



State of Georgia

Douglas J. MacBinnitie  
Commissioner

**Department of Revenue**  
Administrative Division – Office of Tax Policy  
1800 Century Blvd. NE, Suite 13107  
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Frank M. O'Connell  
Director

November 7, 2013

[REDACTED]

Re: An 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 security instrument with the Clerk of Superior Court, [REDACTED] on August 15, 2013. Parties are [REDACTED] (Grantor) and [REDACTED] (as Administrative Agent for itself and other lenders – Grantee; "Lender")

Dear [REDACTED]

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

It is my determination that excess intangible recording tax paid totaling [REDACTED] was not due when the subject security instrument was recorded. Therefore, the Claim for Refund in the amount of [REDACTED] is upheld.

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. Additionally, three things are required to be disclosed on the face of the security instrument: the date of execution of the instrument, the maturity date of the note, and the principal amount of the note. It concludes by stating, "The maximum amount of any intangible recording tax payable as provided in this Code section with respect to any single note shall be \$25,000.00."

Ga. Comp. R. & Regs. r. 560-11-8-.02 Tax Payment and Rate, provides: "An intangible recording tax is due and payable on each instrument securing one or more long-term notes at the

[REDACTED]

rate of \$1.50 per \$500.00 or fraction thereof of the face amount of all notes secured thereby in accordance with O.C.G.A. Section 48-6-61 and these regulations. This tax is assessed on the security instrument securing one or more long-term notes secured by real property, to be paid upon the recording thereof, and must be paid within 90 days from the date of the instrument executed to secure the note or notes. The maximum tax on a single security instrument is \$25,000.”

An “Opinion of the Attorney General” following § 48-6-61 states:

**Tax collector or tax commissioner is required to determine principal amount of a long-term debt solely from the face of the security deed**, without resorting to any other information. Furthermore, where two or more notes are secured by the same security deed, one must determine whether the notes represent portions of the same debt, or whether the notes represent distinct and separate debts. 1980 Op. Att’y Gen. No. 80-141.

With respect to the instant matter, the instrument securing both notes is subject to a maximum amount of intangible tax payable on a single security instrument of \$25,000.00 in accordance with Rev. Reg. 560-11-8-.02. Although the collecting official was compelled to accept and record payment rendered in the amount of [REDACTED] only \$25,000.00 in tax was due and payable at the time of recording. Therefore, the Protest and Claim for Refund should be upheld with the amount currently being held in a special escrow account refunded to claimant.

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

Sincerely,

  
Frank M. O'Connell

FOC/RJL/me

cc: Clerk of Superior Court, [REDACTED]