



State of Georgia

Department of Revenue

Legal Affairs & Tax Policy
1800 Century Blvd., N.E., Suite 15107
Atlanta, Georgia 30345
(404) 417-6649

Lynnette T. Riley
Commissioner

Frank M. O'Connell
Director

May 20, 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] filed upon recording a Security Deed pursuant to a refinance on November 23, 2015, with the Clerk of Superior Court, [REDACTED] 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 based on your request and accompanying documentation 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 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, the original security instrument between [REDACTED] (Borrower) and [REDACTED] (Lender) was recorded on May 10, 2005, in Deed Book [REDACTED], Page [REDACTED]. The loan was immediately assigned that same day by the Lender to Mortgage Electronic Registration Systems, Inc. (MERS), as

[REDACTED]
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nominee for [REDACTED] (Lender), in Deed Book [REDACTED], Page [REDACTED]

The instrument that was recorded under Protest on November 23, 2015, meets the definition of a long-term instrument secured by Georgia real property per O.C.G.A. § 48-6-60(3). It was consummated between the Borrower and [REDACTED] a new Lender, and not the "original lender" pursuant to O.C.G.A. § 48-6-65. It secured a new, long-term note in the amount of [REDACTED]. Accordingly, the instrument was subject to collection of full intangible recording tax at the statutory rate by the Clerk of Superior Court, [REDACTED]. The Clerk's Office handled recording of the instrument properly in conformance with Georgia law and Department regulations and collected the proper amount of tax due. 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

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FOC/RJL/me

cc: Clerk of Superior Court, [REDACTED]