



State of Georgia

Department of Revenue

Suite 15300

1800 Century Boulevard

Atlanta, Georgia 30345

(404) 417-2100

June 10, 2009

Bart L. Graham
Commissioner

[REDACTED]

Re: Intangible Recording Tax Protest and Claim for Refund per O.C.G.A. § 48-6-76(c) in the amount of [REDACTED] paid upon recording a Deed to Secure Debt with the Clerk of Superior Court, [REDACTED] on October 9, 2008. Parties are [REDACTED] (Grantor) and [REDACTED] (Grantee)

Dear [REDACTED]

I have carefully considered your Protest and Claim for Refund of intangible recording tax per O.C.G.A. § 48-6-76(c) pursuant to the above-captioned matter. Your Protest and Claim for Refund, and your correspondence dated October 9, 2008, and December 3, 2008, plus all accompanying documents were considered in the review. It is my determination that your Claim for Refund in the amount of [REDACTED] is denied. The amount may not be refunded.

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 that security instruments must be filed and the intangible recording tax paid no later than ninety days from the date of execution by the parties. The tax is imposed on each instrument at a rate of \$1.50 per \$500.00 or fraction thereof of the face amount of the note secured by the instrument.

Ga. Comp. R. & Regs. r. 560-11-8-.02 Tax Payment and Rate, provides in pertinent part that intangible recording tax is due and payable on each instrument securing one or more long-term notes based on the face amount of all notes secured thereby. The tax is assessed on the security instrument and paid at the time of recording. The instrument must be recorded no later than 90 days from the date of execution by the parties. The maximum tax payable on a single security instrument is \$25,000.00.

[REDACTED]
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Ga. Comp. R. & Regs. r. 560-11-8-.14 Exemptions, at (c) and (d), states: "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:

(c) Where the instrument is given as additional security, to correct a previously recorded instrument, or to substitute real estate; provided the body of the new instrument identifies the existing instrument and specifically states the purpose of the new instrument.

(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)."

The above regulation exempts an instrument from intangible recording tax when the instrument does not secure a note (e.g., Guaranty Agreement).

It is a fundamental rule of taxation that exemptions are construed narrowly against the taxpayer and in favor of the tax. Unless the entity claiming the exemption falls precisely within the exemption granted in every respect, the exemption does not apply.

The instrument recorded between the parties meets the definition of an "instrument" or "security instrument" pursuant to O.C.G.A. § 48-6-60. While the instrument secures both a guaranty and a long-term Promissory Note, the statute provides no authority for computing intangible recording tax other than based on the face amount of the note or notes secured by the instrument. There is no statutory or regulatory authority for exempting any portion of the face amount of the note or notes when the instrument secures both a guaranty and notes.

Given that the instrument secured a long-term Promissory Note in the amount of [REDACTED] taxes in the amount of [REDACTED] were due and payable upon recording in [REDACTED]. The Protest and Claim for Refund must therefore be denied.

A copy of this determination is being provided to the Clerk of Superior Court, [REDACTED] so that the money collected and deposited into an escrow account per O.C.G.A. § 48-6-76(b) may be distributed according to law.

Sincerely,



Bart L. Graham

BLG/RJL/mb

cc: Clerk of Superior Court, [REDACTED]