



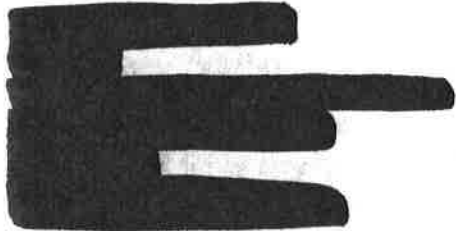
State of Georgia

Douglas J. MacSinnitie  
Commissioner

**Department of Revenue**  
Administrative Division – Office of Tax Policy  
1800 Century Blvd., Suite 15311  
Atlanta, Georgia 30343-3205  
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Frank M. O'Connell  
Director

April 30, 2013



Re: Request for a Commissioner's Letter of Determination per O.C.G.A. § 48-6-71. Whether Intangible Recording Tax will be due and payable upon recording of a First Amendment to Deed to Secure Debt, Security Agreement and Assignment of Leases and Rents. Parties are [REDACTED] (Grantor) and [REDACTED] (as Administrative Agent for itself and other lenders, collectively, Grantee)

Dear [REDACTED]

I have carefully considered your request for a Letter of Determination pursuant to O.C.G.A. § 48-6-71 as captioned above. That statute is supported by Ga. Comp. R. & Regs. r. 560-11-8-.15 Determination Letter Requests.

O.C.G.A. § 48-6-60 Definitions, at (2) and (3), defines 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.

Ga. Comp. R. & Regs. r. 560-11-8-.02 – Tax Payment and Rate, provides in pertinent part that intangible recording tax is due and payable on each instrument securing one or more long-term notes based on the face amount of all notes secured thereby. The tax is assessed on the security instrument and paid at the time of recording. The instrument must be recorded no later than 90 days from the date of execution by the parties. The maximum tax payable on a single security instrument is \$25,000.00.

Ga. Comp. R. & Regs. r. 560-11-8-.06 – Additional Advance, provides in pertinent part that 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 recording tax is determined according to the terms of the new note. This regulation contemplates that in the case of future advances, the collecting official will collect any additional tax due based upon the increased indebtedness.

According to your letter dated January 24, 2013, and the accompanying documents you have provided, a First Amendment to Deed to Secure Debt, Security Agreement and Assignment of Leases and Rent (the "First Amendment"), will secure a Multi-State instrument to be recorded in two counties in Georgia, [REDACTED] and [REDACTED] respectively. The First Amendment will advance to the Borrower an additional amount of principal totaling [REDACTED]. That will increase the total amount of outstanding long-term indebtedness from [REDACTED] to [REDACTED]. Your documents also indicate a total of [REDACTED] in intangible recording tax was allocated among [REDACTED] and [REDACTED] counties, respectively, pursuant to O.C.G.A. § 48-6-69, when the original security instrument between the parties was recorded on April 29, 2011.

Therefore, based upon your letter and the documents submitted with your request, it is my determination that the First Amendment meets the definition of a "security instrument" as set forth in O.C.G.A. § 48-6-60. 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. That amount should be allocated among [REDACTED] and [REDACTED] counties, respectively, in accordance with the statute.

A copy of this determination is being provided to the Clerk of Superior Court, [REDACTED] for informational purposes only. It is rendered without respect as to whether or not a total of [REDACTED] in intangible recording tax was due and payable, and should have been remitted to and collected by, [REDACTED] when a counterpart of the original instrument was recorded on April 29, 2011, in Deed Book [REDACTED] Page [REDACTED] records, instead of the file-stamped amount evidencing collection and deposit of [REDACTED].

Sincerely,

  
Frank M. O'Connell

FOC/RJL/me

cc: Clerk of Superior Court, [REDACTED]