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Commissioner

State of Georgia
Department of Revenue
Administrative Division – Tax Law & Policy
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Frank M. O'Connell
Director

October 21, 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 with the Clerk of Superior Court, [REDACTED] on July 21, 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. § 48-6-60, at (3), defines a "Long-term note secured by real estate" as any note representing credits secured by real estate by means of mortgages, deeds to secure debt, purchase money deeds to secure debt, bonds for title, or any other form of security instrument, when any part of the principal of the note falls due more than three years from the date of the note or from the date of any instrument executed to secure the note and conveying or creating a lien or encumbrance on real estate for such purpose."

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. This Code Section is supported by the following three

[REDACTED]
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“Opinions of the Attorney General”:

“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)*.

The security instrument that was presented for recording on July 21, 2009, was accompanied for recording by a “Modification Agreement” executed between the parties. Because the face page of that document clearly extended the Maturity Date to June 30, 2014, the Clerk of Superior Court, [REDACTED] correctly interpreted the instrument as long term and subject to payment of [REDACTED] in 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]