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Frank M. O'Connell
Director

December 3, 2010

[REDACTED]

Re: Intangible Recording Tax Protest and Claim for Refund pursuant to O.C.G.A. § 48-6-76(c) in the amount of [REDACTED] filed upon recording a Third Modification to Deed to Secure Debt with the Clerk of Superior Court, [REDACTED] on March 23, 2010. 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 correspondence with accompanying enclosures 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 Definitions, at (3) and (4), defines a "Long-term note secured by real estate" and a "Short-term note secured by real estate," respectively.

Ga. Comp. R. & Regs. r. 560-11-8-.04 Modification provides as follows: "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, at (1), provides: "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."

[REDACTED]
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With respect to the Second Modification which was executed on February 10, 2007, additional funds were advanced in the amount of [REDACTED]. The maturity date of the instrument was extended to February 10, 2008. Appended to it was a Third Modification which incorporated a non-refundable loan extension fee of [REDACTED]. Both modifications were recorded with the Clerk – the ultimate result being that intangible recording tax was assessed which triggered the filing of the Protest and Claim for Refund.

[REDACTED] refund claim asserted that the second and third modifications extending the maturity date were “renewals” of the Instrument and did not implicate the intangible recording tax statute. In support of its position [REDACTED] relied on Ga. Comp. R. & Regs. r. 560-11-8-.03(4)(b), which provides that a short-term note remains a short-term note “as long as it remains outstanding, although the indulgence of the creditor allows it to extend beyond a three year period.” [REDACTED] asserted that the Instrument remained outstanding due to the indulgence of the creditor.

[REDACTED] is correct that from the initial maturity date of November 10, 2006, until February 10, 2007, the short-term note remained outstanding due to the indulgence of the creditor. During that time period the creditor took no collection action against the debtor. The Instrument simply remained unpaid.

However on February 10, 2007, the creditor began to take affirmative action to preserve its position. The parties executed the second and third modifications advancing additional funds, extending the maturity date to April 30, 2012, and importantly, collecting a non-refundable loan extension fee of [REDACTED]. The Instrument now was outstanding not by the indulgence of the creditor but rather by the terms of the negotiated extension. In addition, the due date of the Instrument now was more than three years from the date of execution. Therefore, the Instrument became a long-term note on which intangible recording tax properly was collected when it was recorded by the Clerk. Accordingly, the Protest and Claim for Refund must 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 a special escrow account per O.C.G.A. § 48-6-76 may be distributed according to law.

Sincerely,


Frank M. O'Connell

cc: Clerk of Superior Court, [REDACTED]