



Bart L. Graham  
Commissioner

State of Georgia  
Department of Revenue

Suite 15300  
1800 Century Boulevard  
Atlanta, Georgia 30345  
(404) 417-2100

December 4, 2007

[REDACTED]

Re: Intangible Recording Tax Protest and Claim for Refund per O.C.G.A. § 48-6-76 in the amount of [REDACTED] filed upon recording a Security Deed with the Clerk of Superior Court, [REDACTED] on May 17, 2007. Parties are [REDACTED] (Borrowers) and [REDACTED] (Lender)

Dear [REDACTED]

I have carefully considered your Protest and Claim for Refund of intangible recording tax penalty and interest per O.C.G.A. § 48-6-76 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. § 48-6-61 provides in pertinent part that security instruments must be filed and the intangible recording tax paid no later than ninety days from the date of execution by the parties. In this case, the date of execution of the Security Deed was September 22, 2006. The tax was not paid within 90 days and thus a bar to any action for collection on the instrument was automatically imposed pursuant to O.C.G.A. § 48-6-77(a).


The bar to collection was removed by the subsequent recording of the Security Deed, payment of the tax imposed under O.C.G.A. § 48-6-61, and the payment of interest and a penalty imposed under O.C.G.A. § 48-6-77. O.C.G.A. § 48-6-77(c) provides that the commissioner may waive the penalty if he determines that the failure to pay was through ignorance of the law or inadvertence and did not occur in bad faith.

[REDACTED]  
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Even assuming the veracity of the Affidavit supplied by claimant, adequate follow-up procedures would have alerted you and allowed more than enough time for resubmission of the deed and payment of the tax well within the 90-day period. That such due diligence could have prevented the assessment of the penalty, which was thus reasonably within the control of the taxpayer, tends to establish that the failure to pay the tax was not inadvertent.

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.

Sincerely,

  
Bart L. Graham

BLG/RJL/mb

cc: Clerk of Superior Court, [REDACTED]