



Bart L. Graham  
Commissioner

State of Georgia  
**Department of Revenue**

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

February 10, 2009

[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 Multi-State First Amendment to Deed to Secure Debt, Assignment of Leases and Rents and Security Agreement and First Amendment to Assignment of Leases, Rents, Income and Cash Collateral with the Clerk of Superior Court, [REDACTED] on February 19, 2008. Parties are [REDACTED], [REDACTED] (Grantor) and [REDACTED] (Grantee)

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, your letters dated March 11, 2008 and March 27, 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 that conveys or creates a lien or encumbrance on real estate for the purpose of securing a long-term note secured by real estate.

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.

[REDACTED]  
Page Two

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.

For an instrument that secures property both inside and outside of Georgia, the applicable regulation is Ga. Comp. R. & Regs. r. 560-11-8-.07 Multi-State Property. At (2)(b), it provides a formula to calculate the tax due based upon the *fair market value of all property*, both inside and outside Georgia, as it relates to the total loan amount. (emphasis added)

The First Amendment recorded on February 19, 2008, meets the definition of a security instrument as set forth in O.C.G.A. § 48-6-60. Based upon an additional advance totaling [REDACTED] it established an increase in the amount of long-term indebtedness from an existing principal balance of [REDACTED] to [REDACTED]

It is not germane to the issue, however, that none of the properties added pursuant to the First Amendment are located in Georgia. Nor is the statement relevant, per the Claim for Refund, that "the value of the Georgia Properties has not increased." Regulation 560-11-8-.07 clearly requires that the values of all property be stated for purposes of calculating the amount of tax due, whether in respect to an original instrument or any subsequent modification.

Based upon an examination of the First Amendment, the addition of two "New Borrowers" has created a new security instrument due to a material change of the parties involved. Per the principal amount of long-term indebtedness totaling [REDACTED] the maximum amount of [REDACTED] intangible recording tax was due and payable upon recording on February 19, 2008.

Taking into account the amount paid under Protest, there exists a deficit of intangible recording tax totaling [REDACTED]. Upon payment of that additional amount, the instrument shall be stamped to reflect payment with the Clerk of Superior Court directed to distribute it according to law.

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]