



State of Georgia

Douglas J. MacSinnittie
Commissioner

Department of Revenue
Administrative Division – Office of Tax Policy
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Frank M. O'Connell
Director

November 20, 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 Deed to Secure Debt with the Clerk of Superior Court, [REDACTED] on September 23, 2013. 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 plus all associated 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 Definitions, sets forth at (1) the definition of a "Collecting officer"; at (2) and (3) the definitions of a "security instrument" and "Long-term note secured by real estate"; and at (4) the definition of a "Short-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-.14 Exemptions holds in pertinent part: "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:

- (a) Where any of the following is a party: The United States, the State of Georgia, any agency, board, commission, department or political subdivision of either the United States or this state, any public authority, any non-profit public corporation, or any other publicly held entity

[REDACTED]
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sponsored by the government of the United States or this state. (b) Where any of the following is a Grantee: a federal credit union, a state of Georgia chartered credit union, or a church.”

In Georgia, intangible recording tax is an excise tax. It is not an ad valorem tax. “[T]he taxes are paid for the privilege of filing a document to protect the note secured by the recording of the security instrument, and the fact that it is based on the value of the property is only ancillary.” *Bankers Trust Co. v. Jackson*, 236 Ga. App. 490, 512 S.E.2d 378 (1999).


Based upon the documents provided, Grantor-claimant [REDACTED] is identified everywhere as a self-styled “non-profit corporation.” Pursuant to Rev. Reg. 560-11-8-.14(a), there exists no applicable exemption for a “non-profit corporation.” Additionally, Grantor-claimant does not meet the definitional test of a “non-profit public corporation.” There is also no exemption from payment of intangible tax when a church is the Grantor (Borrower).

Further, the parties at issue concerning the instant Protest are separate and distinct compared to those referenced in the short-term deed recorded in [REDACTED] [Deed Book [REDACTED], Page [REDACTED]) on August 5, 2010. No tax was paid upon that recording because the Clerk determined the Deed was short term pursuant to O.C.G.A. § 48-6-60(4). The Deed was not “exempt” from payment of intangible recording tax. The Promissory Note for the loan was paid off in full to lender [REDACTED] per a Loan Closing Statement dated September 18, 2013.

The cover page of the instrument recorded under Protest, which has completely different-new parties compared to the 2010 Deed, has a Date of Execution of September 18, 2013. It states clearly on the face page: “The final maturity date of the Note is upon the two hundred fortieth (240th) monthly installment.” The Clerk of Superior Court, [REDACTED] construed the instrument to be long term pursuant to O.C.G.A. § 48-6-60(3). The instrument was recorded timely and the proper amount of intangible recording tax due was paid. 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. Please be advised that any taxpayer whose Protest and Claim for Refund is denied, in whole or in part, has the right to bring an action for refund of the amount so claimed and not approved against the collecting officer who received the payment and recorded the instrument. The action may be filed in either the Superior Court of the county in which the instrument was recorded or in the Georgia Tax Tribunal no later than 60 days from the date of the denial, and served pursuant to law.

Sincerely,


Frank M. O'Connell

FOC/RJL/me

cc: Clerk of Superior Court, [REDACTED]