REDACTED], Page [REDACTED] indicates that a prior security instrument on record, executed by [REDACTED] [Grantor] to [REDACTED] [Lender] was

legally canceled as paid and satisfied. That instrument was recorded on March 14, 2011, in Deed Book [REDACTED] Page [REDACTED]. It secured a long-term amount of principal totaling [REDACTED] with intangible tax paid in the amount of [REDACTED]. The instrument was secured by the same parcel of Georgia real property as the Security Deed recorded under Protest on June 12, 2015.

The Clerk's office also confirmed for the Department that no subsequent security instruments executed by the exact same parties, and secured by the same parcel of Georgia real property, have been recorded since that instrument was legally canceled on October 7, 2011.

The instrument recorded under Protest on June 12, 2015, meets the definition of a long-term instrument secured by Georgia real property per § 48-6-60(3). Per an amount of long-term principal advanced to the Borrower of [REDACTED] the instrument was subject to collection of intangible recording tax at the statutory rate. Importantly, the instrument is not by definition a "refinance" within the meaning of Georgia law and Department regulations. It is considered to be a brand new instrument, which secures a brand new long-term loan, consummated by brand new parties: [REDACTED] (Borrower) and [REDACTED] (Lender).

The Clerk of Superior Court, [REDACTED] administered recording of the instrument properly and assessed the correct amount of intangible tax that was legally due and payable. 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 for 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]