



State of Georgia

## Department of Revenue

Legal Affairs & Tax Policy

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Atlanta, Georgia 30345

(404) 417-6649

Douglas J. MacSinnitie  
Commissioner

Frank M. O'Connell  
Director

August 1, 2014

[REDACTED]

Re: Request for a letter ruling concerning [REDACTED] and real estate transfer tax. Request submitted pursuant to O.C.G.A. § 50-13-11 and Ga. Comp. R. & Regs. r. § 560-1-1-.10

Dear [REDACTED]

The Department has received your letter dated June 18, 2014, with accompanying materials. As captioned above, and as set forth in your submission, you have requested a letter ruling from the Department concerning this question:

“Are the transfers of an interest in real property from the [REDACTED] to three of its wholly-owned LLC subsidiaries exempt from the Georgia real estate transfer tax (“RETT”) found in O.C.G.A. § 48-6-1, *et seq.*?”

O.C.G.A. § 48-6-1 sets forth the rate of real estate transfer tax as \$1.00 for the first \$1,000.00 or fractional part of \$1,000.00 and at the rate of 10 cents for each additional \$100.00 or fractional part thereof. The tax is imposed on “each deed, instrument, or other writing by which any lands, tenements or other realty sold is granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or purchasers, or any other person or persons by his or their direction.”

O.C.G.A. § 48-6-2(a) contains various exemptions from payment of real estate transfer tax. Per subparagraph (b), “In order to exercise any exemption provided in this Code section, the total consideration of the transfer shall be shown.”

O.C.G.A. § 48-6-4(c) provides, in pertinent part: “The amount of tax to be paid on a deed, instrument, or other writing shall be determined on the basis of written disclosure of the consideration or value of the interest in the property granted, assigned, transferred, or otherwise

conveyed. The disclosure shall be made on a form or in electronic format prescribed by the commissioner and provided by the clerk of the superior court. . . .”

Real estate transfer tax is not a tax on the property as such, as is the ad valorem tax which is charged against the owner of the property or against the specific property. Rather, it is an excise tax on transactions involving the sale of property. *City of Columbus v. Ronald A. Edwards Constr. Co.*, 155 Ga. App. 502, 271 S.E.2d 643 (1980).

As described in your request, [REDACTED]

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.

Accordingly, having reviewed the information contained in your letter, it is my finding that upon the presentation of three separate PT-61 forms, each one conveying [REDACTED] interest in the subject real property to each of the three wholly-owned special purpose entities you have described in your request, at the time of recordation of the warranty deed by the collecting officer, the Clerk of Superior Court, [REDACTED] those three transfers-conveyances shall be considered exempt from payment of real estate transfer tax. [REDACTED]

This letter ruling shall apply to your specific request and the facts as presented therein. It will not apply to any other future transfers-conveyances by any of the subject parties. Should the circumstances regarding these transactions change, or differ materially from those represented, then this ruling may become invalid.

Sincerely,

  
Frank M. O'Connell

FOC/RJL/me