



State of Georgia

Department of Revenue

Administrative Division – Office of Tax Policy

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Frank M. O'Connell
Director

Douglas J. MacSinnittie
Commissioner

March 5, 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 Multi-State Deed to Secure Debt with the Clerk of Superior Court, [REDACTED] on January 20, 2011. Parties are [REDACTED] (Obligor) and [REDACTED] (Obligee)

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.

O.C.G.A. § 48-6-69(b) concerns an instrument that creates a lien on real property located within and outside Georgia as security for a long-term note held by a nonresident. It provides that "the tax required by this article shall be that proportion of the tax which would otherwise be required under this article that the value of the real property within this state bears to the total value of all the real property within and outside this state as described in the instrument."

Ga. Comp. R. & Regs. r. 560-11-8-.07 Multi-State Property, concerns recording and payment, based upon an apportionment of tax, when a security instrument conveys property "located both within and without the State of Georgia to secure a long-term note. . . ." At (2)(a)(b), the regulation states:

(2) Nonresident holder: A nonresident, if a business entity, for the purposes of this regulation is defined as any business entity that is incorporated or organized under law other than the law of Georgia and maintains its principal place of business in a state other than Georgia.

(a) If the holder of an instrument conveying property located both within and without the State of Georgia is a nonresident of Georgia, the amount of tax due would be \$1.50 per \$500.00 or fraction thereof of the principal of the note, times (x) the ratio of the value of real property located in Georgia to the value of all real property, in-state and out-of-state, securing the note.

(b) All values must be certified under oath by the holder presenting the instrument for recording. The application of the \$25,000 cap is made after the above referenced computation is completed. [A mathematical example of how to calculate the tax due and payable pursuant to the above is provided.]

The Multi-State Deed to Secure Debt recorded under Protest on January 20, 2011, meets the definition of a long-term instrument pursuant to O.C.G.A. § 48-6-60. Relying upon O.C.G.A. § 48-6-69, and Ga. Comp. R. & Regs. r. 560-11-8-.07(2) Multi-State Property, the Clerk of Superior Court, [REDACTED] in its statutory role of "collecting officer" responsible for administration of the intangible recording county on behalf of [REDACTED] directed that claimant submit an apportionment affidavit, captioned Exhibit A. Given that Exhibit A, as submitted, apportions the proper amount of tax payable to [REDACTED] pursuant to O.C.G.A. § 48-6-69 and Revenue Regulation 560-11-8-.07(2), it is my determination that the Clerk of Superior Court, [REDACTED] fulfilled its responsibility correctly with respect to the security instrument recorded under Protest. At that time, tax in the amount of [REDACTED] was due.

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]