



Department of Revenue
State of Georgia
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Atlanta, Georgia 30345
(404) 417-2100

T. Jerry Jackson
Commissioner

November 26, 2002

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

RE: Protest and Claim for Refund of Intangible Recording Tax Paid in connection with the recording of a Leasehold Deed to Secure Debt between [REDACTED] and [REDACTED] pursuant to O.C.G.A. 48-6-76; Whether the Leasehold Deed to Secure Debt between the parties secured a note or whether it merely secured a guaranty.

Dear [REDACTED]:

This responds to your Protest and Claim for Refund of intangible recording tax paid in the amount [REDACTED] to the clerk of superior court, [REDACTED] when a Leasehold Deed to Secure Debt between the parties was recorded. The issue is whether intangible recording tax was due based on the alleged "Guarantor" relationship of [REDACTED].

O.C.G.A. 48-6-60 defines an "Instrument or "Security Instrument" as any written document presented for recording for the purpose of conveying or creating a lien or encumbrance on real estate for the purpose of securing a long-term note secured by real estate.

O.C.G.A. 48-6-61 provides in pertinent part that there is imposed on each instrument an intangible recording tax on the face amount of the note, subject to a maximum amount of tax of \$ 25,000.00 for any single note.

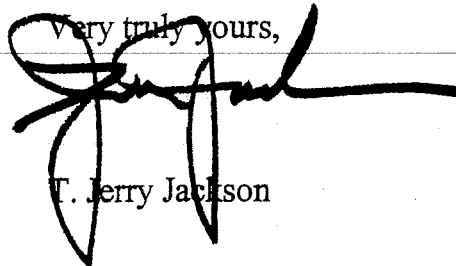
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Department of Revenue Rule 560-11-8-.14 provides in pertinent part that where the instrument does not secure a note, (e.g., guaranty agreement, bail bond; performance agreement; bond issue; indemnity agreement; divorce decree; letter of credit, it is not subject to intangible recording tax.

The information provided in your letters, the loan documents, the Leasehold Deed to Secure Debt and other supporting documents does not establish that the instrument in question does not secure a note.

Based on the information provided in your letters dated January 16, 2002, January 23, 2002 and February 19, 2002 with accompanying loan and security documents, it is my determination that Intangible recording tax in the amount of [REDACTED] was due when the Leasehold Deed to Secure Debt between the parties was recorded on December 21, 2001. It is my further determination that the Leasehold Deed to Secure Debt between the parties secured a note rather than a guaranty. The intangible recording tax may not be refunded.

Very truly yours,



T. Jerry Jackson

TJJ/JWM/jt