



State of Georgia

Department of Revenue

Legal Affairs & Tax Policy

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Lynnette T. Riley
Commissioner

Frank M. O'Connell
Director

November 2, 2015

[REDACTED]

Re: An Intangible Recording Tax Protest per O.C.G.A. § 48-6-76(a) in the amount of [REDACTED] paid upon recording a First Modification of Deed to Secure Debt, Assignment of Leases and Rents and Security Agreement with the Clerk of Superior Court, [REDACTED] on July 22, 2015. 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, 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 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.

O.C.G.A. § 48-6-65(b) provides that "No tax shall be collected on that part of the face amount of a new instrument securing a long-term note secured by real estate which represents a refinancing by the original lender of unpaid principal on a previous instrument securing a long-term note secured by real estate if:" at (2)(A) "The new instrument contains a statement of what part of its face amount represents a refinancing of unpaid principal on the previous instrument. . . ."

Ga. Comp. R. & Regs. r. 560-11-8-.05 Refinancing, at (1), holds that intangible recording tax is not required to be paid on the face amount of a new instrument securing a long-term note secured

by real estate which represents a refinancing by the original lender and original borrower of unpaid principal of an existing instrument securing a long-term note secured by real estate, still owned by the original lender, if the intangible recording tax was paid on the original instrument or the original holder of the instrument was exempt. At (a): The new instrument must contain a statement of what part of the face amount represents a refinancing of unpaid principal. This information must be disclosed on the face of the instrument or in the alternative may be submitted in the form of an affidavit indicating which part of the face amount represents a refinancing of unpaid principal.

Ga. Comp. R. & Regs. r. 560-11-8-.06 Additional Advance, provides that in the case of a new note or 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 on July 22, 2015, meets the definition of a long-term instrument per the *Code*. The "First Modification of Leasehold Deed to Secure Debt, Assignment of Leases and Rents and Security Agreement" incorporates two material changes. It includes the addition of a new lender, which increases the number of participating lenders from eight to nine, and increases the amount of long-term indebtedness secured by the instrument from [REDACTED] to [REDACTED]. Based upon a new lender and new debt, a new security instrument with long-term indebtedness in the amount of [REDACTED] has been created with [REDACTED] due in intangible tax to the state of Georgia. The Clerk of Superior Court, [REDACTED] administered the instrument in conformance with Georgia law and Department regulations by collecting the proper 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

cc: Clerk of Superior Court, [REDACTED]