



Bart L. Graham
Commissioner

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

Frank M. O'Connell
Director

March 6, 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 April 4, 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, and 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.

In brief, intangible recording tax is an excise tax. It is "paid for the privilege of filing a document to protect the note secured by the recording of the security instrument, and the fact that it is based on the value of the property is only ancillary." *Bankers Trust Co. v. Jackson*, Ga. App., 1999 Ga. App. LEXIS 212, S.E.2d (1999).

O.C.G.A. § 48-6-60 contains definitions for a "collecting officer," a "security instrument," a "Long-term note secured by real estate," and a "Short-term note secured by real estate."

The rate of intangible recording tax due and payable on a long-term note is contained in O.C.G.A. § 48-6-61. Intangible recording tax is imposed 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.

[REDACTED]
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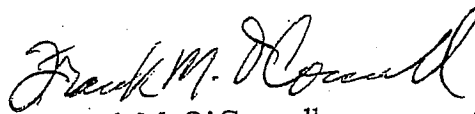
Ga. Comp. R. & Regs. r. 560-11-8-.03, at (4)(d), provides: "A short-term note, with option to renew or extend by the borrower, where any part of the principal or interest of the note *becomes due or may become due* more than three years from execution is classified as long-term." (emphasis in original)

In the instant matter, you have contended that even though the Borrower does have two, separate one-year options to renew or extend the maturity date beyond February 28, 2014, if specified conditions are met, those options are subject to substantial conditions beyond the Borrower's control.

Based upon the plain language of the statute which defines a long-term note, as well as Department of Revenue Rule 560-11-8-.03(4)(d), which provides in pertinent part that a short-term note, with an option to renew or extend by the borrower, where any part of the principal or interest of the note *becomes due, or may become due*, more than three years from the date of execution is classified as a long-term note, the Deed to Secure Debt recorded under protest on April 4, 2011, was interpreted correctly as a long-term security instrument subject to payment of intangible recording tax by the Clerk of Superior Court, [REDACTED]. The protest in the amount of [REDACTED] must therefore necessarily 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(b) may be distributed according to law.

Sincerely,


Frank M. O'Connell

cc: Clerk of Superior Court, [REDACTED]