



Wart L. Graham
Commissioner

State of Georgia
Department of Revenue

Suite 15300
1800 Century Boulevard
Atlanta, Georgia 30345
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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] paid upon recording a Deed to Secure Debt and Security Agreement with the Clerk of Superior Court, [REDACTED] on July 11, 2008. Parties are [REDACTED] ("Grantor") and [REDACTED] ("Agent")

Dear [REDACTED]:

I have carefully considered your intangible recording tax Protest and Claim for Refund per O.C.G.A. § 48-6-76(c) pursuant to the above-captioned matter. Your Protest and Claim for Refund plus all accompanying 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. § 48-6-65(a) holds that "No tax other than as provided for in this article shall be required to be paid on any instrument which is an extension, transfer, assignment, modification or renewal of, or which only adds additional security for, any original indebtedness secured by an instrument subject to the tax imposed by Code Section 48-6-61 when: (2) The original instrument or the holder of the original instrument was exempt from the tax provided for in Code Section 48-6-61 by virtue of any other law."

Ga. Comp. R. & Regs. r. 560-11-8-.14 Exemptions, states: "Any 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]
Page Two

Intangible recording tax in Georgia is an excise tax which is assessed on the instrument at the time of recording and based upon the stated principal amount of the note or notes secured thereby. Intangible taxes ". . . are paid for the privilege of filing a document to protect the note secured by the recording of the security instrument, and the fact that it is based on the value of the property is only ancillary." [*Bankers Trust Co. v. Jackson*, Ga. App., 1999 Ga. App. LEXIS 212, S.E.2d (1999).]

The formally executed Claim for Refund submitted on behalf of claimant (Grantor) [REDACTED] states: "Claimant, a nonprofit public corporation, is a party to the transaction and therefore the Security Instrument is not subject to intangible recording tax pursuant to reg. 560-11-8-.14." Further, "The lender, [REDACTED] is a federally chartered instrumentality of the United States as part of the Farm Credit System, formed by Congress in 1916. It is the oldest U.S. government-sponsored enterprise. The Security instrument is therefore not subject to intangible recording tax under the same reg."


Per a "Certificate of Existence" dated June 17, 2008, from the Georgia Secretary of State, Corporations Division, that was submitted by counsel, Grantor is certified to be a "Foreign Non-Profit Corporation." On that basis, therefore, Grantor does not qualify for an exemption from intangible recording tax pursuant to Rev. Reg. 560-11-8-.14(a).

With respect to counsel's contention that Agent, [REDACTED] should be deemed exempt because they are a federally chartered instrumentality of the United States, as set forth in *Mo. Director of Revenue v. CoBank, ACB*, Banks for Cooperatives have never been exempt from state taxation. More to the point, [REDACTED] own charter states it is not exempt from "taxes on real estate held by the Bank to the same extent, according to its value, as other similar property held by persons is taxed."

[REDACTED] designation on the face of the security instrument as "a federally chartered instrumentality of the United States" notwithstanding, that entity does not qualify for an exemption under 560-11-8-.14(a). Therefore, taxes in the amount of [REDACTED] were due.

A copy of this determination is being provided to the Clerk of Superior Court, [REDACTED] so that the amount currently being held in a special escrow account may be distributed in accordance with the statute.

Sincerely,


Bart L. Graham

BLG/RJL/mb

cc: Clerk of Superior Court, [REDACTED]