



State of Georgia

Department of Revenue

Legal Affairs & Tax Policy

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Douglas J. MacSinnitie
Commissioner

Frank M. O'Connell
Director

October 1, 2014

[REDACTED]

Re: Commissioner's Determination pursuant to O.C.G.A. § 48-6-71, relating to the payment of intangible recording tax. Whether [REDACTED] is required to pay intangible recording tax when they execute a new promissory note since the [REDACTED] was a party on the original 2003 mortgage.

Dear [REDACTED]

This is in reply to your request, dated August 19, 2014, pursuant to O.C.G.A. § 48-6-71, wherein you have posed the following question with respect to application of the Georgia intangible recording tax imposed by O.C.G.A. § 48-6-61: "Whether [REDACTED] will be required to pay intangible tax when they execute a new promissory note since the [REDACTED] was a party on the original 2003 mortgage."

O.C.G.A. § 48-6-60 Definitions, sets forth at (1) the definition of a "Collecting officer"; at (2) the definition of a "security instrument"; and at (3) the definition of 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. § 48-6-69(b) concerns recording of an instrument that "creates a lien on real property located within and outside this state." Any tax deemed due and payable by the collecting official shall be paid to the collecting officer of each county [in conformance with § 48-6-69(a)] in which the "original or a duplicate original executed copy or counterpart" is recorded.

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.

Ga. Comp. R. & Regs. r. 560-11-8-.07 Multi-State Property, at (2), provides that a nonresident holder, if a business entity, is defined "as any business entity that is incorporated or organized under law other than the law of Georgia and maintains its principal place of business in a state other than Georgia." A mathematical example for purposes of calculating the tax due is provided in subparagraph (2)(b).

Ga. Comp. R. & Regs. r. 560-11-8-.14 Exemptions, holds that [a]ny 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."

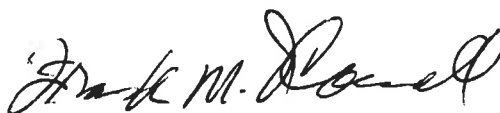
[REDACTED] (hereinafter [REDACTED]) of [REDACTED] is a [REDACTED]. The amount of the long-term loan between these two named parties, which counsel intends to secure via a 2003 Multi-State security instrument, is [REDACTED].

It is a fundamental rule that exemptions are construed narrowly against the taxpayer and in favor of the tax. Unless the entity claiming the exemption falls precisely within the exemption granted in every respect, the exemption does not apply.

Accordingly, having reviewed your letter and the accompanying documents provided, it is my determination, based on the information presented in your letter dated August 19, 2014, along with the accompanying documents, that upon recording of the prospective loan documents in the form as presently constituted, intangible recording tax at the statutory rate will be due and payable as neither of the named parties to the Promissory Note qualifies as an exempt entity pursuant to Ga. Comp. R. & Regs. r. 560-11-8-.14(a).

This determination applies only to the specific facts and documents as detailed in your request. It does not apply to any prior recordings or subsequent Amendments or Restatements of the Agreement between the parties.

Sincerely,



Frank M. O'Connell

FMC/RJL/me