



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

October 25, 2016

[REDACTED]

Re: A Supplemental Letter of Determination Request for Intangible Recording Tax per O.C.G.A. § 48-6-71 pursuant to a proposed Deed to Secure Debt to be filed for record in [REDACTED]. That the Department rule the Deed to Secure Debt is exempt from payment of intangible recording tax. The amount to be secured is [REDACTED]. Parties are [REDACTED] (Grantor) and [REDACTED] (Grantee).

Dear [REDACTED]

I am in receipt of your Supplemental Letter of Determination Request dated September 2, 2015, as captioned above, pursuant to O.C.G.A. § 48-6-71. It relates to a prior Letter of Determination Request to which the Department issued an official response via letter dated August 24, 2015. With respect to the instant request, your letter and all supporting documents were considered in the review. In essence, the Supplemental Request seeks a ruling from the Department that the prospective recording be deemed exempt from collection of intangible recording tax.

Your Supplemental Request states, in pertinent part: “[W]e are substituting the indebtedness in a judgment lien with a deed to secure debt with [REDACTED] and [REDACTED] as the grantees, dated August 3, 2015 in the principal amount of [REDACTED] (hereinafter referred to as the “Deed to Secure Debt”). . . . We have enclosed the filed Consent Order with the Exhibit “A” showing the Deed to Secure Debt for your review. . . [and] request for you to quickly issue the Letter of Determination that no intangible taxes are due on the Deed to Secure Debt as it is an integral plank in the settlement of litigation pending since 2010 as you can readily see from [REDACTED].”

O.C.G.A. § 48-6-60 Definitions, sets forth at (1) the definition of a “Collecting officer”; at (2)

the definition of an "Instrument" or "security instrument"; and at (3) the definition of a "Long-term note secured by real estate," respectively.

Ga. Comp. R. & Regs. r. 560-11-8-.14 Exemptions, provides: "Any mortgage, deed to secure debt, purchase money deed to secure debt, bond for title or any other form of security instrument is not subject to intangible recording tax where any of the following applies:

"(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)."

As a general rule, exemptions from taxation are construed narrowly. *Georgia Dep't of Revenue v. Owens Corning*, 283 Ga. 489, 490 (2008) (quoting *Collins v. City of Dalton*, 261 Ga. 584, 585-586 (1991) ("Taxation is the rule, and exemption from taxation [is] the exception."). *Cherokee Brick & Tile Co. v. Redwine*, 209 Ga. 691, 692-93 (1953) ("[A]ll grants of exemption from taxation must be strictly construed in favor of the State."). See also *Warestores v. Nash*, 125 Ga. App. 210 (1971) (applying principle that exemptions from taxation are strictly construed to intangible property taxes).

Based upon the documents submitted with your request concerning the prospective recording of a Deed to Secure Debt in [REDACTED] and taking into account Revenue Regulation 560-11-8-.14, the Department concludes that the Deed to Secure Debt is not entitled to an exemption from payment and collection of intangible recording tax.

This determination applies only to the specific facts and documents as detailed in your request. It does not apply to any prior recordings or subsequent Amendments or Restatements between the parties.

Sincerely,

  
Frank M. O'Connell

FOC/RJL/me