



## Department of Revenue

Suite 410 Trinity-Washington Building

270 Washington Street, Suite 410

Atlanta, Georgia 30334

Telephone 404-656-4015

June 12, 2001

**T. Jerry Jackson**  
Revenue Commissioner

[REDACTED]

RE: Protest of Intangible Recording Tax and Claim for Refund pursuant to O.C.G.A. 48-6-76; [REDACTED] ("Grantor") and [REDACTED] ("Grantee"); Exemption for Amount of Unpaid Principal pursuant to O.C.G.A. 48-6-65 (b) and Department of Revenue Rule 560-11-8-.05

Dear [REDACTED]:

I have carefully considered your request pursuant to O.C.G.A. 48-6-76 for a refund of intangible recording tax paid under protest to the clerk of superior court, [REDACTED] and it is my determination that your request for a refund be denied. In reaching this determination, the contents of your letter dated January 19, 2001 with accompanying Claim for Refund and subsequently submitted supporting documentation were considered.

O.C.G.A. 48-6-65 (b) 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 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:

- (1) All intangible recording tax due on the previous instrument has been paid or the previous instrument was exempt from intangible recording tax; and
- (2) The new instrument contains a statement of what part of its face amount represents a refinancing of unpaid principal on the previous instrument; or

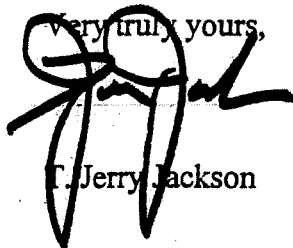
- (3) The holder of the new instrument submits an affidavit as to what part of the face amount of the new instrument represents a refinancing of unpaid principal on the previous instrument.

Department of Revenue Rule 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 secured by real estate which represents a refinancing by the original lender and the original borrower of unpaid principal of an existing instrument securing a long-term note secured by real estate still owned by the original lender, if the intangible recording tax was paid on the original instrument. The rule further provides that the new instrument must contain a statement, or in the alternative, an affidavit stating what part of the face amount of the note represents a refinancing of unpaid principal.

While [REDACTED] was the grantor on the original security deed and on the security deed securing the refinanced note, the lender is not the same for both notes. [REDACTED] was the grantee of the original security deed, but [REDACTED] is the grantee on the security deed for the refinanced note. While both notes are HUD insured notes, the original lender requirement has not been satisfied. HUD is not the lender. They only guarantee the lender a percentage of the note in the event of foreclosure.

Your request for a refund of the intangible recording tax paid in the amount of [REDACTED] is denied.

Very truly yours,



T. Jerry Jackson

TJJ/JWM/jt

Cc: clerk of superior court, [REDACTED]