



State of Georgia

Douglas J. MacSinnitie
Commissioner

Department of Revenue
Administrative Division – Office of Tax Policy
1800 Century Blvd. NE, Suite 13107
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Frank M. O'Connell
Director

November 7, 2012

[REDACTED]

Re: Whether the modification of a short-term note secured by real estate which extends the maturity date beyond three years from date of the note, but less than three (3) years from the date of modification, requires payment of intangible tax and whether, in addition to the tax, penalties and interest are due.

Dear [REDACTED]

I have carefully considered your request for a Letter of Determination pursuant to O.C.G.A. § 48-6-71. You have posed the question stated above in your correspondence dated September 26, 2012, which included copies of documents relating to the transaction at issue pursuant to Ga. Comp. R. & Regs. r. 560-11-8-.15 Determination Letter Requests. It was your affidavit dated [REDACTED], which was rejected for recording by the Clerk of Superior Court, [REDACTED] that has resulted in your request.

The entire class of Intangible Recording Tax Regulations were formally promulgated on July 7, 1996. Since that date they have never been changed or amended in any way. Ga. Comp. R. & Regs. r. 560-11-8-.04 is titled "Modification"; Ga. Comp. R. & Regs. r. 560-11-8-.05 is titled "Refinancing."

Ga. Comp. R. & Regs. r. 560-11-8-.06 Additional Advance, states as follows: "(1) In the case of a new note or a modification of a preexisting note, representing an additional extension of credit to be secured by a previously recorded instrument which otherwise requires no further recording, the intangible tax is determined according to the terms of the new note. (2) In lieu of recording a new or amended security instrument, the holder of the note may elect alternatively to execute an affidavit setting forth the amount of the additional advance, in words and figures, and the correct date on which the additional advance falls due, and the page and book of the previously recorded instrument. (3) The collecting officer of the county where the tax was first paid shall collect the intangible recording tax due and shall enter upon or attach to the affidavit the certificate that the intangible recording tax has been paid, the date, and the amount of the tax, and such affidavit

shall be recorded and attached to the previously recorded instrument.”

According to the documents you have provided, an original short-term Deed to Secure Debt with a Date of Execution of [REDACTED], and a Maturity Date of [REDACTED], was filed and recorded on [REDACTED], in [REDACTED]. The stated amount of principal loaned to the Borrower was [REDACTED]. No intangible recording tax was paid or assessed upon recording due to the Clerk's decision that the Deed to Secure Debt was short-term.

Your affidavit submitted for recording, dated [REDACTED], stipulates an “Amt. Financed” of [REDACTED] an “Amt. Refinanced” of [REDACTED]; and a “Taxable Amt.” of [REDACTED]. The affidavit also states that the existing Maturity Date has been extended by one year to [REDACTED].

Therefore, based upon the documents submitted concerning your transaction, it is my determination that:

An extension of the Maturity Date to [REDACTED] plus an Additional Advance totaling [REDACTED] have combined to transform what was formerly a short-term Deed to Secure Debt into a long-term security instrument subject to payment of intangible recording tax based upon the amount of principal loaned to the borrower totaling [REDACTED] as stated in the short-term Deed to Secure Debt. [The figure of [REDACTED] cited on the affidavit is not applicable.] The new long-term instrument is governed by a Date of Execution of [REDACTED], and a Maturity Date of [REDACTED]. It will be secured by a previously recorded instrument [REDACTED] [160] “which otherwise requires no further recording.” Based upon the controlling date of [REDACTED], as set forth on the affidavit, if recording occurs on or before the ninetieth day after that date pursuant to O.C.G.A. § 48-6-61, payment of intangible recording tax, only, will be due. If recording occurs after the ninetieth day, then intangible recording tax, penalty and interest would be due and payable as assessed by the Clerk of Superior Court, [REDACTED].

While this determination is final and binding with respect to the specific facts as contained in the documents submitted with your request, it does not apply to any other instruments or recordings.

Sincerely,


Frank O'Connell

FOC/RJL/me

cc: [REDACTED] Clerk of Superior Court, [REDACTED]
[REDACTED]