



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

December 11, 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-.12 Instrument Securing Short-Term and Long-Term Notes, states: "Where a single instrument secures both long-term and short-term notes, intangible recording tax is due on the sum of the amounts of both the long-term and short-term notes, up to the maximum tax allowed per instrument."

[REDACTED]
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The following "Opinion of the Attorney General" might also prove instructive:

Whether it is evidenced by one note or a series of notes, when any of the debt is repayable more than three years from the date of execution, it is all long-term and subject to the rates applicable thereto. 1960-61 Op. Att'y Gen. p. 519.

Based upon the documents provided, Grantor does not qualify for an exemption from payment of intangible recording tax as a "non-profit *public* corporation." (emphasis added) Accordingly, the Second Amendment recorded under Protest on August 9, 2012, which incorporated "the 2009 Note" in the amount of [REDACTED] was subject to collection of intangible recording tax totaling [REDACTED]. The Protest and Claim for Refund must necessarily be 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]