

State of Georgia

Wart L. Graham Commissioner

Department of Revenue

Suite 15300 1800 Century Wibd. Atlanta, Georgia 30345 (404) 417-2100

April 5, 2005



RE: Protest and Claim for Refund of Intangible Recording Tax Paid in the Amount of Upon Recording of an Amendment to the Clerk of Superior Court, to Deed to Secure Debt, Assignment of Leases and Rents and Security Agreement between Administrative Agent for the Benefit of Secured parties (Grantee) and (Grantor) on February 17, 2005 Dear I have carefully considered the Protest and Claim for Refund of intangible recording tax paid by to the Clerk of Superior Court, in the amount of when the security instrument between the parties was recorded. The Protest and Claim for and your letters dated March 2, 2005 and March 23, 2005 Refund filed by the with all supporting documentation was considered. Based on a careful review of all documentation provided, it is my determination that the intangible recording tax paid in the when the instrument was recorded on February 17, 2005 was due and no part of the tax that was collected may not be refunded.

O.C.G.A. 48-61 provides that intangible recording tax is to be imposed on each instrument executed to secure a note based on the face amount of the note secured by the instrument, subject to a maximum of \$25,000.00 per security instrument. Department of Revenue Rules and Regulations 560-11-8-.02 provides that intangible recording tax is payable on each instrument securing one or more long-term notes based on the face amount of all notes secured by the instrument. The tax is assessed on the instrument.

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.



Page Two April 5, 2005

Department of Revenue Rules and Regulations 560-11-8-.14 exempts an instrument from intangible recording tax when the instrument does not secure a note (e.g. Guaranty Agreement)

The instrument recorded between the parties meets the definition of "instrument" or "security instrument" as defined in O.C.G.A. 48-6-60. While the instrument secures both a guaranty and notes, the statute provides no authority for computing intangible recording tax other than based on the face amount of the notes secured by the instrument. The instrument, even though it partially secures a guaranty, still secures notes. There is no statutory authority or regulatory authority for exempting any portion of the face amount of the notes when the instrument secures both a guaranty and notes.

A copy of this determination is being provided to the Clerk of Superior Court, authority for disbursing the intangible recording tax currently being held in a special escrow account as provided by statute.

Sincerely,

Bart L. Graham

BLG/JWM/jt

cc: Clerk of Superior Court,