



Bart L. Graham
Commissioner

State of Georgia
Department of Revenue

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

April 8, 2010

[REDACTED]

Re: Claim for Refund of Real Estate Transfer Tax pursuant to O.C.G.A. § 48-6-7(a) in the amount of [REDACTED] Paid upon recording a "Special Warranty Deed" with the Clerk of Superior Court, [REDACTED] on February 11, 2009. Parties are [REDACTED] (Buyer); [REDACTED] (Seller)

Dear [REDACTED]

I have carefully considered your Claim for Refund of real estate transfer tax pursuant to the above-captioned matter. Your letter dated March 1, 2010, plus accompanying documents were all 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. § 48-6-1 provides, in pertinent part, that real estate transfer tax is imposed on each deed, instrument, or other writing by which any lands, tenements or other realty sold is granted, assigned, transferred, or otherwise conveyed when the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrance existing prior to the sale and not removed by the sale) exceeds \$100.00.

O.C.G.A. § 48-6-2(a)(3) provides, in pertinent part, that the tax shall not apply to any deed, instrument, or other writing to which any of the following is a party: the United States; this state; any agency, board, commission, department, or political subdivision of either the United States or this state; any public authority; or any nonprofit public corporation.

O.C.G.A. § 48-6-7 provides, in pertinent part, that "In any case in which the clerk of superior court erroneously or illegally collects the tax imposed by this article and remits the tax to the commissioner, the taxpayer from whom the tax was collected may file a claim for refund with

[REDACTED]
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the commissioner *at any time within one year after the date of collection.*" (emphasis added)

It is a well settled matter of law that real estate transfer tax is not a tax on the property as such, as is the ad valorem tax which is charged against the owner of the property or against the specific property. Rather, it is an excise tax on transactions involving the sale of property. City of Columbus v. Ronald A. Edwards Constr. Co., 155 Ga. App. 502, 271 S.E.2d 643 (1980).

Based upon the documents provided, a "Special Warranty Deed" was filed and recorded by the Clerk of Superior Court, [REDACTED] on February 11, 2009. As evidenced by the Clerk's stamped certification thereon, real estate transfer tax was paid totaling [REDACTED]

Therefore, because your Claim for Refund of Real Estate Transfer Tax was not filed by the statutory deadline set forth in O.C.G.A. § 48-6-7 and is thus statute-barred, your claim for refund in the amount of [REDACTED] must necessarily be denied.

Sincerely,


Frank M. O'Connell

FOC/RJL/me

cc: Clerk of Superior Court, [REDACTED]