



Bart L. Graham  
Commissioner

State of Georgia  
Department of Revenue  
Suite 15300  
1800 Century Boulevard  
Atlanta, Georgia 30345  
(404) 417-2100

February 26, 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] paid to the Clerk of Superior Court, [REDACTED] on June 5, 2008, upon recording a Multi-County, Second Modification of a Deed to Secure Debt. Parties are [REDACTED] (Borrower); [REDACTED] (Lender)

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 June 13, 2008, and July 8, 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.

The Multi-County, Second Modification of a Deed to Secure Debt recorded on June 5, 2008, meets the definition of a security instrument as set forth in O.C.G.A. § 48-6-60. It secures two additional notes with combined long-term indebtedness totaling [REDACTED]

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 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.

O.C.G.A. § 48-6-62 concerns "Certification of payment of tax; effect of filing instrument prior to payment; alternate procedure for filing new or modified note secured by previously recorded instrument." In pertinent part, at (b): "In the case of a new note or modification of a preexisting

[REDACTED]  
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note, when the instrument securing the new note or modification is taxable under Code Section 48-6-61 and is secured by a previously recorded instrument which requires no further recording, the holder of the instrument, in lieu of recording a new or amended instrument as provided for in subsection (a) of this Code section, may elect alternatively to execute a sworn affidavit in the form required by the commissioner. . . . The tax collector or tax commissioner shall collect from the holder the tax due under Code Section 48-6-61 and upon payment of the tax shall enter upon or attach to the affidavit the certification provided for in subsection (a) of this Code section. The certification shall evidence the payment of the required tax with respect to the new instrument or modification.”

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 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.

Having reviewed your request for refund and O.C.G.A. § 48-6-62(b), 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 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]