State of Georgia

Douglas J. MacGinnitie
Commissioner

Department of Revenue

Administrative Division – Office of Tax Policy
1800 Century Blvd., Suite 15311
Atlanta, Georgia 30345-3205
(404) 417-6649

Frank M. O'Connell
Director

October 5, 2012

[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 security instrument representing a refinance with the Clerk of Superior Court, [redacted] on July 6, 2012. Parties are [redacted] (Grantor) and [redacted] (Lender) w/MERS (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 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, at (1), (2) and (3), defines a "Collecting officer," an "Instrument" or "security instrument," and a "Long-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. The tax is imposed on each instrument at a rate of $1.50 per $500.00 or fraction thereof of the face amount of the note secured by the instrument.

O.C.G.A. § 48-6-65 Extension, transfer, assignment, modification, or renewal of instrument; exemption for amount of note refinanced, at (b), provides that, "No tax shall be collected on that part of the face amount of a new instrument securing a long-term note secured by real estate which represents a refinancing by the original lender of unpaid principal on a previous instrument securing a long-term note secured by real estate if:" at (2)(A), "The new instrument contains a statement of what part of its face amount represents a refinancing of unpaid principal on the previous instrument;" or (B), "The holder of the new instrument submits an affidavit as to what part of the face amount of the new instrument represents a refinancing of unpaid principal on the previous instrument."

Ga. Comp. R. & Regs. r. 560-11-8-.05 Refinancing, at (1), holds that intangible recording tax is not required to be paid on the face amount of a new instrument securing a long-term note secured by real estate which represents a refinancing by the original lender and original borrower of unpaid principal of an existing instrument securing a long-term note secured by real estate, still owned by the original lender, if the intangible recording tax was paid on the original instrument or the original holder of the instrument was exempt. At (a), it states: "The new instrument must contain a statement of what part of the face amount represents a refinancing of unpaid principal. This information must be disclosed on the face of the instrument or in the alternative may be submitted in the form of an affidavit indicating which part of the face amount represents a refinancing of unpaid principal."

A determination as to whether intangible recording tax is due, and the proper amount of tax due, is made at the time of recording based on the information and documentation provided to the Clerk of Superior Court. In the instant matter, the security instrument recorded under Protest on July 6, 2012, meets the definition of a security instrument under the *Code*. In contravention of both the statute and regulation, you failed to disclose on its face for the benefit of the collecting officer a statement that it related to any prior security instrument on file in [redacted] No Deed Book and Page Number referencing a prior security instrument was provided. Nor was any statement given for the benefit of the collecting officer that indicated what the existing principal balance of the prior loan was as it relates to the instrument being recorded. In the alternative, you also failed to submit an affidavit per § 48-6-65 and 560-11-8-.05(a).

Accordingly, the security instrument presented for recording, with a stated long-term amount of principal advanced to the Borrower totaling [redacted] was subject to collection of [redacted] in total intangible recording tax. The Clerk of Superior Court recorded the instrument timely and collected the proper amount of tax due. 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. § 48-6-76(b) may be distributed according to law.

Sincerely,

Frank O'Connell

FOC/RJL/me

cc: Clerk of Superior Court, [redacted]