



State of Georgia

## Department of Revenue

Administrative Division - Office of Tax Policy  
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Frank M. O'Connell  
Director

Douglas J. MacSinnitic  
Commissioner

February 17, 2012

[REDACTED]

Re: An 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 Deed to Secure Debt with the Clerk of Superior Court, [REDACTED] on March 15, 2011. 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 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.

O.C.G.A. § 48-6-60 Definitions, sets forth at (1) the definition of a "Collecting officer"; at (2) the definition of an "Instrument" or "security instrument"; at (3) the definition of a "Long-term note secured by real estate"; and at (4) the definition of a "Short-term note secured by real estate," respectively.

O.C.G.A. § 48-6-61 provides in pertinent part that security instruments must be filed and the intangible recording tax paid no later than ninety days from the date of execution by the parties. The tax is imposed on each instrument at a rate of \$1.50 per \$500.00 or fraction thereof of the face amount of the note secured by the instrument.

Ga. Comp. R. & Regs. r. 560-11-8-.03 - Definitions, at (2), holds an "Instrument" or "Security Instrument" should be construed 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.

Ga. Comp. R. & Regs. r. 560-11-8-.13 Secured Lines of Credit, holds as follows:

“(1) Intangible recording tax is due and payable by the note holder, upon the recording of an instrument securing a long-term revolving line of credit secured by real estate, a long-term line of credit secured by real estate or long-term equity line of credit secured by real estate on the total amount of the line of credit, whether advanced or not.

“(2) The determination of whether the revolving line of credit, secured line of credit, or equity line of credit is long-term is made at the time of recording from the face of the instrument. If the term of the revolving line of credit, secured line of credit, or the equity line of credit will extend beyond a three year period, notwithstanding when advances will be advanced or repaid, the revolving line of credit, the secured line of credit, or equity line of credit, will be deemed long-term.

“(3) The \$25,000 maximum intangible tax limit provided for in O.C.G.A. Section 48-6-61 shall apply with respect to the total amount of credit contemplated by the line of credit. No additional tax will be due on the subsequent advances secured by the instrument as long as the principal outstanding at any one time does not exceed the maximum amount permitted to be outstanding as determined by the face of the instrument.”

The Deed to Secure Debt recorded on March 15, 2011, meets the definition of a long-term instrument pursuant to O.C.G.A. § 48-6-60. It secured a long-term revolving account between the parties with a stated maximum amount of principal totaling [REDACTED]. Pursuant to DOR Regulation 560-11-8-.13, intangible recording tax totaling [REDACTED] was due and payable upon recording.

The Protest and Claim for Refund must therefore be denied. The Clerk of Superior Court, [REDACTED] is instructed to remove the protested amount from the special escrow account into which it was deposited and distribute it according to statute.

Sincerely,

  
Frank O'Connell

FOC/RJL/me

cc: Clerk of Superior Court, [REDACTED]