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Commissioner

State of Georgia
Department of Revenue
Administrative Division - Tax Law & Policy
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Frank M. O'Connell
Director

November 24, 2010

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: Intangible Recording Tax Protest and Claim for Refund per O.C.G.A. § 48-6-76(c) in the amount of [REDACTED] filed with the Clerk of Superior Court, [REDACTED] on April 30, 2010. 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 all correspondence with accompanying enclosures 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.

In brief, intangible recording tax is an excise tax. It is not an ad valorem tax. It is "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*, Ga. App., 1999 Ga. App. LEXIS 212, S.E.2d (1999).

O.C.G.A. § 48-6-60 contains definitions for a "collecting officer," a "security instrument," a "Long-term note secured by real estate," and a "Short-term note secured by real estate."

Ga. Comp. R. & Regs. r. 560-11-8-.03, at (4)(d), provides: "A short-term note, with option to renew or extend by the borrower, where any part of the principal or interest of the note *becomes due or may become due* more than three years from execution is classified as long-term." (emphasis in original)

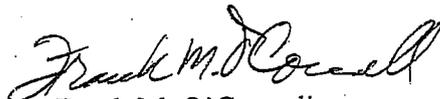
[REDACTED]
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In the instant matter, you have contended that even though the Borrower does have two, separate one-year options to renew or extend the maturity date if specified conditions are met, it will still be up to "the indulgence of the creditor" as to whether or not the maturity date may be extended beyond April 27, 2013, and further, "[w]ithout the Lender's approval, it is impossible for an Extension Option to be exercised."

Based upon the plain language of the statute which defines a long-term note, as well as Department of Revenue Rule 560-11-8-.03(4)(d), which provides in pertinent part that a short-term note, with an option to renew or extend by the borrower, where any part of the principal or interest of the note *becomes due, or may become due*, more than three years from the date of execution is classified as a long-term note, the subject security instrument recorded under protest on April 30, 2010, by the Clerk of Superior Court, [REDACTED] was interpreted correctly as a long-term instrument subject to payment of intangible recording tax. The protest in the amount of [REDACTED] must therefore necessarily 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 a special escrow account per O.C.G.A. § 48-6-76 may be distributed according to law.

Sincerely,


Frank M. O'Connell

cc: Clerk of Superior Court, [REDACTED]