



State of Georgia

Douglas J. MacGinnitie  
Commissioner

**Department of Revenue**  
Legal Affairs & Tax Policy  
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Atlanta, Georgia 30345  
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Frank M. O'Connell  
Director

January 14, 2014

[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 multi-county security instrument with the Clerk of Superior Court, [REDACTED] on October 2, 2013. Parties are [REDACTED] and [REDACTED] (Grantor) and [REDACTED] (Lender) w/MERS (Grantee)

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(c) pursuant to the above-captioned matter. Your Protest and Claim for Refund, and all correspondence has been 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. I also have additional findings that will be discussed herein.

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 instrument was March 26, 2013. 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.C.A. § 48-6-77(a).

The bar to collection was removed by the subsequent recording of the instrument, payment of the

[REDACTED]  
[REDACTED]

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. In this case, the ultimate recording of the instrument occurred on October 2, 2013, or more than six months from the date of execution.

Adequate follow-up procedures would have alerted you and allowed more than enough time for 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.

For the record, claimant also failed to respond to any of the Department's written requests for information.

Because it is of explicit relevance to the instant Protest, please be advised that O.C.G.A. § 48-6-69(a) concerns recording of a multi-county security instrument, which is the case here. In pertinent part, it provides that an instrument which secures real property in more than one county in this state shall be recorded in each county. The original instrument, or a counterpart thereof, shall be presented for recording "in all counties in which the real property is located, and the collecting officer of each county may rely upon the sworn original or a duplicate original certification of values in determining the amount of tax due and payable in that county and collect such portion of the tax imposed by Code Section 48-6-61 and enter the same upon the security instrument." The provisions of subsection (a) were amended and became effective on July 1, 2010. (emphasis added)

During the Department's investigation into the instant Protest, the Clerk of Superior Court, [REDACTED], has confirmed that, as of this date, no counterpart of the multi-county instrument has been recorded in [REDACTED]. Accordingly, based upon claimant's clear and continuing failure to conform to the requirements set forth in §§ 48-6-61 and 48-6-69(a), a bar to collection on the instrument exists with respect to that part of the subject property located in [REDACTED].

Upon presentation of a counterpart of the subject instrument for recording, the Clerk of Superior Court, [REDACTED] is hereby directed to assess intangible recording tax, penalty and interest in accordance with statutory law.

Finally, the Clerk of Superior Court, [REDACTED] has confirmed that no portion of any amount of intangible recording tax, penalty or interest due and payable to [REDACTED] was paid to, or collected by, [REDACTED]. [REDACTED] collected a total of [REDACTED] representing intangible tax of [REDACTED], penalty of [REDACTED] and interest of [REDACTED]. The protested amount of [REDACTED] as captioned on page 1 represents payment of penalty and interest.

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

[REDACTED]  
[REDACTED]

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

FOC/RJL/me

cc: Clerk of Superior Court, [REDACTED]  
Clerk of Superior Court, [REDACTED]