

Bart L. Graham  
Commissioner

State of Georgia  
**Department of Revenue**

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

October 25, 2007

[REDACTED]

Re: Intangible Recording Tax Protest per O.C.G.A. § 48-6-76(a) in the amount of [REDACTED] paid upon recording a Modification of Security Deed with the Clerk of Superior Court, [REDACTED] on June 14, 2007. Parties are [REDACTED] (Borrowers) and [REDACTED] (Lender)

Dear [REDACTED]

I have carefully considered your Protest and Claim for Refund of intangible recording tax per O.C.G.A. § 48-6-76(a) pursuant to the above-captioned matter. Your Protest and Claim for Refund plus all associated documents were considered in the review.

It is my determination that intangible recording tax was not due when the Modification of Security Deed between the parties was recorded by the Clerk of Superior Court, [REDACTED] on June 14, 2007.

O.C.G.A. § 48-6-60 sets forth "Definitions" as they relate to intangible recording tax. Paragraph Four defines a short-term note as follows: (4) "Short-term note secured by real estate" means any note which would be a long-term note secured by real estate were it not for the fact that the whole of the principal of the note falls due within three years from the date of the note or from the date of any instrument executed to secure the note.

Revenue Comp. Rules and Regs. 560-11-8-.04 Modification states: "Intangible recording tax is not required to be paid on any instrument that modifies by extension, transfer, assignment or renewal, or gives additional security for an existing note, when the intangible recording tax has been paid on the original instrument or the original note or holder of the original instrument was exempt."

[REDACTED]  
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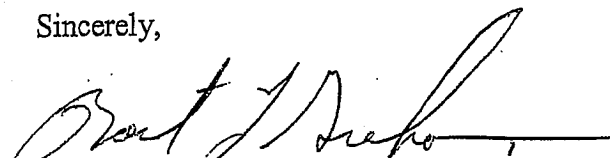
Revenue Comp. Rules and Regs. 560-11-8-.06 Additional Advance provides in pertinent part that in the case of a new note or a modification of a preexisting note, representing an additional extension of credit to be secured by a previously recorded instrument which otherwise requires no further recording, the intangible tax is determined according to the term of the new note. This regulation contemplates that in the case of future advances, the collecting officer will collect any additional tax due based on the increased indebtedness.

In the instant matter, the parties initially recorded separate Security Deeds. The multiple Modifications of each that followed subsequently advanced additional long-term principal which was secured and cross-collateralized by the two Security Deeds. Where applicable, intangible recording tax was imposed and collected.

The Modification of Security Deed that was filed under Protest on June 14, 2007 (Book [REDACTED] Pages [REDACTED]), converted all existing long-term indebtedness, which also incorporated an additional advance to the Borrowers, into a brand new, short-term Promissory Note. For that reason, the Modification agreement must be considered short term.

A copy of this decision is being provided to the Clerk of Superior Court, [REDACTED] as authority for refunding the amount from the special escrow fund in which it is currently being held according to statute.

Sincerely,

  
Bart L. Graham

BLG/RJL/mb

cc: Clerk of Superior Court, [REDACTED]