



State of Georgia

Bart L. Graham
Commissioner

Department of Revenue

Suite 15300
1800 Century Boulevard
Atlanta, Georgia 30345
(404) 417-2100

February 19, 2008

[REDACTED]

Re: Intangible Recording Tax Protest per O.C.G.A. § 48-6-76 in the amount of [REDACTED] paid upon recording a Multi-State, Deed to Secure Debt with the Clerk of Superior Court, [REDACTED] on June 22, 2007, and the Clerk of Superior Court, [REDACTED] on June 25, 2007. Parties are [REDACTED] (Grantor) and [REDACTED] (Agent and Grantee)

Dear [REDACTED]

I have carefully considered your Protest and Claim for Refund of intangible recording tax per O.C.G.A. § 48-6-76 pursuant to the above-captioned matter. Your protest and claim for refund, your letters of July 18, 2007 and July 25, 2007, plus all associated documents were considered in the review. It is my determination that your Claim for Refund in the amount of [REDACTED] is denied. The amount may not be refunded.

O.C.G.A. § 48-6-60 defines an "instrument" or "security instrument" as any written document that conveys or creates a lien or encumbrance on real estate for the purpose of securing a long-term note secured by real estate.

Department of Revenue Regulation 560-11-8-.02 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 to be paid at the time of recording the instrument and must be paid within 90 days of the date of execution by the parties. The maximum tax payable on a single security instrument is \$25,000.00.

[REDACTED]
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Department of Revenue Regulation 560-11-8-.06 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 officer will collect any additional tax due based on the increased indebtedness. If the maximum intangible recording tax has already been paid on the original instrument, tax would be due on the increased indebtedness, subject to the maximum tax payable on each instrument.

Even though you failed to comply with O.C.G.A. § 48-6-69(a), which requires that the full amount of tax due be paid to the collecting officer of the county in which the instrument is first recorded, that does not affect the determination as to whether the tax was due. In this case, the Deed to Secure Debt recorded in [REDACTED] on June 25, 2007, meets the definition of a security instrument as set forth in O.C.G.A. § 48-6-60. Consequently, based upon an increase to the long-term principal in the amount of [REDACTED], per the apportionment process set forth in Department of Revenue Rule 560-11-8-.07, intangible recording tax in the amount of [REDACTED] was due.

A copy of this determination is being provided to the Clerk of Superior Court, [REDACTED] and the Clerk of Superior Court, [REDACTED], so that the money collected and deposited into an escrow account per O.C.G.A. § 48-6-76(b) may be distributed according to law.

Sincerely,



Bart L. Graham

BLG/RJL/mb

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