



Department of Revenue  
State of Georgia

410 Trinity-Washington Building  
Atlanta, Georgia 30334  
(404) 656-4015

W. Jerry Jackson  
Commissioner

June 26, 1998

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

RE: Commissioner's determination pursuant to O.C.G.A. § 48-6-71 regarding notes from [REDACTED] all due not more than three years from the date of execution of the notes and secured by deeds to secure debt executed and recorded more than three years prior to the execution of the notes, borrower and grantor, to [REDACTED], lender and grantee

Dear [REDACTED]:

In reply to your request pursuant to O.C.G.A. § 48-6-71 with respect to the application of the Georgia intangible recording tax imposed by O.C.G.A. § 48-6-61, it is my determination, based on the information presented in your letters dated April 2, 1998, and April 20, 1998, along with the accompanying documents, that:

Further recordation of the security instrument dated March 7, 1995, [REDACTED] grantor, and [REDACTED], grantee, in order to secure the further advances contemplated under the security instrument is not required by the intangible recording tax statute. O.C.G.A. § 48-6-66 requires that every instrument conveying, encumbering, or creating a lien upon real estate shall set forth in words and figures the correct amount of the note secured by the instrument and the date upon which the note falls due. In those cases where the security instrument contains a valid future advances clause, the above statutory requirement is met by means of an affidavit. O.C.G.A. § 48-6-62(b) provides: "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

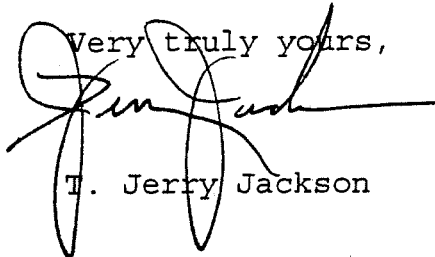
[REDACTED]  
June 26, 1998

Page 2

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, which affidavit shall set forth the information required by Code Section 48-6-66. The holder of the instrument shall present the sworn affidavit to the collecting officer of the county in which the real estate is located. 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."

Upon presentation of the sworn affidavit above, no intangible recording tax will be due. The due date of the notes is not more than three years from the date of execution of the notes. O.C.G.A. § 48-6-60(4) provides that the term of a note is measured from either the date of the note or the date of the instrument securing the note. These dates are applied in the disjunctive such that if either measurement produces a term of not more than three years, then the note is short term. Thus, application of this test indicates that the notes in this instance are classified as short term.

Very truly yours,



T. Jerry Jackson

---TJJ/TW/jt