



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 26, 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] paid upon recording a Deed to Secure Debt with the Clerk of Superior Court, [REDACTED] on October 30, 2015. 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 an "Instrument" or "security instrument"; and at (3) the definition of a "Long-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-.14 Exemptions, provides: "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:

“(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).”

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 Deed to Secure Debt recorded under Protest on October 30, 2015 [REDACTED] [REDACTED] meets the definition of an “Instrument” or “security instrument” per the *Code*. The stated maturity date of July 1, 2025, as set forth on the face page is long term by definition. Further, the instrument is secured by Georgia real property. The Deed to Secure Debt between the parties refers specifically to the agreed upon indebtedness of [REDACTED] which is to be paid over a long term with the credit secured by creating or conveying a lien on the real estate through the executed Deed to Secure Debt. The instrument plainly provides for the consequences of a default for failure to pay off the indebtedness. Given the plain language contained in the instrument and the overall strict construction of exemptions to taxation, the long-term Deed to Secure Debt does not qualify for an exemption from payment of intangible recording tax.

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]