



Bart L. Graham
Commissioner

State of Georgia
Department of Revenue

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

March 16, 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 upon recording a Modification To Deed To Secure Debt with the Clerk of Superior Court, [REDACTED] on October 16, 2008. Parties are [REDACTED] (Grantor) and [REDACTED] (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(c) pursuant to the above-captioned matter. Your Protest and Claim for Refund, your letters dated November 5, 2008, and November 18, 2008, plus all associated documents were considered in the review.

It is my determination that intangible recording tax was not due when the Modification To Deed To Secure Debt between the parties was recorded by the Clerk of Superior Court, [REDACTED] on October 16, 2008.

O.C.G.A. § 48-6-60 sets forth "Definitions" as they relate to intangible recording tax. Paragraph Four defines a short-term note as follows: (4) "Short-term note secured by real estate" means any note which would be a long-term note secured by real estate were it not for the fact that the whole of the principal of the note falls due within three years from the date of the note or from the date of any instrument executed to secure the note.

Ga. Comp. R. & Regs. r. 560-11-8-.03 Definitions, at (4)(c), provides: "A renewal note in payment of an existing short-term note is to be classified according to its own terms as to whether it is short-term or long-term."

[REDACTED]
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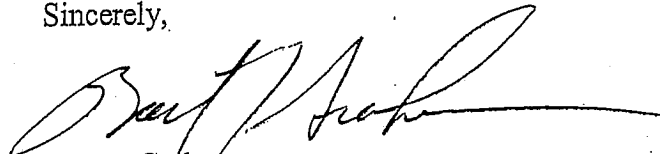
Ga. Comp. R. & Regs. r. 560-11-8-.04 Modification states: "Intangible recording tax is not required to be paid on any instrument that modifies by extension, transfer, assignment or renewal, or gives additional security for an existing note, when the intangible recording tax has been paid on the original instrument or the original note or holder of the original instrument was exempt."

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 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.

In the instant matter, the Modification Agreement recorded on October 16, 2008, included an additional advance to the Borrower. Because it incorporated all existing indebtedness into a brand new, short-term Renewal Note, for that reason the Modification Agreement must be considered short term.

A copy of this decision is being provided to the Clerk of Superior Court, [REDACTED] as authority for refunding the amount to claimant from the special escrow fund in which it is currently being held according to statute.

Sincerely,



Bart L. Graham

BLG/RJL/mb

cc: Clerk of Superior Court, [REDACTED]