



State of Georgia

Department of Revenue

Legal Affairs & Tax Policy
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Atlanta, Georgia 30345
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Lynnette T. Riley
Commissioner

Frank M. O'Connell
Director

August 24, 2015

[REDACTED]

Re: An Intangible Recording Tax Letter of Determination request per O.C.G.A. § 48-6-71. Submitted by [REDACTED] relating to a proposed Deed to Secure Debt to be filed for record in [REDACTED] Georgia, and requesting that the Department rule it is exempt from payment of intangible recording tax

Dear [REDACTED]

I am in receipt of your letter and accompanying request dated May 12, 2015. Your letter and all supporting documents have been considered in the review.

Your letter requests that the Department issue a Letter of Determination concerning a proposed Deed to Secure Debt in the amount of [REDACTED] per a Judgment Lien recorded on [REDACTED] [Lien Book [REDACTED] Page [REDACTED] records], as last transferred by an Assignment recorded in Lien Book [REDACTED] Page [REDACTED] records, be deemed exempt from intangible recording tax in accordance with Ga. Comp. R. & Regs. r. 560-11-8-.14(d). That subparagraph states: "(d) Where the instrument does not secure a note, (e.g., guaranty agreement; bail bond; performance agreement; bond issue; indemnity agreement; divorce decree; letter of credit)."

Also referenced in your letter, as it relates to the prospective recording of the proposed Deed to Secure Debt, is a proposed Consent Order. The present status of both the proposed Consent Order and proposed Deed to Secure Debt are not specified.

"The indebtedness in the Deed to Secure Debt is based on a proposed Consent Order with [REDACTED] as the plaintiffs. There is no new money advanced to the defendants/grantors. ["[REDACTED]" is captioned as Defendant on the Judgment Lien.] The existing indebtedness is simply being transferred from

the below-described Judgment Lien to the Deed to Secure Debt. This Consent Order requires the substitution of the existing Judgment Lien with the Deed to Secure Debt. . . . All fees for the Judgment Lien have been paid to the Superior Court.”

In response, be please be advised it has long been the policy of the Department that private letter rulings or letters of determination can only be issued upon submission of a “real” transaction with all facts presented. The Department does not issue letter rulings in response to prospective or theoretical transactions. Because your request posits certain prospective recordings (a proposed Deed to Secure Debt pursuant to a proposed –signed and agreed to– Consent Order) without including a necessary degree of additional, substantive detail so that the Department would have the benefit of analyzing all aspects of what has been agreed to (the Consent Order) and thereupon memorialized (the Deed to Secure Debt) preparatory to being recorded with the Clerk of Superior Court, the Department respectfully declines to issue a Letter of Determination at this time.

Accordingly, the Department would be pleased to review a future draft copy of a Deed to Secure Debt, substantially in final form, if it is accompanied by a signed, file-stamped copy of a Consent Order from the appropriate venue, and render a determination as to whether or not the Deed to Secure Debt should be deemed exempt from payable of intangible recording tax upon being presented for recording to the Clerk of Superior Court,

Sincerely,


Frank M. O'Connell

FOC/RJL/me