



State of Georgia

Lynnette T. Riley
Commissioner

Department of Revenue
Legal Affairs & Tax Policy
1800 Century Blvd., N.E., Suite 15107
Atlanta, Georgia 30345
(404) 417-6649

Frank M. O'Connell
Director

October 5, 2016

[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] filed upon recording an Amended and Restated Security Deed on January 4, 2016, with the Clerk of Superior Court, [REDACTED]. 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) the definition of a "security instrument" and at (3) and (4) the definition of a "Long-term note secured by real estate," and a "Short-term note secured by real estate," respectively.

O.C.G.A. § 48-6-61 Filing instruments securing long-term notes; procedure; intangible recording tax; rate; minimum tax, 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-.04 Modification, holds that "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."

Ga. Comp. R. & Regs. r. 560-11-8-.14 Exemptions, states 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: [at] (b): Where any of the following is Grantee: a federal credit union, a state of Georgia chartered credit union, or a church."

It is a fundamental rule 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 Amended and Restated Security Deed recorded under Protest extended the prior, short-term maturity date on record of September 20, 2015, by more than ten years. It established a new maturity date of January 5, 2026, thereby transforming the formerly short-term deed into a long-term instrument subject to intangible recording tax based upon the stated amount of long-term principal totaling [REDACTED]. Grantor-Claimant filed a Protest on the basis that, "The Grantee is a chartered credit union that is exempt from or not subject to Georgia intangible tax."

[REDACTED] Grantee, is not a "state of Georgia chartered credit union" which is explicitly required by Revenue Regulation 560-11-8-.14(b). Nor do they qualify for an exemption from tax pursuant to subparagraph (b).

The instrument presented for recording was administered properly by the Clerk of Superior Court, [REDACTED] in conformance with Georgia law and Department regulations. The Protest and Claim for Refund must therefore be denied.

A copy of this letter 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]