



State of Georgia

Douglas J. MacSinnitie  
Commissioner

**Department of Revenue**  
Legal Affairs & Tax Policy  
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Frank M. O'Connell  
Director

July 1, 2014

[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 Modification Agreement with the Clerk of Superior Court, [REDACTED] on April 18, 2014. Parties are [REDACTED] (Obligor) and [REDACTED] (Obligee)

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, 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. § 48-6-62(b), holds that in the case of a new note or modification of a preexisting note, when the instrument securing the new note or modification is taxable under Code Section 48-6-61 and is secured by a previously recorded instrument which requires no further recording, the holder of the instrument, in lieu of recording a new or amended instrument as provided for in subsection (a) of this Code section, may elect alternatively to execute a sworn affidavit in the form required by the commissioner. . . . The tax collector or tax commissioner shall collect from the holder the tax due under Code Section 48-6-61 and upon payment of the tax shall enter upon or attach to the affidavit the certification provided for in subsection (a) of this Code section. The

certification shall evidence the payment of the required tax with respect to the new instrument or modification.

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 is exempt."

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.

The instrument recorded under Protest meets the definition of a "long-term note secured by real estate" per O.C.G.A. § 48-6-60(3). In this case, [REDACTED] acquired the loan formerly held by [REDACTED] pursuant to a "Purchase and Assumption Agreement" executed with the Federal Deposit Insurance Corporation, as Receiver, upon the failure of [REDACTED]. The stated long-term principal balance totaling [REDACTED] per the Modification Agreement, constitutes a brand new loan and brand new debt consummated by brand new parties, one of whom is a New Lender. It is secured by a previously recorded instrument [Deed Book [REDACTED], Page [REDACTED]], "which requires no further recording." The Clerk of Superior Court, [REDACTED] recorded the instrument timely and collected the proper -total- amount of tax due. 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.

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]