

TOWNSHIP OF CENTRE  
BERKS COUNTY, PENNSYLVANIA  
ORDINANCE NO. 1-01-86

AN ORDINANCE OF THE TOWNSHIP OF CENTRE, BERKS COUNTY, PENNSYLVANIA, AMENDING THE REALTY TRANSFER TAX ORDINANCE OF THE TOWNSHIP OF CENTRE TO IMPOSE THE REALTY TRANSFER TAX PREVIOUSLY LEVIED BY THE TOWNSHIP OF CENTRE UPON THE ADDITIONAL CLASSES OR TYPES OF TRANSACTIONS WHICH THE TOWNSHIP IS AUTHORIZED TO TAX UNDER THE PROVISIONS OF ARTICLE XI-C OF THE ACT OF MARCH 4, 1971, KNOWN AS THE "TAX REFORM CODE OF 1971", AS AMENDED.

WHEREAS, the Township of Centre, Berks County, Pennsylvania, has in effect at the present time an Ordinance known as The Realty Transfer Tax Ordinance adopted pursuant to the authority conferred upon the Township by the Local Tax Enabling Act, imposing a real estate transfer tax upon certain transactions, which Ordinance became effective January 1, 1968, and has been in effect continuously since that time; and

WHEREAS, the Pennsylvania Legislature recently enacted Act 77 amending the Act of March 4, 1971, P.L. 6, known as the "Tax Reform Code of 1971", providing for the imposition of a local real estate transfer tax upon additional classes or types of transactions previously not subject to this tax; and

WHEREAS, it is the intention of the Board of Supervisors of the Township of Centre, in addition to taxing those transactions already subject to its aforesaid real estate transfer tax levied pursuant to the authority conferred upon the Township by the Local Tax Enabling Act, to impose the said tax upon the additional classes or types of transactions which it is authorized to tax under the provisions of Article XI-C of the Act of March 4, 1971, known as the "Tax Reform Code of 1971", as amended;

NOW, THEREFORE, BE IT ENACTED by the Board of Supervisors of the Township of Centre, Berks County, Pennsylvania, and it is hereby enacted by the authority of the same as follows:

Section 1. Definitions. The following words when used in this Ordinance shall have the meanings ascribed to them in this Section:

(a) "Association." A partnership, limited partnership, or any other form of unincorporated enterprise owned or conducted by two or more persons other than a private trust or decedent's estate.

(b) "Corporation." A corporation, joint-stock association, business trust, or banking institution which is organized under the laws of this Commonwealth, the United States, or any other state, territory, or foreign country, or dependency.

(c) "Document." Any deed, instrument or writing which conveys, transfers, demises, vests, confirms or evidences any transfer or demise of title to real estate, but does not include wills, mortgages, deeds of trust or other instruments or like character given as security for a debt and deeds of release thereof to the debtor, land contracts whereby the legal title does not pass to the grantee until the total consideration specified in the contract has been paid or any cancellation thereof unless due consideration is payable over a period of time exceeding thirty years or instruments which solely grant, vest or confirm a public utility easement. "Document" shall also include a declaration of acquisition required to be presented for recording under Section 6 of this Ordinance.

(d) "Family Farm Corporation." A corporation of which at least seventy-five percent of its assets are devoted to the business of agriculture, and at least seventy-five percent of each class of stock of the corporation is continuously owned by members of the same family. The business of agriculture shall not be deemed to include:

(1) Recreational activities such as, but not limited to, hunting, fishing, camping, skiing, show competition or racing;

(2) The raising, breeding or training of game animals or game birds, fish, cats, dogs or pets or animals intended for use in sporting or recreational activities;

(3) Fur farming;

(4) Stockyard and slaughterhouse operations; or

(5) Manufacturing or processing operations of any kind.

(e) "Members of the Same Family." Any individual, such individual's brothers and sisters, the brothers and sisters of such individual's parents and grandparents, the ancestors and lineal descendants of any of the foregoing, a spouse of any of the foregoing, and the estate of any of the foregoing. Individuals related by the half blood or legal adoption shall be treated as if they were related by the whole blood.

(f) "Person." Every natural person, association, or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to associations, shall include the responsible members or general partners thereof, and as applied to corporations, the officers thereof.

(g) "Real Estate."

(1) Any lands, tenements or hereditaments within the Township of Centre, including without limitation buildings, structures, fixtures, mines, minerals, oil, gas, quarries, spaces with or without upper or lower boundaries, trees, and other improvements, immovables or interests which by custom, usage or law pass with a conveyance of land, but excluding permanently attached machinery and equipment in an industrial plant.

(2) A condominium unit.

(3) A tenant-stockholder's interest in a cooperative housing corporation, trust or association under a proprietary lease or occupancy agreement.

(h) "Real Estate Company." A corporation or association which is primarily engaged in the business of holding, selling or leasing real estate ninety percent or more of the ownership in which is held by thirty-five or fewer persons and which:

(1) derives sixty percent or more of its annual gross receipts from the ownership or disposition of real estate; or

(2) holds real estate, the value of which comprises ninety percent or more of the value of its entire tangible asset holdings exclusive of tangible assets which are freely transferable and actively traded on an established market.

(i) "Title to Real Estate."

(1) Any interest in real estate which endures for a period of time the termination of which is not fixed or ascertained by a specific number of years, including without limitation an estate in fee simple, life insurance, or perpetual leasehold; or

(2) Any interest in real estate enduring for a fixed period of years but which, either by reason of the length of the term or the grant of a right to extend the term by renewal or otherwise, consists of a group of rights approximating those

of an estate in fee simple, life estate or perpetual leasehold, including without limitation a leasehold interest or possessory interest under a lease or occupancy agreement for a term of thirty years or more or a leasehold interest or possessory interest in real estate in which the lessee has equity.

(j) "Transaction." The making, executing, delivering, accepting, or presenting for recording of a document.

(k) "Value."

(1) In the case of any bona fide sale of real estate at arm's length for actual monetary worth, the amount of the actual consideration therefor, paid or to be paid, including liens or other encumbrances thereon existing before the transfer and not removed thereby, whether or not the underlying indebtedness is assumed, and ground rents, or a commensurate part thereof where such liens or other encumbrances and ground rents also encumber or are charged against other real estate; provided, that where such documents shall set forth a nominal consideration, the "value" therefor shall be determined from the price set forth in or actual consideration for the contract of sale.

(2) In the case of a gift, sale by execution upon a judgment or upon the foreclosure of a mortgage by a judicial officer, transactions without consideration or for consideration less than the actual monetary worth of the real estate, a taxable lease, an occupancy agreement, a leasehold or possessory interest, any exchange of properties, or the real estate of an acquired company, the actual monetary worth of the real estate determined by adjusting the assessed value of the real estate for local real estate tax purposes for the common level ratio of assessed values to market values of the taxing district as established by the State Tax Equalization Board, or a commensurate part of the assessment where the assessment includes other real estate.

(3) In the case of an easement or other interest in real estate the value of which is not determinable under clause (1) or (2), the actual monetary worth of such interest; or

(4) The actual consideration for or actual monetary worth of any executory agreement for the construction of buildings, structures or other permanent improvements to real estate between the grantor and other persons existing before the transfer and not removed thereby or between the grantor, the agent or principal of the grantor or a related corporation, association or partnership and the grantee existing before or effective with the transfer.

Section 2. Imposition of Tax. -- Every person who makes, executes, delivers, accepts or presents for recording any document or in whose behalf any document is made, executed, delivered, accepted or presented for recording, shall be subject to pay for and in respect to the transaction or any part thereof, or for or in respect of the vellum parchment or paper upon which such document is written or printed, a local tax at the rate of one percent of the value of the real estate represented by such document, which local tax shall be payable at the earlier of the time the document is presented for recording or within thirty days of acceptance of such document or within thirty days of becoming an acquired company that has been conveyed or transferred within the Township of Centre's territory regardless of where the instruments making the transfers are made, executed or delivered, or where the transaction took place.

Section 3. Exempt Parties. -- The United States, the Commonwealth, or any of their instrumentalities, agencies or political subdivisions shall be exempt from payment of the tax imposed by this Ordinance. The exemption of such governmental bodies shall not, however, relieve any other party to a transaction from liability for the tax.

Section 4. Excluded Transactions. -- The tax imposed by Section 2 shall not be imposed upon:

(a) A transfer to the Commonwealth, or to any of its instrumentalities, agencies or political subdivisions, by gift, dedication or deed in lieu of condemnation or deed of confirmation in connection with condemnation proceedings, or a reconveyance by the condemning body of the property condemned to the owner of record at the time of condemnation which reconveyance is made within one year from the date of condemnation.

(b) A document which the Commonwealth is prohibited from taxing under the Constitution or statutes of the United States.

(c) A conveyance to a municipality, township, school district or county pursuant to acquisition by the municipality, township, school district or county or a tax delinquent property at sheriff sale or tax claim bureau sale.

(d) A transfer for no or nominal actual consideration which corrects or confirms a transfer previously recorded, but which does not extend or limit existing record legal title or interest.

(e) A transfer of division in kind for no or nominal actual consideration of property, passed by testate or intestate succession and held by covenants; however, if any of the parties take shares greater in value than their undivided interest, tax is due on the excess.

(f) A transfer between husband and wife, between persons who were previously husband and wife who have since been divorced, provided the property or interest therein subject to such transfer was acquired by the husband and wife or husband or wife prior to the granting of the final decree in divorce, between parent and child or the spouse of such child, between brother or sister or spouse of a brother or sister and brother or sister or the spouse of a brother or sister, and between grandparent and grandchild or the spouse of such grandchild, except that a subsequent transfer by the grantee within one year shall be subject to tax as if the grantor were making such transfer.

(g) A transfer for no or nominal actual consideration of property passing by testate or intestate succession from a personal representative of a decedent to the decedent's devisee or heir.

(h) A transfer for no or nominal actual consideration to a trustee or an ordinary trust where the transfer of the same property would be exempt if the transfer was made directly from the grantor to all of the possible beneficiaries, whether or not such beneficiaries are contingent or specifically named. No such exemption shall be granted unless the recorder of deeds is presented with a copy of the trust instrument that clearly identifies the grantor and all possible beneficiaries.

(i) A transfer for no or nominal actual consideration from a trustee to a beneficiary of an ordinary trust.

(j) A transfer for no or nominal actual consideration from trustee to successor trustee.

(k) A transfer:

(i) for no or nominal actual consideration between principal and agent or straw party; or

(ii) from or to an agent or straw party where, if the agent or straw party were his principal, no tax would be imposed under this Ordinance.

Where the document by which title is acquired by a grantee or statement of value fails to set forth that the property was acquired by the grantee from, or for the benefit of, his principal, there is a rebuttable presumption that the property is the property of the grantee in his individual capacity if the grantee claims an exemption from taxation under this clause.

(l) A transfer made pursuant to the statutory merger or consolidation of a corporation or statutory division of a nonprofit corporation, except where the department reasonably determining that the primary intent for such merger, consolidation or division is avoidance of the tax imposed by this Ordinance.

(m) A transfer from a corporation or association of real estate held of record in the name of the corporation or association where the grantee owns stock of the corporation or an interest in the association in the same proportion as his interest in or ownership of the real estate being conveyed and where the stock of the corporation or the interest in the association has been held by the grantee for more than two years.

(n) A transfer from a nonprofit industrial development agency or authority to a grantee of property conveyed by the grantee to that agency or authority as security for a debt of the grantee or a transfer to a nonprofit industrial development agency or authority.

(o) A transfer from a nonprofit industrial development agency or authority to a grantee purchasing directly from it, but only if:

(i) the grantee shall directly use such real estate for the primary purpose of manufacturing, fabricating, compounding, processing, publishing, research and development, transportation, energy conversion, energy production, pollution control, warehousing or agriculture; and

(ii) the agency or authority has the full ownership interest in the real estate transferred.

(p) A transfer by a mortgagor to the holder of a bona fide mortgage in default in lieu of a foreclosure or a transfer pursuant to a judicial sale in which the successful bidder is the bona fide holder of a mortgage, unless the holder assigns the bid to another person.

(q) Any transfer between religious organizations or other bodies or persons holding title for a religious organization if such real estate is not being or has not been used by such transferor for commercial purposes.

(r) A transfer to a conservancy which possesses a tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, (68A Stat. 3), 26 U.S.C., Section 501(c)(3) and which has as its primary purpose preservation of land for historic, recreational, scenic, agricultural or open space opportunities.

(s) A transfer of real estate devoted to the business of agriculture to a family farm corporation by a member of the same family which directly owns at least seventy-five percent of each class of the stock thereof.

(t) A transfer between members of the same family of an ownership interest in a real estate company or family farm corporation.

(u) A transaction wherein the tax due is one dollar (\$1) or less.

(v) Leases for the production or extraction of coal, oil, natural gas or minerals and assignments thereof.

In order to exercise any exclusion provided in this section, the true, full and complete value of the transfer shall be shown on the statement of value. For leases of coal, oil, natural gas or minerals, the statement of value may be limited to an explanation of the reason such document is not subject to tax under this Ordinance.

Section 5. Documents Relating to Associations or Corporations and Members, Partners, Stockholders or Shareholders Thereof. -- Except as otherwise provided in Section 3, documents which make, confirm or evidence any transfer or demise of title to real estate between associations or corporations and the members, partners, shareholders or stockholders thereof are fully taxable. For the purposes of this Ordinance, corporations and associations are entities separate from their members, partners, stockholders or shareholders.

Section 6. Acquired Company. --

(a) A real estate company is an acquired company upon a change in the ownership interest in the company, however effected, if the change:

(1) Does not affect the continuity of the company;  
and

(2) Of itself or together with prior changes has the effect of transferring, directly or indirectly, ninety percent or more of the total ownership interest in the company within a period of three years.

(b) With respect to real estate acquired after February 16, 1986, a family farm corporation is an acquired company when, because of voluntary or involuntary dissolution, it ceases to be a family farm corporation or when, because of issuance or transfer of



stock or because of acquisition or transfer of assets that are devoted to the business of agriculture, it fails to meet the minimum requirements of a family farm corporation under this Ordinance.

(c) Within thirty days after becoming an acquired company, the company shall present a declaration of acquisition with the recorder of each county in which it holds real estate for the affixation of documentary stamps and recording. Such declaration shall set forth the value of real estate holdings of the acquired company in such county.

Section 7. Credits Against Tax. --

(a) Where there is a transfer of a residential property by a licensed real estate broker which property was transferred to him within the preceding year as consideration for the purchase of other residential property, a credit for the amount of the tax paid at the time of the transfer to him shall be given to him toward the amount of the tax due upon the transfer.

(b) Where there is a transfer by a builder or residential property which was transferred to the builder within the preceding year as consideration for the purchase of new, previously unoccupied residential property, a credit for the amount of the tax paid at the time of the transfer to the builder shall be given to the builder toward the amount of the tax due upon the transfer.

(c) Where there is a transfer of real estate which is demised by the grantor, a credit for the amount of tax paid at the time of the demise shall be given the grantor toward the tax due upon the transfer.

(d) Where there is a conveyance by deed of real estate which was previously sold under a land contract by the grantor, a credit for the amount of tax paid at the time of the sale shall be given the grantor toward the tax due upon the deed.

(e) If the tax due upon the transfer is greater than the credit given under this section, the difference shall be paid. If the credit allowed is greater than the amount of tax due, no refund or carryover shall be allowed.

Section 8. Severance. If any article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase or word in this Ordinance, is, for any reason declared to be illegal, unconstitutional or invalid, by any Court of competent jurisdiction, such decision shall not affect or impair the validity of this Ordinance as a whole, or any other article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase, word, or remaining portion of the within Ordinance. The Board of Supervisors of the

Township of Centre, Berks County, Pennsylvania, hereby declares that it would have adopted the within Ordinance and each article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase and word thereof, irrespective of the limitations, restrictions, sentences, clauses, phrases, or word may be declared illegal, unconstitutional or invalid.

Section 9. Repealer. All Ordinances or parts of Ordinances conflicting with the provisions of this Ordinance are hereby repealed insofar as they are inconsistent with this Ordinance.

Section 10. Effective Date. This Ordinance shall become effective thirty (30) days after the date of its enactment.

DULY ENACTED AS AN ORDINANCE this 23 day of December, 1986, by the Board of Supervisors of the Township of Centre, Berks County, Pennsylvania, in lawful session duly assembled.

TOWNSHIP OF CENTRE  
Berks County, Pennsylvania

Albert W. Burkholder Jr.  
Chairman

Harold W. Miller  
Supervisor

Wilmer H. Phillips  
Supervisor