



State of Georgia

Lynnette T. Riley
Commissioner

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

Frank M. O'Connell
Director

October 26, 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] paid upon recording a Loan Modification Agreement with the Clerk of Superior Court, [REDACTED] on May 25, 2016. 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 that your Claim for Refund in the amount of [REDACTED] is denied. The amount may not be refunded.

O.C.G.A. § 48-6-60 Definitions, sets forth at (1) the definition of a "Collecting officer"; at (2) the definition of a "security instrument"; and at (3) and (4) the definition of a "Long-term note secured by real estate," and a "Short-term note secured by real estate," respectively.

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 June 21, 2011. The tax was not paid to the correct county within ninety 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 instrument, 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. In this case, ultimate recording of the instrument in [REDACTED] occurred on May 25, 2016, or more than fifty-nine (59) months from the date of execution.

Although the instrument was recorded in an incorrect county, [REDACTED] on June 29, 2011, adequate follow-up procedures would have alerted you and allowed more than enough time for recording and payment of the tax well within the 90-day period in the correct county – [REDACTED]. 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 letter 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

FOC/RJL/me

cc: Clerk of Superior Court, [REDACTED]