



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

August 20, 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 security deed representing a modification agreement with the Clerk of Superior Court, [REDACTED] on June 5, 2012. Parties are [REDACTED] (Borrower) and [REDACTED] (Lender)

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 intangible recording tax was not due when the Modification Agreement between the parties was recorded. Therefore, your claim for refund in the amount of [REDACTED] is upheld.

O.C.G.A. § 48-6-60 sets forth "Definitions" as they relate to intangible recording tax. Paragraph Four defines a short-term note as follows: (4) "Short-term note secured by real estate" means any note which would be a long-term note secured by real estate were it not for the fact that the whole of the principal of the note falls due within three years from the date of the note or from the date of any instrument executed to secure the note.

Ga. Comp. R. & Regs. r. 560-11-8-.03 Definitions, provides, at (4)(b): A short-term note remains classified as short-term according to its terms, as long as it remains outstanding, although the indulgence of the creditor allows it to extend beyond a three year period. At (4)(c): A renewal note in payment of an existing short-term note is to be classified according to its own terms as to whether it is short-term or long-term.

Ga. Comp. R. & Regs. r. 560-11-8-.04 Modification, states: "Intangible recording tax is not required to be paid on any instrument that modifies by extension, transfer, assignment or renewal, or gives additional security for an existing note, when the intangible recording tax has been paid on the original instrument or the original note or holder of the original instrument was exempt."

In the instant matter, the Modification Agreement recorded on June 5, 2012, established a brand new short-term Renewal Note. For that reason, the Modification Agreement was not subject to payment of intangible recording tax. The Protest must therefore be upheld.

A copy of this decision is being provided to the Clerk of Superior Court, [REDACTED] as authority for refunding the protested amount from the special escrow account in which it is currently being held according to statute.

Sincerely,


Frank O'Connell

FOC/RJL/me

cc: Clerk of Superior Court, [REDACTED]