



Bart L. Graham
Commissioner

State of Georgia
Department of Revenue
Administrative Division - Tax Law & Policy
Suite 15311
1800 Century Blvd.
Atlanta, Georgia 30345-3205
(404) 417-6649

Frank M. O'Connell
Director

September 2, 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 Multi-County Deed to Secure Debt and Security Agreement with the Clerk of Superior Court, [REDACTED] on June 19, 2009. 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 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. § 48-6-60, at (2), 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 purpose of securing a long-term note secured by real estate.

O.C.G.A. § 48-6-61 states, in pertinent part, that intangible recording tax is assessed at the rate of \$1.50 for each \$500.00 or fraction thereof of the face amount of the note secured by the recording of the security instrument. It further provides that the face of a long-term instrument presented for recording shall contain three things for the benefit of the Clerk or a member of their staff as the "collecting officer": the date of execution of the instrument, the maturity date of the note, and the principal amount of the note. This Code Section is supported by the following three "Opinions of the Attorney General":

[REDACTED]
Page Two

“Tax collector or tax commissioner is required to determine principal amount of a long-term debt solely from the face of the security deed without resorting to any other information. . . .” 1980 Op. Att’y Gen. No. 80-141.

“Where any of debt is repayable more than three years from date, it is all long-term and subject to the rates applicable thereto.” 1960-61 Op. Att’y Gen. p. 519 (rendered under Ga. L. 1953, Nov.-Dec. Sess., p. 379, § 4).

“If a maturity date is set out in the instrument to be filed, the note, regardless of its recitals, is not a demand note, and the tax collector or tax commissioner must classify the note by the date as set out.” 1970 Op. Att’y Gen. U70-9 (rendered under Ga. L. 1953, Nov.-Dec. Sess., p. 379, § 4).

When the Multi-County security instrument was initially presented for recording on June 12, 2009, the Clerk of Superior Court, [REDACTED] performed its legal obligation correctly and in conformance with Georgia law by requesting that a maturity date be specified in the instrument. Accordingly, this would enable the collecting officer to determine whether or not the security instrument was, or was not, subject to payment of intangible recording tax. There is no provision in Georgia law or Department of Revenue Regulations that states an “annual test period” must be taken into account as the basis for determining whether or not a security instrument is subject to tax. Given that the Multi-County instrument subsequently presented for recording on June 19, 2009, met the definition of a security instrument cited above, it was subject to payment of intangible recording tax. 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. § 48-7-76(b) may be distributed according to law.

Sincerely,


Frank M. O'Connell

FOC/RJL/me

cc: Clerk of Superior Court, [REDACTED]
Clerk of Superior Court, [REDACTED]
Clerk of Superior Court, [REDACTED]