

**RULES
OF
DEPARTMENT OF REVENUE**

**CHAPTER 560-11
LOCAL GOVERNMENT SERVICES DIVISION**

**SUBJECT 560-11-8
INTANGIBLE RECORDING TAX**

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Rule 560-11-8-.01. Purpose of Regulations

These regulations have been adopted by the Commissioner to establish specific policies and procedures of the Department applicable to the administration and collection of intangible recording tax pursuant to O.C.G.A. § 48-6-60. These regulations are administrative regulations applicable to a class of instruments within the meaning of O.C.G.A. § 48-6-71.

Authority: O.C.G.A. §§ 48-2-12, 48-6-60 - 48-6-77.

Rule 560-11-8-.03. Definitions

- (1) "Collecting officer" means the tax collector or tax commissioner of the county; provided, however, that in each county of this state having a population of 50,000 or more according to the United States Decennial Census of 1990 or any future such census, collecting officer means the Clerk of Superior Court of the county.
- (2) "Instrument" or "security instrument" means any written document presented for recording for the purpose of conveying or creating a lien or encumbrance on real estate for the purpose of securing a long-term note secured by real estate.
- (3) "Long-term note secured by real estate" shall mean any note representing credits secured by real estate by means of mortgages, deed to secure debt, purchase money deeds to secure debt, bonds for title, or any other form of security instrument, when any part of the principal of the note falls due more than 62 months from the date of the note or from the date of any instrument executed to secure the note and conveying or creating a lien or encumbrance on real estate for such purpose.
- (4) "Short-term note secured by real estate" shall mean any note which would be a long-term note secured by real estate were it not for the fact that the whole of the principal of the note falls due within 62 months from the date of the note or from the date of any instrument executed to secure the note.

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- (a) Reserved.
- (b) A short-term note remains classified as short-term according to its terms, as long as it remains outstanding, even if the indulgence of the creditor allows it to extend beyond a 62-month period.
- (c) A renewal note in payment of an existing short-term note is to be classified according to its own terms as to whether it is short-term or long-term.
- (d) A short-term note, with option to renew or extend by the borrower, where any part of the principal or interest of the note becomes due or may become due more than 62 months from execution is classified as long-term.
- (e) A "bona fide demand note" is always a short-term note according to its terms; provided however, that a note denominated as a "demand" note where the maturity date as determined from the instrument extends or may extend beyond 62 months is nevertheless a long-term note. For purposes of this regulation, a "bona fide demand note" is a note payable unconditionally on demand whose maturity date is not determined by any contingency other than the demand of the holder.
- (f) A note which matures the same month and day as executed only 62 months later is a short-term note.

Authority: O.C.G.A. §§ 48-6-60 - 48-6-64, 48-6-70.

Rule 560-11-8-.07. Multi-State Property

- (1) For a resident holder securing a long-term note: When conveying property located both within and outside the State of Georgia, intangible recording tax is calculated as if the property were located entirely within the State of Georgia. The maximum amount of Georgia intangible recording tax payable with respect to the instrument is \$25,000.
- (2) For a non-resident holder securing a long-term note: When conveying property located both within and outside the State of Georgia, the intangible recording tax due is \$1.50 per \$500 (or fraction thereof) of the total principal of the note, multiplied by the ratio of the value of real property located in Georgia to the value of all of the property, both within and outside of Georgia, securing the note.

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- (a) For the purposes of this regulation, a nonresident holder, if a business entity, is defined as any business entity that is incorporated or organized under the laws of a jurisdiction other than the State of Georgia and maintains its principal place of business outside of Georgia.
- (b) All values must be certified under oath by the holder presenting the instrument for recording. The application of the \$25,000 cap is made after the above referenced computation is completed. An example follows:

\$100,000,000 = Total Loan Amount

10% = % of FMV of Real Property located within Ga.

90% = % of FMV of Real Property located outside Ga.

\$300,000 = Tax on Loan Amount (\$100,000,000 x .003)

\$30,000 = Tax on 10% of Loan Amount (Ga. portion)

\$25,000 = Tax (after application of the cap)

- (3) Resident and nonresident holders: Where a single security instrument secures long-term notes held by both residents and nonresidents, and the long-term notes held by the residents and the long-term notes held by the nonresidents are clearly identifiable from the security instrument, intangible recording tax will be calculated as follows:
 - (a) Nonresident holders will be allowed to apportion their tax paid based on the apportionment formula described in subsection (2).
 - (b) Resident holders in the same transaction will be required to pay the intangible recording tax as if the property were located wholly within the State of Georgia on that portion of indebtedness represented by the long-term notes they hold. The maximum amount of Georgia intangible recording tax payable with respect to the indebtedness is \$25,000.

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- (c) If the notes held by residents and nonresidents cannot be distinguished from the face of the security instrument, no holder, resident or nonresident, will be allowed to apportion their tax paid based on the apportionment formula described in subsection (2). In this case, the amount of intangible recording tax required is the same amount that would be due were the property located wholly within the State of Georgia.

Authority: O.C.G.A. §§ 48-6-61, 48-6-69.

Rule 560-11-8-.11. Adjustable Rate Mortgages ("ARM")

Where an instrument secures a long-term note which contemplates the extension of credit based upon an adjustable interest rate, the intangible recording tax due is computed as follows:

- (a) Where the instrument contemplates negative amortization, the intangible recording tax is based upon the total amount of the credit contemplated within the instrument, if determinable. In some cases, this will be reflected as a percentage of the initial principal balance, and in some cases, it will be a fixed dollar amount.
- (b) If the instrument does not contain a ceiling, or if negative amortization may occur based on some future rate index, then the total credit contemplated cannot be determined. The intangible recording tax is then due on the initial principal balance as shown on the face of the instrument, and if negative amortization occurs, the holder of the instrument must execute and submit an affidavit as provided for in Rule 560-11-8-.05 concerning the intangible recording tax computation on additional advances and pay the intangible recording tax on the additional credit extended.

Authority: O.C.G.A. §§ 48-2-12, 48-6-62.

Rule 560-11-8-.13 Secured Lines of Credit

- (1) Intangible recording tax is due and payable by the note holder upon the recording of any of the types of lines of credit described in this subsection and is due on the total amount of the line of credit, whether advanced or not, when the instrument secures:
 - (a) A long-term line of credit secured by real estate;
 - (b) A long-term revolving line of credit secured by real estate; or
 - (c) A long-term equity line of credit secured by real estate.

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- (2) The determination of whether a line of credit is long-term is made at the time of recording from the face of the instrument. If the term of the line of credit will extend beyond a 62-month period, notwithstanding when advances will be advanced or repaid, the line of credit will be deemed long-term.
- (3) The \$25,000 maximum intangible recording tax limit provided for in O.C.G.A. § 48-6-61 shall apply with respect to the total amount of credit contemplated by the line of credit. No additional tax will be due on subsequent advances secured by the instrument as long as the principal outstanding at any one time does not exceed the maximum amount permitted to be outstanding as determined from the face of the instrument.

Authority: O.C.G.A. §§ 48-2-12, 48-6-61.

Rule 560-11-8-.14. Exemptions

Any mortgage, deed to secure debt, purchase money deed to secure debt, bond for title or any other form of security instrument is not subject to intangible recording tax where any of the following applies:

- (a) Where any of the following is a party: The United States, the State of Georgia, any agency, board, commission, department or political subdivision of either the United States or this state, any public authority, any non-profit public corporation, or any other publicly held entity sponsored by the government of the United States or this state.
- (b) Where any of the following is Grantee: a federal credit union, a state of Georgia chartered credit union, or a church.
- (c) Where the instrument is given as additional security, to correct a previously recorded instrument, or to substitute real estate; provided the body of the new instrument identifies the existing instrument and specifically states the purpose of the new instrument.
- (d) Where the instrument does not secure a note, (e.g., guaranty agreement; bail bond; performance agreement; bond issue; indemnity agreement; divorce decree; letter of credit).
- (e) In the case of a transfer or assignment, where the original note or the holder of the original note was exempt.

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- (f) Where the instrument is recorded pursuant to a plan of reorganization confirmed under Chapter 11 of the U.S. Code and where the instrument is accompanied by documentation verifying confirmation of the plan of reorganization.

Authority: O.C.G.A. §§ 7-1-662, 48-5-41(a)(1)(A), 48-6-60, 48-6-65(a), 48-6-65(a)(2), 48-6-65(b)(1), 48-6-71, 48-6-97.

Rule 560-11-8-.15. Determination Letter Requests

Requests for determination letter rulings by the Commissioner should always include a copy of the instrument being recorded. Notes and financial agreements may also be included with the request. The Department may request additional information to aid in its review and determination.

Authority: O.C.G.A. § 48-6-71.

Rule 560-11-8-.16. Claim for Refund

- (1) Any taxpayer who disputes the taxability of an instrument or the amount of intangible recording tax assessed by the collecting officer may pay the tax under Protest. The Protest must be filed at the moment the instrument is recorded and tax is paid. It cannot be filed after the instrument has been recorded and tax is paid. The Protest must be filed in duplicate and signed by the collecting officer at the time of recording. One copy must be attached to the instrument being recorded, and the collecting officer shall forward a copy of the Protest and the recorded instrument to the Department of Revenue at the address indicated on the Protest form.
- (2) The collecting officer who receives the protested payment shall deposit it into a special escrow account.
- (3) A taxpayer who files a Protest must file a Claim for Refund to successfully complete the Protest. The Claim for Refund must be filed with the Department no later than 45 days from the date of the Protest. It may also be executed at the time the Protest is filed. The Claim for Refund shall be filed with the Department of Revenue and sent to the address indicated on the Claim for Refund form. A copy of the Claim for Refund shall be filed with the collecting officer who recorded the instrument under Protest.

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- (4) 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 must be filed in the Superior Court of the county in which the instrument was recorded under Protest or in the Georgia Tax Court.
- (5) If the Claim for Refund is approved, in whole or in part, the collecting officer who collected the tax shall refund to the taxpayer the amount approved without interest.

Authority: O.C.G.A. §§ 48-2-12, 48-6-76.