



Wart L. Graham  
Commissioner

State of Georgia  
**Department of Revenue**

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

November 18, 2008

[REDACTED]

Re: Intangible Recording Tax Protest and Claim for Refund per O.C.G.A. § 48-6-76(c) in the amount of [REDACTED] filed upon recording a Modification Agreement with the Clerk of Superior Court, [REDACTED] on September 5, 2008. Parties are [REDACTED] (Borrower); [REDACTED] (Lender)

Dear [REDACTED]

I have carefully considered your Protest and Claim for Refund of intangible recording tax per O.C.G.A. § 48-6-76(c) pursuant to the above-captioned matter. Your Protest and Claim for Refund, your correspondence of September 19, 2008, and October 16, 2008, 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 presented for recording for the purpose of conveying or creating a lien or encumbrance on real estate for the purposes of securing a long-term note secured by real estate.

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-.08 Multi-County Property, sets forth the procedure whereby security instruments can be recorded in multiple counties. In brief, the taxpayer chooses the initial county of recording for the security instrument; all tax due and payable is paid to the collecting officer. Once the tax has been paid the taxpayer can then record the instrument (or a counterpart of same which differs with respect to the property description contained therein) in any other counties involved without payment of further tax.

[REDACTED]  
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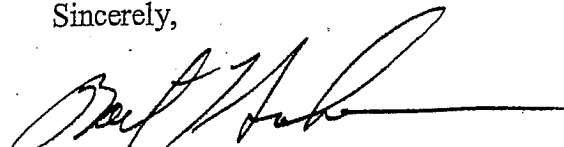
In the instant matter, on September 5, 2008, the Modification Agreement as agreed to by the parties, dated June 26, 2008, was presented to [REDACTED] for recording. The Modification Agreement sought to add two parcels of property in [REDACTED] as security collateral for a long-term note secured by real estate in [REDACTED]. Based upon the date of the Modification Agreement, there existed a long-term security instrument as of record in [REDACTED]. Claimant's responsibility, therefore, was to adhere to the requirements of Rev. Reg. 560-11-8-.08. Accordingly, the Modification Agreement should have been recorded in [REDACTED] prior to being recorded in [REDACTED].

Claimant's assertion on the face page of the Protest notwithstanding, there is no provision in either the Georgia Code or Department of Revenue Regulations that permits a security instrument to be released from one county and recorded in any other county without having to meet certain definitional tests according to Georgia law.

Because there existed no security instrument as of record in [REDACTED] the collecting officer correctly imposed intangible recording tax, per the stated amount shown on "Exhibit A," when the document was presented for recording. The Protest and Claim for Refund must therefore be denied.

A copy of this determination is being provided to 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]