



Department of Revenue

Suite 15100

1990 Century Center Bldg., NE

Atlanta, Georgia 30345-3205

Telephone 404-417-2100

Barry L. Graham
Commissioner

January 8, 2004

[REDACTED]

RE: Protest and Claim for Refund of Intangible Recording Tax pursuant to O.C.G.A. 48-6-76 Paid Upon Recording of a Security Deed between [REDACTED] (Borrowers) and Mortgage Electronic Registration Systems, Inc. (MERS) (Lender) on December 18, 2001.

Dear [REDACTED]

Your protest and claim for a refund has been carefully reviewed based on the contents of your letters dated December 7, 2001 and March 13, 2002, your Protest, your Claim for Refund, supporting documentation provided by yourselves and supporting documentation provided by the Clerk of Superior Court, [REDACTED]. It is my determination that an exemption from intangible recording tax on the outstanding principal balance of your original loan from [REDACTED] when you refinanced with them on November 23, 2001 was not authorized. Intangible recording tax in the amount [REDACTED] was due when the security deed between yourselves and [REDACTED] and Mortgage Electronics Registration Systems, Inc. (MERS) as their nominee was recorded on December 18, 2001 and may not be refunded.

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, which represents a refinancing by the original lender of unpaid principal on a previous instrument if all intangible recording tax due on the previous instrument has been paid.

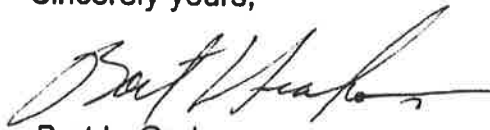
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O.C.G.A. 48-6-71 provides in pertinent part that The Commissioner upon his own motion or upon written request of one or more holders of instruments securing notes secured by real property shall render publicly and in writing his determination of whether the intangible recording tax is payable with respect to a particularly described real property instrument or class of real property instruments . The determination may be in the form of administrative regulations, if applicable to a class of real property instruments.

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, 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 intangible recording tax that was due on the previous instrument has been paid.

MERS as nominee for [REDACTED] may not be recognized as the original lender in the refinancing between yourselves and [REDACTED]. Documentation shows that on April 9, 2001 [REDACTED] assigned your original loan instrument to MERS as nominee for [REDACTED]. Since [REDACTED] had assigned the mortgage to [REDACTED] it cannot be said that they still owned the loan at the time of refinancing.

Sincerely yours,



Bart L. Graham

BLG/JWM/jt

Cc: Clerk of Superior Court, [REDACTED]