



State of Georgia

Douglas J. MacSinnitie  
Commissioner

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

Frank M. O'Connell  
Director

February 20, 2012

[REDACTED]

Re: An Intangible Recording Tax Protest and Claim for Refund –Multi-County-- per O.C.G.A. § 48-6-76(c) in the amount of [REDACTED] paid upon recording a Modification to Deed to Secure Debt, Assignment of Rents, Security Agreement and Fixture Filing with the Clerk of Superior Court, [REDACTED] on December 19, 2011. Parties are [REDACTED] (Grantor) and [REDACTED] (for the Lenders, collectively, 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, at (1), (2) and (3), defines a "Collecting officer," an "Instrument" or "security instrument," and a "Long-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-.02 – Tax Payment and Rate, provides in pertinent part that intangible recording tax is due and payable on each instrument securing one or more long-term notes based on the face amount of all notes secured thereby. The tax is assessed on the security

instrument and paid at the time of recording. The instrument must be recorded no later than 90 days from the date of execution by the parties. The maximum tax payable on a single security instrument is \$25,000.00.

Rev. Reg. 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 recording tax is determined according to the terms of the new note. This regulation contemplates that in the case of future advances, the collecting official will collect any additional tax due based upon the increased indebtedness.

The instrument recorded under Protest meets the definition of a “security instrument” pursuant to O.C.G.A. § 48-6-60. In this case, the “Modification” increased the amount of long-term indebtedness from [REDACTED] to [REDACTED]. Based upon the increase in long-term principal totaling [REDACTED] pursuant to 560-11-8-.06, intangible recording tax in the amount of [REDACTED] was due and payable upon recording. The Protest and Claim for Refund must therefore necessarily be denied.

A copy of this determination is being provided to all six Georgia Clerks of Superior Court so that the amount of tax currently being held in their respective escrow accounts may be distributed in accordance with the statute.

Sincerely,

  
Frank M. O'Connell

FOC/RJL/me

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