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Commissioner

State of Georgia  
**Department of Revenue**  
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Frank M. O'Connell  
Director

October 21, 2009

[REDACTED]

Re: 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 Security Deed with the Clerk of Superior Court, [REDACTED] on September 16, 2009. Parties are [REDACTED] (Grantor) and [REDACTED] (Grantee)

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 accompanying 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 states, in pertinent part, that intangible recording tax is assessed at the rate of \$1.50 for each \$500.00 or fraction thereof of the face amount of the note secured by the recording of the security instrument. Further, every holder of a long-term note secured by real estate shall, within 90 days from the date of the instrument executed to secure the note, record the security instrument in the county in which is located the real estate conveyed or encumbered or upon which a lien is created to secure the note.

Although the security instrument was initially recorded in [REDACTED] on July 2, 2009, claimant's payment of intangible recording tax there in the amount of [REDACTED] is considered to be a voluntary payment. The instrument was ultimately recorded in [REDACTED] the correct county, on September 16, 2009, seventy-six days from the date of execution.

[REDACTED]  
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An "Opinion of the Attorney General" states as follows:

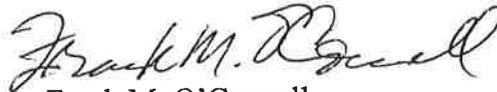
Applicability of refund provisions. – Ga. L. 1937-38, Ex. Sess., p. 77, § 34 (see § 48-2-35), which authorizes a refund procedure whether paid voluntarily or involuntarily, applies only to taxes paid to the state and has no application to the recording tax. 1960-61 Op. Att’y Gen. p. 521.

Intangible recording tax is an excise tax, not an ad valorem tax. It is paid for the privilege of filing a document to protect the note secured by the recording of the security instrument, and the fact that it is based on the value of the property is only ancillary. *Bankers Trust Co. v. Jackson*, Ga. App., 1999 Ga. App. LEXIS 212, S.E.2d (1999).

The Protest and Claim for Refund must therefore be denied.

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. § 48-7-76(b) may be distributed according to law.

Sincerely,

  
Frank M. O'Connell

FOC/RJL/me

cc: Clerk of Superior Court, [REDACTED]