



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

November 8, 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 security instrument representing a Modification with the Clerks of Superior Court in [REDACTED] and [REDACTED] counties on August 16, 2012. Parties are [REDACTED] (on behalf of itself and eight other co-Borrowers), "Grantor"; [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 your Claim for Refund in the amount of [REDACTED] is denied. The amount may not be refunded. Further, it is my finding that an additional [REDACTED] in Intangible Recording Tax is due and payable and should be allocated among [REDACTED] and [REDACTED] counties.

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 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-.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.

Ga. Comp. R. & Regs. r. 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.

Ga. Comp. R. & Regs. r. 560-11-8-.07 – Multi-State Property, concerns recording and payment of intangible 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), it 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.

The instrument recorded under Protest meets the definition of a "security instrument" as set forth in O.C.G.A. § 48-6-60. In this case, the "First Amendment to Deed to Secure Debt" establishes a brand new co-borrower which increases the total number of co-borrowers (collectively, "Grantor") from eight to nine. It also establishes a new, long-term "Second Note" in the amount of [REDACTED]. Based upon a new borrower and new debt, a new security instrument with long-term indebtedness in the amount of [REDACTED] has been created with [REDACTED] in intangible tax to the state of Georgia. Therefore, the claimant is instructed to execute a "corrected affidavit" for recording in both [REDACTED] and [REDACTED] counties that allocates the additional [REDACTED] in tax due to Georgia pursuant to O.C.G.A. § 48-6-69 and Regulation 560-11-8-.07.

Upon receipt of the additional intangible recording tax, the Clerks of Superior Court in [REDACTED] and [REDACTED] counties should remove the protested amount being held in a special escrow account and distribute the total amount of tax paid to the county in accordance with the statute.

Sincerely,

  
Frank M. O'Connell

FOC/RJL/me

cc: Clerk of Superior Court. [REDACTED]

Clerk of Superior Court. [REDACTED]