



State of Georgia

Douglas J. MacGinnitie
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

December 10, 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]. Filed on August 9, 2012, pursuant to recording a Second Amendment to Georgia Security Deed and Security Agreement with the Clerk of Superior Court, [REDACTED]. 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, 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.

Ga. Comp. R. & Regs. r. 560-11-8-.14 Exemptions, states in pertinent part: "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.”

With respect to the instant matter, regardless of the fact that no intangible recording tax was paid or collected, the Security Deed recorded on June 13, 2008 [REDACTED], was long term and subject to payment of tax.

It may prove instructive to mention that, should a taxpayer disagree with the Clerk, or be uncertain regarding the taxability of an instrument and want to ensure the instrument is recorded timely with no Bar to Foreclosure subject to being imposed upon the instrument, the taxpayer has the following options. First, the taxpayer can make a voluntary payment under Protest pursuant to O.C.G.A. § 48-6-76 and thereby compel the collecting officer to record the instrument timely with evidence that tax has been paid. Second, the taxpayer can request a Letter of Determination from the State Revenue Commissioner pursuant to O.C.G.A. § 48-6-71. Utilizing either option, a ruling based upon statutory law and Department regulations will be issued for the benefit of both parties.

Based upon the documents provided, Grantor does not qualify for an exemption from payment of intangible recording tax as a “non-profit public corporation.” Pursuant to statutory law, the long-term instrument recorded on June 13, 2008, that secured indebtedness totaling [REDACTED] was subject to payment of [REDACTED] in intangible recording tax. Your request for a refund of that amount must necessarily be denied.

Penalty and Interest totaling [REDACTED] which was assessed upon recording of the Second Amendment, was also due. There is no statutory basis for a waiver of the Interest. That amount may not be refunded. Your request for a Penalty Waiver pursuant to O.C.G.A. § 48-6-77(c) is denied.

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

Sincerely,


Frank M. O'Connell

FOC/RJL/me

cc: Clerk of Superior Court, [REDACTED]