



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

September 26, 2013

[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 an Amended and Restated Deed to Secure Debt and Security Agreement with the Clerk of Superior Court, [REDACTED] on July 9, 2013. Parties are [REDACTED] (Grantor) and [REDACTED] (“Bank”)

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. Further, it is my finding that an additional [REDACTED] in intangible recording tax is due and payable and should be remitted to the Clerk of Superior Court, [REDACTED]

O.C.G.A. § 48-6-60 Definitions, sets forth at (1) the definition of a “Collecting officer”; at (2) and (3) the definitions of a “security instrument” and “Long-term note secured by real estate”; and at (4) the definition of a “Short-term note secured by real estate.” O.C.G.A. § 48-6-61 provides 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.

An "Opinion of the Attorney General" relating to § 48-6-60 holds as follows:

**Length of period rather than number of notes determines classification of notes.**— Intent of this statute is to impose a tax upon the entire long-term debt secured by real estate. 1954-56 Op. Att'y Gen. p. 773.

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-.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 amount allowed per instrument."

The instrument recorded under Protest is not a brand new, short-term deed that secures a short-term note. Rather the instrument, which "otherwise requires no further recording," is governed by an original Date of Execution of December 22, 2010. It secures a Promissory Note in the "maximum loan amount" of [REDACTED]. Of that amount, [REDACTED] represents the existing principal balance of long-term indebtedness incurred by the Grantor, for which tax was paid on December 30, 2010, when the original instrument securing a long-term note in the amount of [REDACTED] was recorded. Because the Promissory Note at issue includes short-term indebtedness upon which no tax has ever been paid, and given that it is being combined with existing long-term indebtedness *including an additional advance of principal to the Grantor* (a.k.a. "new money"), pursuant to 560-11-8-.12 the total indebtedness secured by the instrument "is all considered to be long-term" and subject to collection of intangible recording tax. Finally, the Maturity Date has been extended to April 17, 2016.

Deducting [REDACTED] from the maximum loan amount of [REDACTED] yields a balance of [REDACTED] which was subject to payment of intangible recording tax at the statutory rate. Accordingly, the amount of intangible tax that was legally due and payable to Cobb County upon recording on July 9, 2013, is [REDACTED]. Subtracting the protested amount of [REDACTED] results in a deficit of [REDACTED] that is due and payable to the Clerk of Superior Court, [REDACTED]. Upon payment of that amount, the instrument recorded under Protest will require a notation by the collecting official to reflect the additional payment of tax.

For the foregoing reasons, therefore, the Protest and Claim for Refund must be denied.

A copy of this determination is being provided to the Clerk of Superior Court, [REDACTED] so that the money collected and deposited into an escrow account per O.C.G.A. § 48-6-76(b) may be distributed according to law. Upon payment of additional intangible tax totaling [REDACTED] the Clerk should distribute that amount also in accordance with the statute.

[REDACTED]  
Page Three

Please be advised that any taxpayer whose Protest and Claim for Refund is denied, in whole or in part, has the right to bring an action for refund of the amount so claimed and not approved against the collecting officer who received the payment and recorded the instrument. The action may be filed in either the Superior Court of the county in which the instrument was recorded or in the Georgia Tax Tribunal no later than 60 days from the date of the denial, and served pursuant to law.

Sincerely,

  
Frank M. O'Connell

FOC/RJL/me

cc: Clerk of Superior Court, [REDACTED]