



State of Georgia

Department of Revenue
Legal Affairs & Tax Policy
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Lynnette T. Riley
Commissioner

Frank M. O'Connell
Director

February 22, 2016



Re: An Intangible Recording Tax Protest and Claim for Refund per O.C.G.A. § 48-6-76(c) in the aggregate amount of [REDACTED] paid upon recording a Multi-State/Multi-County Second Amended and Restated Deed to Secure Debt. A total of \$25,000 in intangible recording tax, in the aggregate, was paid upon recording in five Georgia counties, commencing with [REDACTED] on September 15, 2015. Parties in [REDACTED] are [REDACTED] (Grantor) and [REDACTED] as Administrative Agent (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 excess intangible recording tax paid totaling [REDACTED] in the aggregate, was not due when the Multi-State/Multi-County security instrument was recorded in five Georgia counties with an aggregate amount of intangible recording tax paid totaling \$25,000. Therefore, the Claim for Refund, in the aggregate amount of [REDACTED] should be upheld.

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. § 48-6-69, at (a), governs recording of a Multi-County security instrument in this state with respect to payment of tax due to each individual county. At (b), it governs recording and payment of tax in multiple counties in this state when the instrument secures real property

located both within and outside this state.

Ga. Comp. R. & Regs. r. 560-11-8-.02 Tax Payment and Rate, provides, in pertinent part, that intangible recording tax is due and payable on each instrument securing one or more long-term notes at the rate of \$1.50 per \$500.00 or fraction thereof of the face amount of all notes secured thereby. The maximum tax on a single security instrument is \$25,000.

Ga. Comp. R. & Regs. r. 560-11-8-.07 Multi-State Property, underpins O.C.G.A. § 48-6-69(b). In addition to setting forth how resident and nonresident "holders" should proceed, it provides a mathematical example for purposes of determining the proper amount of tax due.

Ga. Comp. R. & Regs. r. 560-11-8-.08 Multi-County Property, underpins O.C.G.A. § 48-6-69(a) and describes, *inter alia*, how a counterpart of the instrument for recording should be accompanied by an affidavit that "sets forth the value of the real property encumbered in every county being secured by the instrument."

With respect to the instant matter, the Second Amended and Restated Deed to Secure Debt secures long-term indebtedness "not to exceed [REDACTED]" Date of Execution is September 11, 2015; the Maturity Date is July 10, 2020. The instrument, and appropriate counterparts, were recorded in five counties in Georgia beginning with [REDACTED] on September 15, 2015, in [REDACTED]. Per an affidavit provided with each of the five recordings, which sets forth the respective values of Georgia property as each relates to the whole, plus intangible tax due and payable to each county, intangible recording tax totaling \$25,000, in the aggregate, was paid. Because four participating co-Borrowers recorded instruments (one of whom recorded a counterpart that encumbered property in two counties), "in an abundance of caution" each of them paid [REDACTED] in intangible tax at the time of recording. Each co-Borrower also executed separate refund claims pursuant to Georgia law and Department regulations.

Because the instrument secures one long-term indebtedness, the maximum amount of intangible recording tax payable on a single security instrument of \$25,000 was due pursuant to Rev. Reg. 560-11-8-.02. The excess amount of tax paid totaling [REDACTED] in the aggregate, should therefore be refunded by the Clerk of Superior Court in each of the five subject counties per the five Claim for Refund forms submitted. The amounts should be removed from the respective escrow accounts into which they were deposited and refunded to the claimants.

Sincerely,


Frank M. O'Connell

FOC/RJL/me

cc: [REDACTED] [REDACTED]