

Georgia Intangible Recording Tax Laws

A Guide for Superior Court Clerks

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Preface

This guide is a synopsis of statutes applicable to intangible recording taxes effective January 1, 1999. Statutes pertaining to the tax appear in Article 3 of Chapter 6 of Title 48 of the Official Code of Georgia Annotated (hereinafter referred to as "Article 3"). Corresponding federal and state laws, attorney general opinions, and judicial decisions relative to interpretation of specific statutes are provided herein. Citations of law are indicated in parentheses at the end of the sentence, paragraph, or section to which they relate.

Duties of the collecting officer and the clerk of superior court duties are delineated separately to accommodate the needs of counties in which the tax commissioner or tax collector performs the duties of collecting officer.

Intangible Recording Tax

Rate and Limit

On each long-term note secured by real estate, except as otherwise provided in Article 3, an intangible recording tax is imposed at the rate of ***\$1.50 for each \$500.00*** or fraction thereof of the face amount of the note secured by the recording of a security instrument (O.C.G.A. § 48-6-61).¹ The maximum amount of intangible recording tax payable for any single note is **\$25,000.00** (O.C.G.A. § 48-6-61).

¹ For calculation purposes, the rate can be converted to \$3.00 per \$1,000.00. Amounts less than \$500.00 must be calculated at the rate of \$1.50 per \$500.00.

Figure 1 illustrates a typical calculation of intangible recording taxes due on a long-term security note secured by real estate when the principal amount of the note is \$66,700.

Figure 1. Calculating Intangible Recording Tax		
A	B	C
Face amount of note (from security instrument to be recorded)		\$66,700.00
1. Divide face amount (C-1) by \$500 (increment for calculating rate) ²	$\$66,700 \div \500	\$ 133.40
2. For any portion of quotient less than 1, round to next whole number	\$133.40 (round to \$134.00)	\$134.00
3. Multiply quotient (B-2) by \$1.50 (rate per \$500 of face amount)	$\$134.00 \times \1.50	\$ 201.00
4. Total intangible recording tax due		\$201.00

Exemptions from Payment of Tax

Several exemptions from payment of the intangible recording tax are provided by Georgia and federal law. The Georgia Department Revenue has interpreted applicable statutes concerning exemptions in the department's *Rules and Regulations* (Chapter 560-11-8-.14), which provide:

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 sponsored by the government of the United State or this state.
- b) Where any of the following is Grantee: a federal credit union, a state of Georgia chartered credit union, or a church.
- c) Where the instrument is given as additional security, to correct a previously recorded instrument, or to substitute real estate; provided the body of the new instrument identifies the existing instrument and specifically states the purpose of the new instrument.
- 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).
- e) In the case of a transfer or assignment, where the original note or the holder of the original note was exempt.
- f) Where the instrument is recorded pursuant to a plan of reorganization confirmed under Chapter 11 of the U.S. Code and where the instrument is accompanied by documentation verifying confirmation of the plan of reorganization.

² To simply procedure, divide face amount by \$1,000 and multiply quotient by \$3.00.

Filing Requirements and Duties of Holders of Long-Term Notes

The following are Article 3 provisions regarding statutory filing requirements and obligations of holders of long-term notes:

1. Every holder of a long-term note secured by real estate:
 - a) Must record the security instrument in the county in which the real estate is conveyed or encumbered or upon which a lien is created to secure the note within 90 days from the date of the instrument executed to secure the note (O.C.G.A. § 48-6-61).
 - b) Prior to presenting the instrument to the clerk of superior court for recording, must present the security instrument to the collecting officer of the county where the real estate is located for determination of intangible recording tax due (O.C.G.A. § 48-6-61).
 - c) May present for recording with the security instrument a sworn statement itemizing the principal amount of the note and the other charges included within the amount shown on the face of the security instrument in instances where the security instrument reflects an amount greater than the principal amount of the note³ (O.C.G.A. § 48-6-61).
 - d) Must pay the required intangible recording tax to the collecting officer (based on calculation of the date of the execution of the instrument, the maturity date of the note, and the principal amount of the note, as determined by the collecting officer from the face of the security instrument) (O.C.G.A. § 48-6-61).
 - e) Upon payment to the collecting officer of the requisite intangible recording tax provided by Article 3, may present the security instrument together with the certificate of the collecting officer that the tax has been paid, the date it was paid, and the amount of tax paid [as provided in O.C.G.A. § 48-6-62 (a) (1)] to the clerk of the superior court of the county in which the real property is located for filing⁴ [O.C.G.A. § 48-6-62 (a) (1)].

³ The provisions of this Code section are optional, merely providing a procedure for enabling the collecting officer to ascertain a precise principal amount in such circumstance; thus it is incumbent upon the holder of the security instrument to avail himself or herself to procedures provided for such purpose (O.C.G.A. § 48-6-61).

⁴ Presentation for recording of a sworn statement as to the principal amount of the note, as authorized by O.C.G.A. § 48-6-61, “shall suffice for purposes of permitting the filing of a security instrument which is in compliance with [O.C.G.A. § 48-6-62 (a) (1)] other than for the fact that the security instrument does not disclose the principal amount of the note.” O.C.G.A. § 48-6-62 (a) (1).

2. Pursuant to O.C.G.A. § 48-6-66, every instrument “conveying, encumbering, or creating a lien upon real estate shall set forth in words and figures the correct amount of the note secured by the instrument and the date upon which the note falls due. When a note falls due within three years from the date of the note or from the date of any instrument executed to secure the note, a statement of the fact in lieu of specifying the date upon which the note falls due may be made in the security instrument and shall constitute sufficient compliance with Article 3. Loans not made on the security instrument do not have to be set forth in the instrument.

It is unlawful for any person to willfully violate Code Section 48-6-66 and such violation shall be punished as a misdemeanor.

3. A bond for title shall be executed and delivered to the purchaser by any seller of real estate who retains title to the real estate as security for the purchase price and who does not convey title to such purchaser or take back a deed to secure debt. The bond for title shall “correctly set forth the unpaid portion of the purchase price and the maturity of the indebtedness.” *If any part of the purchase price falls due more than three years from the date of the instrument, the seller shall have the instrument recorded before delivery of the bond for title in the county in which the land is located and shall pay the intangible recording tax for the instrument (O.C.G.A. § 48-6-68).*

As used in Article 3, the term:

- “*Instrument*” or “*security instrument*” means “any written document presented for recording for the purpose of conveying or creating a lien or encumbrance on real estate for the purpose of securing a long-term note secured by real estate” [O.C.G.A. § 48-6-60 (2)].
- “*Long-term note secured by real estate*” means “any note representing credits secured by real estate by means of mortgages, deeds to secure debt, purchase money deeds to secure debt,⁵ bonds for title, or any other form of security instrument, when any part of the principal of the note falls due more than three years from the date of the note or from the date of any instrument executed to secure the note and conveying or creating a lien or encumbrance on real estate for such purpose [O.C.G.A. § 48-6-60 (3)].⁶

⁵ A “purchase money deed to secure debt” is a mortgage or security device taken back to secure the performance of an obligation incurred in the purchase of property. *Black’s Law Dictionary*, 5th Edition, p. 1111. West Publishing Co., 1979. St. Paul, Minnesota.

⁶ When notes secured by real estate are all part of a single transaction representing one loan, some payable within three years and some payable after a longer period, they are all to be considered long-term notes secured by real estate and taxable within the meaning of Article 3. 1962 Op. Att’y Gen., p. 531. A mortgage to secure a sublease agreement is a long-term note secured by real estate. 1962 Op. Att’y Gen., p. 527. A sales contract for purchase of a house and lot is a long-term note secured by real estate. 1963-65 Op. Att’y Gen., p. 272.

Procedures for Long-Term Notes Secured by Real Estate Subsequent to Original

The following provisions govern actions on long-term notes secured by real estate following filing of an original security instrument:

- 1) **Note Secured by Previously Recorded Instrument.** In the case of a new note or modification of a preexisting note, when the instrument securing the new note or modification is taxable under Code Section 48-6-61 and is secured by a previously recorded instrument that requires no further recording, in lieu of recording a new or amended instrument as provided for in O.C.G.A. § 48-6-61, the holder of a security agreement may elect alternatively to execute a sworn affidavit in the form required by Code Section 48-6-66. The sworn affidavit must be presented to the collecting officer of the county in which the real estate is located. O.C.G.A. § 48-6-62.
- 2) **Extensions, Transfers, Assignments, Modification, or Renewals.** Security instruments that are an extension, transfer, assignment, modification, or renewal of, or which only add additional security for any original indebtedness or part of original indebtedness secured by an instrument subject to the tax imposed by Code Section 48-6-61 are exempt from additional taxation provided in Article 3:
 - a) When it “affirmatively appears” that the required intangible recording tax has been paid on the original security agreement (O.C.G.A. § 48-6-65 (a) (1)); or
 - b) When the original instrument or the holder of the original instrument was exempt from the tax provided for in Code Section 48-6-61 by virtue of any other law [O.C.G.A. § 48-6-65 (a) (2)]. See *Exemptions from Payment of Tax* on page 2.
- 3) **Refinancing of Unpaid Principal on Previous Instrument.** Pursuant to O.C.G.A. § 48-6-65 (b), no tax may be collected on that part of the face amount of a new instrument securing a long-term note secured by real estate that represents a refinancing by the original lender of unpaid principal on a previous instrument securing a long-term note secured by real estate if:
 - a) All intangible recording tax due on the previous instrument has been paid or the previous instrument was exempt from intangible recording tax [O.C.G.A. § 48-6-65 (b) (1)]; and
 - b) The new instrument contains a statement of what part of its face amount represents a refinancing of unpaid principal on the previous instrument [O.C.G.A. § 48-6-65 (b) (2) (A)]; or
 - c) The holder of the new instrument submits an affidavit as to what part of the face amount of the new instrument represents a refinancing of unpaid principal on the previous instrument [O.C.G.A. § 48-6-65 (b) (2) (B)].

Property Located in Multiple Counties of State, Within and Outside State by Nonresident Holder of Security Instrument, or Outside State by Resident

Property in Multiple Counties of State

When an instrument required to be recorded by Article 3 “conveys, encumbers, or creates a lien upon property located in more than one county of this state, the intangible recording tax is paid to the collecting officer of the county in which the instrument is first recorded. When the certificate of the collecting officer acknowledging payment of the intangible recording tax has been entered on the security instrument, such instrument may thereafter be recorded in any other county of this state without payment of any further tax” [O.C.G.A. § 48-6-69 (a)]. See related information on page 14 concerning statutory requirements concerning distribution of intangible recording taxes collected for other counties.

Figure 2. Calculating Multi-State Property Values	
Georgia property value	\$5,000
Value of property in other states	\$95,000
Total value of property	\$100,000
Portion (%) of Georgia property (\$5,000 ÷ \$100,000)	.05 (5%/five percent)

Property Within and Outside State

If an instrument conveying, encumbering, or creating a lien on real property located within and outside the state as security for a long-term note is held by a nonresident of Georgia when presented for recording, the intangible recording tax is that portion of the tax that would otherwise be required under Article 3 which the value of the real property bears to the total value of all the real property within and outside this state as described in the instrument. All values must be certified under oath by the holder presenting the instrument for recording [O.C.G.A. § 48-6-69 (b)].

Figure 2 above is a sample calculation of intangible recording taxes for a long-term note securing property in Georgia and other states.

Resident Holder of Property Outside State

A resident holder of an instrument securing a long-term note secured by real property located outside Georgia—including, but not limited to domestic corporations and foreign corporations having their principal places of business in Georgia—are required to file a memorandum of the instrument with the commissioner on forms prescribed by the Commissioner of the Georgia Department of Revenue (hereinafter referred to as “commissioner”) and at such periodic intervals as the commissioner may

designate by regulation. The memorandum is filed in lieu of recording the instrument securing the note. The holder of the instrument is required to pay the amount of intangible recording tax required at the time the memorandum is filed. Revenue from each instrument is distributed to the state, counties, and municipalities in the same manner as if the property securing the instrument were located in the county of the domicile of the taxpayer or, if the taxpayer is a corporation, in the county of the principal place of business of the taxpayer (O.C.G.A. § 48-6-70).

Determinations by Commissioner of Whether Tax Is Payable

The commissioner is statutorily required to “render publicly and in writing his determination of whether the intangible recording tax...is payable with respect to a particularly described real property instrument or class of real property instruments or modifications of such instruments” upon his own motion or upon the written request of one or more holders of instruments securing notes secured by real property. Nonpayment of the intangible recording tax with respect to a real property instrument filed for record “in reliance upon a determination rendered by the commissioner pursuant to (O.C.G.A. § 48-6-71) shall not constitute a bar, as provided in Code Section 48-6-77, to the collection of the indebtedness secured by such instrument” (O.C.G.A. § 48-6-71).

Failure to Pay Tax and Related Penalties

The results of non-payment of the intangible recording tax required by O.C.G.A. § 48-6-61 are:⁷

- 1) **Bar to Collection.** Failure to pay the intangible recording tax “constitutes a bar to the collection by any action, foreclosure, the exercise of any power of sale, or otherwise of the indebtedness secured by any instrument required by Article 3 to be recorded, whether the instrument is held by an original party to the instrument or by a transferee.” Failure to pay the tax “does not affect or discharge the indebtedness and other obligations secured by an instrument or the debtor’s liability on account thereof and, subject to the bar, the instrument continues to secure the indebtedness and other obligations secured thereby and continues to encumber the collateral described therein” [O.C.G.A. § 48-6-77 (a)].
- 2) **Penalty.** To remove the bar provided by O.C.G.A. § 48-6-77 (a), the following is required:
 - a) Payment of the intangible recording tax due;
 - b) Plus interest at the rate specified in Code Section 48-2-40 [one (1) percent per month] from the time the tax was due;⁸

⁷ O.C.G.A. § 48-6-77 (a), (b) and (d). Non-payment has no effect on any instrument subject to the tax on which the statute of limitations has expired or instruments acquired at a time when the holder of the instrument was otherwise exempt from payment of the tax, or when the commissioner has determined that the tax is not payable.

⁸ O.C.G.A. § 48-2-40 provides that, except as otherwise expressly provided by law, taxes owed the state or any local

c) Plus a penalty of fifty (50%) percent of the amount of the tax [O.C.G.A. § 48-6-77 (a)].

Upon removal of the bar, the process to collect the indebtedness, including foreclosure, may proceed as if no bar existed [O.C.G.A. § 48-6-77 (a)].

A sample calculation of penalties for late payment of the intangible recording tax is shown in Figure 3.

Figure 3. Calculating Penalties for Late Payment of Intangible Recording Tax		
Example for the security instrument shown in Figure 1, on page 2, when the intangible recording tax was due on January 1, 1998, but paid on July 15, 1998.		
A	B	C
1. Amount of intangible tax due on January 1, 1998		\$201.00
2. Interest for seven months (1/1/98 - 7/1/98) @ 1% per month from date tax due x amount of intangible tax due (C-1)	.01 (interest) x \$201.00 (tax due) x 7 (months due) ⁹	\$ 14.07
3. 50% (.50) penalty of amount of intangible tax due	.50 x \$201.00	\$100.50
4. Total Due (Sum of Column C)		\$315.57

3. **Perfection of Imperfected Instrument Subject to Tax.** If any instrument required to be recorded fails to reflect on its face that the intangible recording tax is due and after a foreclosure has taken place it is discovered that the instrument securing the indebtedness is in fact subject to the tax, any deed given pursuant to the foreclosure or in lieu of foreclosure “shall be imperfected but may be perfected by the payment of the required tax,” plus interest at the rate specified in Code Section 48-2-40 from the time the tax was due, plus a penalty of fifty percent (half) of the amount of the tax. The perfection of the deed reverts back to the date of the deed once the tax, interest, and penalty have been paid. The deed retains its priority over any and all intervening liens or conveyances except those made or created by the grantee, its successors, and assigns named in the foreclosure deed or deed in lieu of foreclosure [O.C.G.A. § 48-6-77 (a)].

The commissioner may waive the penalty provided in Code Section 48-6-77 (a) if the commissioner

taxing jurisdiction “shall bear interest at the rate of one (1) percent per month from the date the tax is due until the date the tax is paid.” **Any period of less than one month is considered to be one month.**

⁹ The months of January and July are periods of “less than one month” and, therefore, should be included with the months of March, April, May, and June for the purpose of calculating the total number of months the taxes were delinquent and subject to the interest rate set forth in O.C.G.A. § 48-2-40. Thus the taxes were due for a total of seven months.

determines that failure to pay the tax was “through ignorance of the law or inadvertence and that failure did not occur out of bad faith” [O.C.G.A. § 48-6-77 (c)].

Procedure for Protesting and Recovery of Intangible Taxes

Protests

A taxpayer is entitled pursuant to O.C.G.A. § 48-6-76 to protest as erroneous or illegal the collection or any part of the collection of the intangible recording tax. The protest must be in writing, in duplicate, and must be filed with the collecting officer at the time of payment of the tax as provided in Code Section 48-6-61. Payment of the required intangible recording tax due is required at the time the protest is filed. The collecting officer receiving the payment under written protest is “deemed to have made a conditional collection of the protested amount of the payment.”

Immediately upon receiving a payment under written protest, the collecting officer is required to forward to the commissioner an executed copy of the protest.

Each protested collection is effective to discharge any duty of the taxpayer to pay the tax and to require the collecting officer to enter upon or attach to the instrument securing the obligation upon which the tax is claimed to be due a certification prescribed in Code Section 48-6-62 of the fact that the required intangible recording tax has been paid.

Collections made under written protest are subject to refund upon determination by the commissioner, or by final judgment in a refund action, that the collection was erroneous or illegal [O.C.G.A. § 48-6-76 (a)].

The taxpayer making the written protest may file at any time within 30 days after the date of the payment a claim for refund of the protested amount of the payment with the commissioner. The claim shall be in writing, shall be in the form and contain such information as required by the commissioner, and shall include a summary statement of the grounds upon which the taxpayer relies in contending that the collection of the amount was erroneous or illegal [O.C.G.A. § 48-6-76 (c)].

A copy of the claim must be filed by the taxpayer within the 30-day period with the collecting officer or said officer’s successor who collected the protested amount [O.C.G.A. § 48-6-76 (c)].

The commissioner may approve or deny the claim for refund and, upon doing so, is required to notify the taxpayer and the collecting officer or said officer’s successor who collected the protested amount of said officer’s action. If the claim is approved in whole or in part, the collecting officer of said officer’s successor shall “forthwith” refund the amount approved to the taxpayer, without interest, from the

special escrow fund held by said officer. No appropriation or further authorization is required to authorize and require the refund to the taxpayer [O.C.G.A. § 48-6-76 (d)].

Actions for Recovery

If the claim for refund is denied entirely or in part by the commissioner or if the commissioner does not render a decision within 30 days from the date of filing the claim, the taxpayer shall have the right to bring an action in the superior court against the collecting officer or said officer's successor who collected the amount for refund of the amount claimed and not approved.¹⁰ The action shall be filed in the county where the collecting official collected the amount [O.C.G.A. § 48-6-76 (e) (1)]. No action for refund may be brought after the expiration of 60 days from the date of denial by the commissioner of the taxpayer's claim for refund [O.C.G.A. § 48-6-76 (e) (2)]. The commissioner—in said commissioner's official capacity—shall be made a party defendant to each action for refund for the purpose of representing the state's interest in the action, and the Attorney General is required to represent the defendants in each action [O.C.G.A. § 48-6-76 (f)].

The taxpayer shall be entitled to judgment against the defendant "county tax official in said tax official's official capacity" for any amount erroneously or illegally collected, without interest to the date of judgment, if it is determined in the action that the amount claimed by the taxpayer was erroneously or illegally collected from the taxpayer. The commissioner shall pay, as part of the expenses of administering Article 3, court costs charged against the defendant and any interest payable on a judgment in favor of the taxpayer for a period before the judgment becomes final. The principal amount of a final judgment in favor of a taxpayer in such an action, exclusive of court costs, shall be paid "forthwith" to the taxpayer by the defendant county tax official from the special escrow fund, and no appropriation or further authorization is necessary to authorize and require the payment of a judgment from such special escrow fund. O.C.G.A. § 48-6-76 (f).

If (a) a claim is not filed and the period for filing a claim for refund of a protested payment has expired, (b) the period for filing an action for refund of a protested payment has expired without any action being filed, upon dismissal of such an action, or (c) upon final judgment in such an action, whichever occurs first, the collecting officer holding the protested amount in a special escrow fund shall distribute such funds as provided by Code Section 48-6-73 for the year during which the amount was paid by the taxpayer, from the intangible recording tax imposed by Article 3 [O.C.G.A. § 48-6-76 (g) (1) and (2)].

Responsibilities of Collecting Officer for Protest

Upon receiving a payment under written protest, the collecting officer is required to deposit the

¹⁰ For purposes of O.C.G.A. § 48-6-76, failure of the commissioner to grant or deny the taxpayer's claim for refund within the 30-day period does not constitute constructive denial of the claim. O.C.G.A. § 48-6-76 (e) (3).

protested amount of the payment in a separate account in a bank approved as a depository for state funds. The protested amount shall be held in a special escrow fund and the collecting officer shall not distribute the amount pursuant to O.C.G.A. § 48-6-74 or retain from the amount or pay into the county treasury any commission provided under Code Section 48-6-73.

Collecting Officer's Duties

"Collecting Officer" Defined

For purposes of Article 3, "collecting officer" is the clerk of superior court of the county although, in counties of the state having a population of 50,000 or less, "at the discretion of the clerk of superior court of the county, 'collecting officer' may mean the tax collector or tax commissioner of the county."¹¹ In the event that the collecting officer is temporarily absent from office for reasons of health, vacation, or otherwise, the collecting officer must designate another qualified person to collect the intangible recording taxes imposed by Article 3. In the event of a collecting officer's death, the county governing authority shall immediately designate another qualified person to collect the tax until a new collecting officer qualifies for the position as provided by law [O.C.G.A. § 48-6-60 (1)].

Official Acts and Breaches of Duty

All intangible recording taxes collected by the collecting officer are "deemed to have been collected by the collecting officer in said officer's official capacity," which impugns liability to the collecting officer for errors, omissions, and breaches of law. Failure to collect and distribute intangible recording taxes as provided by law constitutes a breach of the official duty and of the official bond of the collecting officer (O.C.G.A. § 48-6-73).

In light of O.C.G.A. § 48-6-76 (f), the collecting officer is a "county tax official."

¹¹ Population is determined according to the United State decennial census of 1990 or any future such census of the county.

Duties of Collecting Officer

The duties of the collecting officer pursuant to Article 3 are to:¹²

1. Upon receiving a security instrument, determine from the face amount of the security instrument the date of execution of the instrument, the maturity date of the note, and the principal amount of the note¹³ (O.C.G.A. § 48-6-61).
2. Collect and receipt the intangible recording tax paid on the instrument (O.C.G.A. § 48-6-61).
3. Upon receiving payment from the holder of the security instrument of the correct tax disclosed from the information recited on the face of the security instrument, enter upon or attach to the security instrument a certification that the intangible recording tax required by Code Section 48-6-61 has been paid, the date, and the amount of the tax. The certificate must be signed by the collecting officer or said officer’s deputy¹⁴ [O.C.G.A. § 48-6-62 (a) (1)].

Figure 4. Sample Certification of Collecting Officer¹⁵

GEORGIA INTANGIBLE RECORDING TAX PAID	
\$	Georgia intangible recording tax paid on the date stated.
Date:	
Signature of Clerk of Superior Court/Deputy Clerk	

4. Distribute intangible recording taxes collected under Article 3 at least monthly, using as a basis

¹² Pursuant to O.C.G.A. § 48-6-72 the governing authority of each county “shall take into consideration any increase or decrease in duties and responsibilities of the offices of tax commissioner and the clerk of superior court required by (Article 3) in establishing the annual budget for each such office and, where applicable, the affected officers shall cooperate fully in any transferring of responsibilities required under” Article 3.

¹³ In instances where the security instruments reflects an amount greater than the principal amount of the note and the holder tenders a sworn statement to the collecting officer at the time the security instrument is presented for recording itemizing the principal amount of the note and other charges included within the amount shown on the face of the security instrument, the collecting officer shall determine the amount from the sworn statement.

¹⁴ In the case of a new note or modification of an existing note, when the instrument securing the new note or modification is taxable under O.C.G.A. § 48-6-61 and is secured by a previously recorded instrument requiring no further recording, the **tax collector** or **tax commissioner** shall collect from the holder the tax due under Code Section 48-6-61 and upon payment of the tax shall enter upon or attach to the affidavit the certification provided for in O.C.G.A. § 48-6-62 (a) (1). The certification “shall evidence the payment of the required tax with respect to the new instrument or modification” O.C.G.A. § 48-6-62 (b).

¹⁵ A rubber stamp may be used to stamp the certification on the face of the security instrument.

the county tax commissioner's or tax collector's records and certificates supplied by each school district, municipality, and other tax district in the county. Millage rates used in distributions of revenue under Code Section 48-6-72 each year shall be based upon the immediately preceding year's millage rate of each participating tax authority as provided in Article 3 [O.C.G.A. § 48-6-72 (c)].

5. Make a report to the commissioner on the first day of each month on forms prescribed by the commissioner of all sums collected and remitted for the preceding month (O.C.G.A. § 48-6-73).
6. If a taxpayer files at the time of payment of the intangible recording tax as provided in Code Section 48-6-61 a written protest of the collection or any part of the collection of the tax as erroneous or illegal, process the protest in accordance with the provisions of O.C.G.A. § 48-6-76, as summarized below (in Protests, page 9).
7. Collect and cause to be distributed intangible recording taxes due other counties of this state or other states when an instrument to be recorded conveys, encumbers, or creates a lien upon property located in more than one county of this state or outside this state, as provided by O.C.G.A. §§ 48-6-69 (a) and (b) and 48-6-74 discussed below.

O.C.G.A. § 48-6-74 requires the commissioner to distribute equitably the appropriate portion of the intangible recording tax among effected counties when the tax is collected on an instrument securing a note on real property located in more than one county of the state.

Reports and Distributions

Automated Accounting System

Accounting for intangible recording taxes requires only standard bookkeeping and accounting procedures, but use of a computer-based, electronic accounting system provides a seamless accounting system, mitigates personnel time devoted to accounting duties, and generally helps to reduce redundant accounting tasks.

When the clerk of superior court is the collecting officer, accounting programs required for intangible recording taxes may be integrated into the office's general accounting and real estate indexing systems. Integration facilitates automated calculation of intangible recording taxes when the face amount of a security instrument, the execution date of the note, and the maturity date are entered during the receipting process. Receipting data is integrated with accounts payable and general ledger programs, eliminating the need for manual transfer of accounting data. Additionally, accounting data may be automatically posted to real estate indexing programs. Reports required by law and provided to the

commissioner may be compiled from receipting, accounts payable, and general ledger information.

Required Reports

On the first day of each month, the collecting officer shall make a report of all intangible recording tax sums collected and remitted for the preceding month to the commissioner on forms prescribed by the commissioner. Each report shall also show the principal amount of each note, the date of execution, and the maturity date of each note as stated on the face of the security instrument to be recorded (O.C.G.A. § 48-6-73).

Distributions of Intangible Recording Taxes

O.C.G.A. § 48-6-72 (d) provides that revenue from intangible recording taxes shall be divided among the state and all other tax jurisdictions and districts—including, but not limited to, county and municipal districts—which levy or cause to be levied for their benefit a property tax on real and tangible personal property having the same taxable situs as the real property which is the subject of the intangible tax.¹⁶

The distribution is made according to the proportion that the millage rate levied for the state and each other tax jurisdiction or district respectively bears to the total millage rate levied for all purposes applicable to real and tangible personal property having the same tax situs as the subject of the intangible tax.

Millage rates used for distributing intangible recording tax revenue shall be based upon the immediately preceding year's millage rate of each participating tax authority. The intangible recording tax collecting officer is authorized and required to use the tax commissioner's or tax collector's records and certificates supplied by each school district and any other tax district in the county for purposes of ascertaining the preceding year's millage rates for each participating authority [O.C.G.A. § 48-6-72 (c) and (d)].

Revenue distributed to municipalities having independent school systems supported by taxes levied by the municipality are divided between the municipality and the independent school system according to the proportion that the millage rate levied by the municipality for non-school purposes and the millage rate levied for school purposes bear to the total millage rate levied by the municipality for all purposes.

By law, the intangible recording tax “shall be deemed to be levied by the participating tax authorities in the proportion that the millage rate of each participating tax authority bears to the aggregate millage rate of all the participating tax authorities” [O.C.G.A. § 48-6-72 (d)].

¹⁶ “Situs” means location or place of business; the place where a thing is considered, for example, with reference to jurisdiction over it, or the right or power to tax it. *Blacks Dictionary*, op. cit.

If any distribution or part of a distribution of intangible recording taxes collected under Article 3 are “adjudged to be invalid for any reason, such distribution or part of a distribution shall be paid into the general fund of the state in the same manner and for the same purposes as provided in (Article 3) for the state’s share of the revenues derived from the tax imposed by (such) article” [O.C.G.A. § 48-6-72 (e)].

Calculating Intangible Recording Tax Distributions

The following are procedures for determining how intangible recording taxes are distributed:

Step One. Determine Entities Entitled to Distribution. Ascertain which entities are entitled to receive a portion of intangible recording taxes collected from records of the tax collector or tax commissioner, each school district, and all other tax jurisdictions or districts. The records obtained should provide the millage for all eligible tax entities for the preceding year, becoming the basis for determining distributions during the current year.¹⁷ (Note: This step should be performed at the beginning of each year).

Step Two. Calculate Factors. Using millage amounts for the preceding year, calculate the percentage the millage for each entity is of the total millage, as shown below. Percentages are “factors” that simplify calculations.¹⁸

Figure 5 below illustrates a simple method for determining factors. Using the illustration for the state in Row 1 as an example, the factor is determined by dividing the millage amount in Column B-1 by the total millage for all entities in Column B-8 (that is, .25 divided by 39.11). The quotient (0.0063922) is the factor for the state’s share of intangible recording tax collected, as shown in Column C-1).¹⁹

¹⁷ “Millage” denotes the value that one “mill” produces in terms of \$1.00 tax for every \$1,000 worth of property value. A mill may be expressed as .001 in decimal form (with 10.30 mills being 10.30 x .001, or 0.0103). Homes are assessed in Georgia at 40% of their fair market value. For example, a home worth \$106,00 in Hinesville, on January 1, 1998 would be taxed at a millage rate of 10.3 mills as follows: \$106,000 * 40% = \$42,400 assessment; \$42,400 * .0103 = \$436.72 ad valorem tax. Homestead exemptions are omitted in this illustration.

¹⁸ For purposes of this guide, a “factor” is a quantity that, when multiplied by another number, produces a product indicative of tax liability.

¹⁹ Factors shown in Figure 5 are shown in the ten-millionth decimal position. Rounding the amounts to the nearest hundredth or thousandth place is permissible but may produce significant, undesirable distribution results. In the figure, there are two tax rates: 1) for property in “unincorporated” areas of the county and 2) property in a municipality (the City of Hinesville). Factors must be determined for each since the millage rates differ.

Figure 5. Determining Factors for IRT Distributions			
	A	B	C
	Entity	Millage	Factor
1.	State	.25	0.0063922
2.	School	13.90	0.3554078
3.	County	10.46	0.2674508
4.	School Bond	.20	0.0051138
5.	Industrial Authority	2.00	0.0511378
6.	Hospital Authority	2.00	0.0511378
7.	City of Hinesville ²⁰	10.30	0.2633598
8.	Total	39.11	100.0

Step Three. Record Security Instrument Data. At the time intangible recording taxes are paid on a security instrument, record required information provided on the face of the instrument (execution date, maturity date of the note, and face amount of the note) on the form provided by the commissioner or in substantially the same format as illustrated in Table 1 on page 20. The information is used as a basis for calculating the tax and, when payment is delinquent, any interest and penalty due.

Using the security instrument received from **James E. Martin** shown in Table 1, the collecting officer recorded each filing party's name in Column A (James E. Martin), the date the intangible recording tax payment was received in Column B (10/12/98), the execution date and note maturity date in Column C (1/1/98 execution date and 1/11/2004 maturity date), and the face amount of the note (or adjusted amount) in Column D (\$66,700.00). Using tax data and the legal description of the property provided in the instrument, the collecting officer determined for distribution purposes that the property was subject to taxation within a municipality or an independent school district and used corresponding factors for tax calculation purposes.

Step Four. Calculate and Record Primary Distribution Data. Calculate the amount of intangible recording tax and interest and penalty due on the security instrument using the rates shown on page 1. Enter the amount of tax, plus applicable interest and penalty due (using procedures shown in Figure 3 on page 8) and record the amounts in the appropriate columns on the intangible recording tax collection form. The sum of the tax paid (Column F), interest (Column G), and penalty (Column H) is entered in Column I. Calculate the collection fee (6% or .06 times the subtotal in Column I). Subtract the

collection fee (Column J) from the subtotal in Column I, then enter the difference in Column K. This is the total intangible recording tax subject to disbursement to qualified tax entities.

In the example in Table 1, it was determined that the property was located within the City of Hinesville, a municipality. The amount of tax paid (\$201.00) was entered in Column F (for the City of Hinesville). Because the tax was delinquent, interest (\$14.07) and penalty (\$100.50) were calculated and recorded in Column G and Column H respectively. The tax paid, interest, and penalty were subtotaled and the amount (\$315.57) was entered in Column I. The six (6%) collection fee (\$18.93) was entered in Column J. The total tax payable to entities (\$296.64) was determined by subtracting Column J from Column I, and the amount was entered in Column K.

Step Five. Compile Distribution Disbursement Summary. A summary of information collected and recorded on the form required by O.C.G.A. § 48-6-7 (see Table 1) must be compiled for reporting intangible recording tax information to the commissioner and as a prerequisite for disbursing distributions to qualified tax entities. Table 2 on page 21 illustrates a recapitulation of the preliminary accounting in Table 1. Using the data from Table 1 and the appropriate factors, the distribution amount for each tax entity may be determined for each intangible recording tax payment received.

As shown in Table 2, the distributions of the intangible recording tax payment (\$296.64) received from James E. Martin (“Martin”) was calculated for each entity qualified to receive a portion of the tax for property located in the City of Hinesville. The factors for municipal property (abbreviated as “Munic. Factor”) are shown on the top of the table. The distribution for the State of Georgia (State/Ga.), for example, was calculated by multiplying the factor for the state (0.00639) times the intangible recording tax paid for Martin in Column 3 (IRT Due – Int./Penalty). The product (\$2.02) was posted in the row and column corresponding to Martin and the State of Georgia. The process of calculating distributions was repeated for the other tax entities (school, county, industrial authority, hospital authority, and the City of Hinesville). The sum of the distributions was recorded in the subtotal column. The collection fee was calculated and, the total disbursements to entities were determined by subtracting the collection fee from the subtotal of distributions for all tax entities. The total was entered in the total column.

The information from the distribution summary in Table 2 serves as an accounts payable journal. At the end of the month, the total distribution amounts are used as a basis for making disbursements of distributions to qualified tax entities. Collection fees are

disbursed as provided by law (see *Compensation of Collecting Officer* on page 18).

Table 3 on page 22 is a summary (or ledger) of all collections and distributions reflected in Table 1 and Table 2.

Compensation of Collecting Officer

Collecting officers compensated on a fee system shall retain six percent of the intangible recording tax collected as compensation for the officer's services in collecting the taxes. In counties with a population of more than 500,000 according to the United States decennial census of 1990 or any future census, however, the commission allowed as compensation to the collecting officer is four percent (O.C.G.A. § 48-6-73).

Collecting officers compensated by salary are required to collect and pay into the county treasury the six-percent commission, which consequentially becomes property of the county (O.C.G.A. § 48-6-73).

The six-percent commission provided for in O.C.G.A. § 48-6-73 is the only compensation permitted to any collecting officer for performance of services with respect to the intangible recording tax.

Duties of Clerk of Superior Court

General Statutory Provisions for Acceptance of Instruments for Recording

The intangible recording tax levied by O.C.G.A. § 48-6-61 shall be paid to the collecting officer prior to and as a prerequisite to the filing for record of the real property instrument securing the note with the clerk of superior court and that the clerk is not be permitted to file the instrument for record unless the security instrument discloses on its face the amount of the note, the date executed, the due date, and the certificate of the collecting officer or said officer's deputy showing that the tax has been paid on the instrument. However, when a sworn statement as to the principal amount of the note is presented for recording in accordance with Code Section 48-6-61, the statement suffices for the purpose of permitting filing of a security instrument that otherwise complies with provisions of law other than for the fact that the security instrument does not disclose the principal amount of the note [O.C.G.A. § 48-6-62 (a) (1)].

By law, any instrument statutorily sufficient for recording and actually recorded by the clerk of superior court constitutes legal notice of the interest and title of the holder of the note in and to real estate that, under the instrument, secures a long-term note. This provision is applicable even if the intangible tax, interest, and penalty, if any, are not paid [O.C.G.A. § 48-6-62 (a) (2)].

Duties (Pursuant to Article 3)

1. Upon receiving an instrument for recording, verify that the collecting officer has entered upon or attached to the security instrument a certification that the intangible recording tax as provided in O.C.G.A. § 48-6-61 has been paid and that the date the tax was paid and the amount of the tax paid is duly noted. The certificate entered upon or attached to the security instrument by the collecting officer must be recorded with the security instrument. It should be in the form required by the commissioner, and should in every instance bear the signature of the collecting officer or said officer's deputy.

2. Process and record the security instrument in the same manner as other real estate conveyances.
Upon receiving a bond for title as provided in O.C.G.A. § 48-6-68 (see page 4), process and record the bond in the same manner as other real estate conveyances.

Table 1. Sample Intangible Recording Tax Collection Form

INTANGIBLE RECORDING TAX COLLECTIONS: Clerk of Superior Court, Liberty County, Georgia

Month/Year: **October, 1998**

County: **Liberty**

A Name of Filing Party(ies) (italicized in unincorp. area)	B Date	C Execution Date/ Note Maturity Date	D I R T Amount		F Hinesville (10.30 mil.) ²²	G Interest (1% per mo.)	H Penalty (50% tax due)	I Subtotal Tax Due (E-H)	J Collection Fee [I x 6% (.06)]	K Total Tax Payable (I less J)
			E Note Face Amount	E Liberty Co. Unincorp. 28.81 mil.) ²¹						
<i>James M. and Wanda M. Willis</i>	10/6/98	10/6/98 11/01/2008	\$77,600.00	\$233.00				\$233.00	\$13.98	\$219.02
<i>Samuel J. and Dwindia L. Wilson</i>	10/11/98	10/11/98 11/1/2022	\$120,000.00	\$360.00				\$360.00	\$21.60	\$338.40
Dewayne E. Goad	10/11/98	10/11/98 1/1/2022	\$66,198.00		\$199.00			\$199.00	\$11.94	\$187.06
Duncan E. Moran	10/12/98	10/12/98 11/1/2022	\$131,070.00		\$394.00			\$394.00	\$23.64	\$370.36
JAMES E. MARTIN	10/12/98	1/1/98 11/1/2004	\$66,700.00		\$201.00	\$14.07	\$ 100.50	\$315.57	\$18.93	\$296.64
Ronnie L. and Sue H. Ulrey	10/12/98	10/12/98 1/1/200	\$20,000.00		\$60.00			\$60.00	\$3.60	\$56.40
<i>Darin E. and Mary D. Ball</i>	10/12/98	10/12/98 1/11/2008	\$57,950.00	\$174.00				\$174.00	\$10.44	\$163.56
James R. Charles	10/13/98	10/13/98 11/01/2004	\$97,920.00		\$294.00			\$294.00	\$17.64	\$276.36
Ronald M. and Marianne K. Yaztek	10/14/98	10/14/98 11/1/2024	\$57,000.00		\$171.00			\$171.00	\$10.26	\$160.74
<i>Donald Mark Sutter</i>	10/14/98	10/14/98 10/8/2002	\$8,084.53	\$25.00				\$25.00	\$1.50	\$23.50
William W. and Shirley L. Freeman	10/14/98	10/14/98 11/13/2026	\$116,905.00		\$351.00			\$351.00	\$21.06	\$329.94
Total			\$819,427.53	\$792.00	\$1670.00	\$14.07	\$100.50	\$2576.57	\$154.59	\$2421.98

²¹ See **Table 3** for formula for calculating recording tax distribution for unincorporated areas.

²² See **Table 3** for calculating recording tax distribution for municipality (City of Hinesville).

Table 2. Sample Journal of Distributions of Intangible Recording Tax (Including Millage Rates and Factors)

Information from Table 1		IRT Due Int./Penalty	Entity	State/Ga.	School	County	School Bond	Indust. Auth.	Hosp. Auth.	Hinesville	Subtotal	Collection Fee	Total
			Millage	0.25	13.90	10.46	0.20	2.00	2.00	10.30			
Name	Face Amt.	From Example	Unicorp. Factor	0.00868	0.48247	0.36307	0.00694	0.06942	0.06942	-	28.81 mil		
			Munic. Factor	0.00639	0.35541	0.26745	0.00511	0.05114	0.05114	0.26336	39.11 mil		
Willis	\$77,600.00	\$233.00		\$2.02	\$112.42	\$84.59	\$1.62	\$16.17	\$16.17	\$0.00	\$233.00	\$13.98	\$219.02
Wilson	\$120,000.00	\$360.00		\$3.12	\$173.69	\$130.70	\$2.50	\$24.99	\$24.99	\$0.00	\$360.00	\$21.60	\$338.40
Goad	\$66,198.00	\$199.00		\$1.27	\$70.73	\$53.22	\$1.02	\$10.18	\$10.18	\$52.41	\$199.00	\$11.94	\$187.06
Moran	\$131,070.00	\$394.00		\$2.52	\$140.03	\$105.38	\$2.01	\$20.15	\$20.15	\$103.76	\$394.00	\$23.64	\$370.36
Martin	\$66,700.00	\$315.57		\$2.02	\$112.16	\$84.40	\$1.61	\$16.14	\$16.14	\$83.11	\$315.57	\$18.93	\$296.64
Ulrey	\$20,000.00	\$60.00		\$0.38	\$21.32	\$16.05	\$0.31	\$3.07	\$3.07	\$15.80	\$60.00	\$3.60	\$56.40
Ball	\$57,950.00	\$174.00		\$1.51	\$83.95	\$63.17	\$1.21	\$12.08	\$12.08	\$0.00	\$174.00	\$10.44	\$163.56
Charles	\$97,920.00	\$294.00		\$1.88	\$104.49	\$78.63	\$1.50	\$15.03	\$15.03	\$77.43	\$294.00	\$17.64	\$276.36
Yaztek	\$57,000.00	\$171.00		\$1.09	\$60.77	\$45.73	\$0.87	\$8.74	\$8.74	\$45.03	\$171.00	\$10.26	\$160.74
Sutter	\$8,084.53	\$25.00		\$0.22	\$12.06	\$9.08	\$0.17	\$1.74	\$1.74		\$25.00	\$1.50	\$23.50
Freeman	\$116,905.00	\$351.00		\$2.24	\$124.75	\$93.88	\$1.79	\$17.95	\$17.95	\$92.44	\$351.00	\$21.06	\$329.94
Total	\$819,427.53	\$2,576.57		\$18.28	\$1016.37	\$764.83	\$14.62	\$146.24	\$146.24	\$469.98	\$2576.57	\$154.59	\$2,41.98

Table 3. Summary of Intangible Recording Taxes Collected and Distributions To Tax Entities

October, 1998

Face Amount \$819,472.53

Item	Unincorp.	Hinesville	Total
Intangible Tax Collected	\$792.00	\$1,670.00	\$2,462.00
Interest and Penalty		\$114.57	\$114.57
Total Collected	\$792.00	\$1,784.57	\$2,576.57

<i>Distribution Amounts Property in City of Hinesville</i>	<i>Millage Due</i>	<i>Factor</i>	<i>Amount Due</i>	<i>Collection Fee (6%)</i>	<i>Total/ Entity</i>
A. State of Georgia	0.25	0.0063922	\$11.41	\$0.68	\$10.73
B. Countywide School Maint.	13.90	0.3554078	\$634.25	\$38.06	\$596.19
C. County	10.46	0.2674508	\$477.28	\$28.64	\$448.64
D. School Bond	0.20	0.0051138	\$9.13	\$0.55	\$8.58
E. Industrial Authority	2.00	0.0511378	\$91.26	\$5.48	\$85.78
F. Hospital Authority	2.00	0.0511378	\$91.26	\$5.48	\$85.78
G. City of Hinesville	10.30	0.2633598	\$449.98	\$28.20	\$441.78
Total Millage Collectable	39.11	100%	\$1764.57	\$ 107.09	\$1,677.48

<i>Distribution Amounts Property in Unincorporated Areas</i>	<i>Millage Due</i>	<i>Factor</i>	<i>Amount Due</i>	<i>Collection Fees (6%)</i>	<i>Total/ Entity</i>
A. State of Georgia	0.25	0.0086775	\$6.87	\$0.41	\$6.46
B. Countywide School Maintenance	13.90	0.4824714	\$382.12	\$22.93	\$359.19
C. County	10.46	0.3630684	\$287.55	\$17.25	\$270.30
D. School Bond	0.20	0.006942	\$5.50	\$0.33	\$5.17
E. Industrial Authority	2.00	0.0694203	\$54.98	\$3.30	\$51.68
F. Hospital Authority	2.00	0.0694203	\$54.98	\$3.30	\$51.68
Total Millage Collectable	28.81	100%	\$792.00	\$47.52	\$744.48

Total Collections - All			\$2576.57	\$154.59	\$2421.98
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PRACTICE APPLICATIONS

Calculate the intangible recording taxes due for the security instruments in the scenarios below.

Scenario A. Grantor: _____
Grantee: _____
Note Amount: _____
Instrument Date: _____
Filing Date: _____
Maturity Date: _____
Intangible Tax Due: \$ _____
Interest Due: \$ _____
Penalty Due: \$ _____
Total Due: \$ _____

Scenario B. Grantor: _____
Grantee: _____
Note Amount: _____
Instrument Date: _____
Filing Date: _____
Maturity Date: _____
Intangible Tax Due: \$ _____
Interest Due: \$ _____
Penalty Due: \$ _____
Total Due: \$ _____

Scenario C. Grantor: _____
Grantee: _____
Note Amount: _____
Instrument Date: _____
Filing Date: _____
Maturity Date: _____
Intangible Tax Due: \$ _____
Interest Due: \$ _____
Penalty Due: \$ _____
Total Due: \$ _____

Scenario D. Grantor: _____
Grantee: _____
Note Amount: _____
Instrument Date: _____
Filing Date: _____
Maturity Date: _____
Intangible Tax Due: \$ _____
Interest Due: \$ _____
Penalty Due: \$ _____
Total Due: \$ _____

SCENARIO 1

SCENARIO 2

SCENARIO 3

SCENARIO 4