



Department of Revenue
State of Georgia

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

T. Jerry Jackson
Commissioner

December 4, 1998

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

Re: [REDACTED]; intangible recording tax determination request

Dear [REDACTED]

This is in response to your letter dated September 15, 1998 requesting a determination under O.C.G.A. § 48-6-71 on behalf of [REDACTED] ("[REDACTED]") regarding the applicability of Georgia's intangible recording tax under certain circumstances described therein. The instant determination is based solely on the information presented in your submission to the Department. In the event of any material omissions or misstatements of fact, whether inadvertent or otherwise, this determination shall be null and void.

According to your letter, [REDACTED] is a [REDACTED] corporation with its commercial domicile in [REDACTED]. The company is a wholly-owned subsidiary of [REDACTED] ("[REDACTED]"), which also has its principal place of business in [REDACTED]. [REDACTED] currently owns or will own approximately \$3 billion of loans evidenced by notes secured by real estate throughout the United States. These loans were all originated by [REDACTED], which was the original holder of the notes. When the security instruments for such notes were recorded by [REDACTED] in the various states in which the real estate was located, including Georgia in some instances, all appropriate recording taxes were paid by [REDACTED].¹ After such instruments were recorded and the taxes paid, the secured notes were packaged and assigned to [REDACTED]. It is expected that [REDACTED]

¹I therefore assume for purposes of this determination that Georgia intangible recording tax is paid by [REDACTED] in every case where the long-term note is secured, at least in part, by property located in Georgia.

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[REDACTED] will continue to accept assignments of secured loans that are originated and packaged by [REDACTED] in this manner.

[REDACTED] is considering moving its commercial domicile from [REDACTED] to Georgia. The question posed by your determination request is whether O.C.G.A. § 48-6-70 would, in such an event, require [REDACTED] to pay intangible recording tax with respect to either the secured notes which it acquired (or will acquire) as assignee from [REDACTED] under the circumstances described above or the security instruments related to such notes.

Code Section 48-6-65 provides in pertinent part:

Every resident holder of an instrument securing a long-term note secured by real property located outside of this state including, but not limited to, domestic corporations and foreign corporations having their principal places of business in this state shall file, in lieu of recording the instrument securing any such note, at such periodic intervals as the commissioner by regulation may designate, a memorandum of the instrument with the commissioner on forms prescribed by the commissioner. At the same time as the memorandum is filed, the holder of the instrument shall pay to the commissioner the amount of the tax required by this article with respect to the instrument.

At the same time, Code Section 48-6-65 provides that

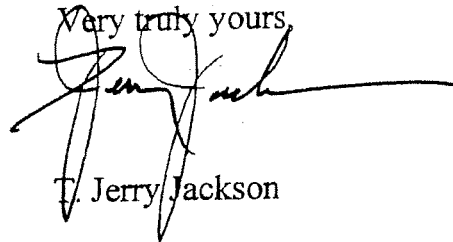
[n]o tax other than as provided for in [Article 3 of Chapter 6 of Title 48] shall be required to be paid on any instrument which is [a] transfer [or] assignment. . . of... any original indebtedness. . . secured by an instrument subject to the tax imposed by Code Section 48-6-61 when... [i]t affirmatively appears that the tax as provided by this article has been paid on the original security instrument recorded; or [t]he original instrument or the holder of original instrument was exempt from the tax provided for in Code Section 48-6-61 by virtue of any other law.

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Based on the above, it is my determination that if ████████ moves its principal place of business to Georgia, neither the secured notes which it acquired (or will acquire) as assignee from ████████ under the circumstances described above nor the security instruments related to such notes will be subject to Georgia intangible tax recording tax under O.C.G.A. § 48-6-70.

Very truly yours,

A handwritten signature in cursive script, appearing to read "T. Jerry Jackson", with a long horizontal flourish extending to the right.

T. Jerry Jackson

TJJ:bf