



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

May 11, 2016

[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 representing a refinance with the Clerk of Superior Court, [REDACTED] on March 15, 2016. Parties are [REDACTED] (Borrower) 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 associated documents were considered in the review. It is my determination based on your request and accompanying documentation that your Claim for Refund in the amount of [REDACTED] be upheld.

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," respectively.

O.C.G.A. § 48-6-65(b) provides 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 which represents a refinancing by the original lender of unpaid principal on a previous instrument securing a long-term note secured by real estate if:" at (2)(A) "The new instrument contains a statement of what part of its face amount represents a refinancing of unpaid principal on the previous instrument. . . ."

Ga. Comp. R. & Regs. r. 560-11-8-.05 Refinancing, at (1), provides that intangible recording tax is not required to be paid on the face amount of a new instrument securing a long-term note secured by real estate which represents a refinancing by the original lender and original borrower of unpaid principal of an existing instrument securing a long-term note secured by real estate,

[REDACTED]  
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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, borrower [REDACTED] qualifies as an "original borrower" per Rev. Reg. 560-11-8-05(1). It has also been shown to the Department's satisfaction that [REDACTED] qualifies as an "original lender" pursuant to O.C.G.A. § 48-6-65(b).

Based upon Georgia statutory law and Department regulations, because the requirement of "original lender" and "original borrower" has been met, intangible tax of [REDACTED] only was due at the time of recording. Therefore, the Claim for Refund should be upheld with the protested amount of [REDACTED] refunded to the claimant.

The Clerk of Superior Court, [REDACTED] is hereby directed to refund to the claimant the amount that is currently being held in a special escrow account under authority of the statute.

Sincerely,

  
Frank M. O'Connell

FOC/RJL/me

cc: Clerk of Superior Court, [REDACTED]