



State of Georgia

Douglas J. MacSinnittie
Commissioner

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

May 18, 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, Assignment of Rents and Security Agreement with the Clerk of Superior Court, [REDACTED] on May 10, 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, 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-.14 Exemptions, states: "Any mortgage, deed to secure debt, purchase money deed to secure debt, bond for title or any other form of security instrument is not subject to intangible recording tax where any of the following applies:

(a) Where any of the following is a party: The United States, the State of Georgia, any agency,

board, commission, department or political subdivision of either the United States or this state, any public authority, any non-profit public corporation, or any other publicly held entity sponsored by the government of the United States or this state. (d) Where the instrument does not secure a note, (e.g., guaranty agreement; bail bond; performance agreement; bond issue; indemnity agreement; divorce decree; letter of credit).”

The transaction at issue concerns a Loan and Security Agreement between the parties. It pertains to a construction mortgage whereby the proceeds of two series of bonds in an original aggregate principal amount of [REDACTED] are being loaned to the Grantor in order to finance the costs, among other things, of acquiring, constructing, equipping, improving and/or operating a charter school facility commonly known as the [REDACTED]

The long-term Deed to Secure Debt recorded under Protest on May 10, 2011, meets the definition of a security instrument under the *Code*. With respect to claimant’s assertion that the instrument does not secure a note and therefore should be considered exempt from payment of intangible recording tax pursuant to Revenue Regulation 560-11-8-.14(d), these two “Opinion[s] of the Attorney General” may prove instructive:

Whether instrument is bond or long-term note is a fact question. – Determination of whether an instrument is a bond or a long-term loan secured by real estate for purposes of determining which intangibles tax provisions shall apply is a fact question. 1954-56 Op. Att’y Gen. p. 772.

Tax held applicable. – Intangible recording tax imposed by O.C.G.A. § 48-6-61 is applicable to a long-term note secured by real estate held by a lender who was enabled to make the loan through the deposit of the proceeds of revenue bonds issued by a local housing authority and which deposit was conditioned upon the lender making the loan. 1984 Op. Att’y Gen. No. 84-17.

The long-term security instrument recorded in [REDACTED] on May 10, 2011, was subject to payment of [REDACTED] in intangible recording tax. Therefore, the Protest and Claim for Refund must be denied.

The Clerk of Superior Court, [REDACTED] is hereby permitted to remove the protested amount from the special escrow account and distribute it according to statute.

Sincerely,


Frank O'Connell

FOC/RJL/me

cc: Clerk of Superior Court, [REDACTED]