

Robyn A. Crittenden
State Revenue Commissioner



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Deputy State Revenue Commissioner

**Georgia Department of Revenue
Office of the General Counsel**

1800 Century Boulevard, N.E., Suite 15107, Atlanta, Georgia 30345

April 22, 2022

VIA: First Class Mail

[REDACTED]

RE: Intangible Recording Tax Protest and Claim for Refund for Security Deed, recorded on [REDACTED] Clerk of Superior Court, granted to [REDACTED] . ("Lender") by [REDACTED] ("Borrower"); [REDACTED]

Dear [REDACTED],

The Department of Revenue has carefully reviewed your Protest and Claim for Refund on the above-captioned instrument (hereinafter, "Second Amended Note"). As you acknowledge in your Claim for Refund, your position regarding the collection of intangible recording tax ("IRT") on the Second Amended Note contradicts the conclusion set forth in a Department of Revenue Determination Letter issued on April 30, 2013. The interpretation articulated in the 2013 Determination Letter continues to apply. Accordingly, your Claim for Refund is denied. A copy of this letter is being mailed to the [REDACTED] Clerk of Superior Court.

As you explain in your Claim for Refund, Borrower and Lender executed a long term note in the amount of \$ [REDACTED] on [REDACTED] . ([REDACTED]). The maximum IRT amount of \$25,000 was paid at the time of recording. The original note was amended in [REDACTED] with increased indebtedness of \$ [REDACTED] . IRT of \$ [REDACTED] was paid at the time of recording without protest.¹ ([REDACTED]). The Second Amended Note increasing the loan amount to \$ [REDACTED] was recorded on [REDACTED] . ([REDACTED])

¹ You do not mention the [REDACTED] amendment in your present Claim for Refund.

[REDACTED]). At the time of recording, \$1 [REDACTED] in IRT was paid on the increased indebtedness of \$ [REDACTED]. The IRT was paid under protest in accordance with O.C.G.A. § 48-6-76.

In the attachment to your Claim for Refund, you state: “[T]he Commissioner has previously taken the incorrect position that an amendment to an existing deed to secure debt meets the definition of ‘security instrument’ as set forth in O.C.G.A. § 48-6-60(2).” You reference the 2013 Determination Letter in which the Department decided additional IRT was due on an amended security deed pursuant to which the lender advanced additional principal. The Department concluded:

The additional advance to the Borrower of long-term principal totaling \$ [REDACTED] results in what is considered to be a brand new instrument that secures a new amount of original indebtedness totaling \$ [REDACTED]. Accordingly, a total of \$ [REDACTED] in intangible recording tax will be due and payable upon recording of the First Amendment.

You contend the 2013 Determination Letter is incorrect because when Borrower executed the original security deed in [REDACTED] it gave “an outright conveyance of land by warranty deed to its lender” You reference O.C.G.A. § 44-14-60, which states:

Whenever any person in this state conveys any real property by deed to secure debt to any person loaning or advancing the grantor any money . . . the conveyance of real or personal property shall pass the title of the property to the grantee until the debt or debts which the conveyance was made to secure shall be fully paid.

Based on this provision you contend that when the Second Amended Note was recorded, Borrower “had nothing left to convey and could not create a new lien or encumbrance in favor of its lender; it only modified, with the agreement of its lender, what it had already conveyed.” On this basis you conclude “the amendment in 2021 was not an ‘instrument’ or ‘security instrument’ requiring the payment of intangible tax under O.C.G.A. § 48-6-61.”

Relying on O.C.G.A. § 44-14-60 to avoid the payment of IRT on the additional indebtedness incurred on the Second Amended Note would negate the specific statutory provision governing modification of security instruments. Section 48-6-65(a)(1) of the Official Code of Georgia states: “[T]he tax required by Code Section 48-6-61 shall be due on any portion of the instrument **which is an additional advance of indebtedness** secured by a previously recorded instrument.” (Emphasis added). The statutory language is clear – if the amount of indebtedness increases, additional IRT is due.

The Georgia Attorney General has likewise concluded that additional indebtedness incurs additional IRT. The Attorney General has stated: “Any long-term note secured by real estate

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evidencing indebtedness beyond the remaining balance of the original indebtedness is subject to the tax imposed by [the statute] on the amount of the new or additional indebtedness.” 1963-65 Ga. Op. Att’y Gen. 654; *see also* 1960-61 Ga. Op. Att’y Gen. 519 (“[IRT] is imposed upon the amount of the indebtedness, the total amount of the note. The tax is not upon the instrument securing the note, nor upon the value of the real estate security.”).

Your position contradicts the specific statutory provision governing the payment of IRT upon the modification of security instruments. IRT in the amount of \$1 [REDACTED] was due and payable on the Second Amended Note.

Sincerely,

Dominick Capotosto

Dominick Capotosto
Deputy General Counsel

cc: [REDACTED] Clerk of Superior Court