

**WEST PIKELAND TOWNSHIP
BOARD OF SUPERVISORS
CHESTER COUNTY, PENNSYLVANIA**

ORDINANCE NO. 01 of 2007

AN ORDINANCE OF THE TOWNSHIP OF WEST PIKELAND, CHESTER COUNTY, PENNSYLVANIA, AMENDING THE WEST PIKELAND TOWNSHIP TRANSFER TAX ORDINANCE, BY RENACTING AND AMENDING THE ORDINANCE, TO AUTHORIZE THE DEPARTMENT OF REVENUE OF THE COMMONWEALTH OF PENNSYLVANIA TO DETERMINE, COLLECT, AND ENFORCE THE TOWNSHIP'S REALTY TRANSFER TAX, ESTABLISH INTEREST RATES AND PENALTIES, AND MISCELLANEOUS RULES AND REGULATIONS. EFFECTIVE FIVE DAYS FROM ENACTMENT.

BE IT AND IT IS HEREBY ENACTED by the Board of Supervisors of West Pikeland Township, Chester County, as follows:

Section 1. The Township of West Pikeland Realty Transfer Tax Ordinance, is amended by reenacting and amending the ordinance, to read as follows:

§1. Tax levied; title.

- A. A realty transfer tax for general revenue purposes is hereby imposed upon the transfer of real estate, or interest in real estate, situated within West Pikeland Township, regardless of where the documents making the transfer are made, executed or delivered, or where the actual settlements on such transfer took place, as authorized by Article XI-D "Local Real Estate Transfer Tax," 72 P.S. § 8101-D et seq.
- B. This article shall be known and may be cited as the "West Pikeland Township Transfer Tax Ordinance."

§2. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ACQUIRED COMPANY — A real estate company upon a change in the ownership interest in the company, however effected, if the change does not affect the continuity of the company; and of itself or together with prior changes has the effect of transferring, directly or indirectly, 90% or more of the total ownership interest in the company within a period of three years.

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.

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, foreign country or dependency.

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 instrument of 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 the consideration is payable over a period of time exceeding 30 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 §6 of this article.

FAMILY FARM CORPORATION — A corporation of which at least 75% of its assets are devoted to the business of agriculture and at least 75% of each class of stock of the corporation is continuously owned by members of the same family. The business or agriculture shall not be deemed to include:

- A. Recreational activities such as, but not limited to, hunting, fishing, camping, skiing, show competition or racing;
- B. 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;
- C. Fur farming;
- D. Stockyard and slaughterhouse operations; or
- E. Manufacturing or processing operations of any kind.

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.

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.

REAL ESTATE

- A. Any lands, tenements or hereditaments within this Township, 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.
- B. A condominium unit.
- C. A tenant-stockholder's interest in a cooperative housing corporation, trust or association under a proprietary lease or occupancy agreement.

REAL ESTATE COMPANY — A corporation or association which is primarily engaged in the business of holding, selling, leasing real estate 90% or more of the ownership interest in which is held by 35 or fewer persons and which:

- A. Derives 60% or more of its annual gross receipts from the ownership or disposition of real estate; or
- B. Holds real estate, the value of which comprises 90% 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.

TITLE TO REAL ESTATE

- A. 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 estate or perpetual leasehold; or
- B. 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.

TRANSACTION — The making, executing, delivering, accepting or presenting for recording of a document.

VALUE

- A. 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" thereof shall be determined from the price set forth in or actual consideration of the contract of sale;
- B. In the case of 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 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 factor developed by the Pennsylvania Department of Revenue for Pennsylvania realty transfer tax base calculations;
- C. In the case of an easement or other interest in real estate the value of which is not determinable under Subsection A or B, the actual monetary worth of such interest; or
- D. The actual consideration of 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 principle of the grantor of a related corporation, association or partnership and the grantee existing before or effective with the transfer.

§3. Imposition of tax; interest.

- A. 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, a tax at the rate of 1% of the value of the real estate represented by such document, which tax shall be payable at the earlier of the time the document is presented for recording or within 30 days of acceptance of such document or within 30 days of becoming an acquired company.

- B. The payment of the tax imposed herein shall be evidence by the affixing of an official stamp or writing by the Recorder of Deeds of Chester County whereon the date of the payment of the tax, amount of the tax and the signature of the collecting agent shall be set forth.
- C. It is the intent of this article that the entire burden of the tax imposed herein on a person or transfer shall not exceed the limitations prescribed in "The Local Tax Enabling Act," Act of December 31, 1965, P.L. 1257, 53 P.S. § 6901 et seq., so that if any other political subdivision shall impose or thereafter shall impose such tax on the same person or transfer then the tax levied by the Township under the authority of that Act shall during such time such duplication of tax exists, except as hereinafter otherwise provided, be 1/2 of the rate and such 1/2 rate shall become effective without any action on the part of Township; provided, however, that the Township and any other political subdivision which impose such tax on the same person or transfer may agree that, instead of limiting their respective rates to 1/2 of the rate herein provided, they will impose respectively different rates, the total of which shall not exceed the maximum rate permitted under the Local Tax Enabling Act.

§4. 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 article. The exemption of such governmental bodies shall not, however, relieve any other party to a transaction from liability for the tax.

§5. Excluded transactions.

- A. The tax imposed by §3 shall not be imposed upon:
 - 1. 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 may include property line adjustments provided said reconveyance is made within one year from the date of condemnation.
 - 2. A document which the Township is prohibited from taxing under the constitution or statutes of the United States.
 - 3. A conveyance to a municipality, township, school district or county pursuant to acquisition by the municipality, township, school district or county of a tax delinquent property at sheriff sale or tax claim bureau sale.

4. 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.
5. A transfer of division in kind for no or nominal actual consideration or 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.
6. 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 between a 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.
7. 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.
8. A transfer for no or nominal actual consideration to a trustee of 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.
9. A transfer for no or nominal actual consideration from a trustee to a beneficiary of an ordinary trust.
10. A transfer for no or nominal actual consideration from trustee to successor trustee.
11. 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 article.
 - a. 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.

12. 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 determines that the primary intent for such merger, consolidation or division is avoidance of the tax imposed by this article.
13. 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 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.
14. 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.
15. 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 conservation, energy production, pollution control, warehousing or agriculture; and ii) the agency or authority has the full ownership interest in the real estate transferred.
16. 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.
17. 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.
18. 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. § 501(c)(3)] and which has as its primary purpose preservation of land for historic, recreational, scenic, agricultural or open space opportunities.

19. 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 75% of each class of stock thereof.
 20. A transfer between members of the same family of an ownership interest in a real estate company or family farm corporation.
 21. A transaction wherein the tax due is \$1 or less.
 22. Leases for the production or extraction of coal, oil, natural gas or minerals and assignments thereof.
 23. Or any other transaction excluded under the Act of March 4, 1971 (P.L. 6, No. 2) (72 P.S. §8102-C.3), as amended.
- B. 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. (A copy of the Pennsylvania realty transfer tax statement of value may be submitted for this purpose.) 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 article.

§6. Documents relating to associations, corporations and acquired companies.

- A. Except as otherwise provided in §5 hereof, documents which make, confirm or evidence any transfer or demise of title to real estate between associations or corporations and their members, partners, shareholders or stockholders thereof are fully taxable. For the purpose of this article, corporations and associations are entities separate from their members, partners, stockholders or shareholders.
- B. Within 30 days after becoming an acquired company, the company shall present for recording a declaration of acquisition with the Recorder of Deeds of Chester County for the purpose of noting thereon or the affixation thereto of such documentary stamps or evidence of the payment of this tax as required by law. Such declaration shall set forth the value of real estate holdings of the acquired company in Chester County.

§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 of 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. In determining the term of a lease, it shall be presumed that a right or option to renew or extend a lease will be exercised if the rental charge to the lessee is fixed or if a method for calculating the rental charge is established.
- 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 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 credit shall be allowed.

§8. Proceeds of judicial sale.

The tax herein shall be fully paid, and have priority out of the proceeds of any judicial sale of real estate before any other obligation, claim, lien, judgment, estate or costs of the sale and of the writ upon which the sale is made, and the sheriff, or other officer, conducting said sale shall pay the tax herein imposed out of the first monies paid to him in connection therewith. If the proceeds of the sale are insufficient to pay the entire tax herein imposed, the purchaser shall be liable for the remaining tax.

§9. Real estate or interest therein partially located in the Township.

Where real estate or interest in real estate lying partially within the boundaries of West Pikeland Township and partly without said boundaries is transferred, the tax herein imposed shall be calculated upon such portion of the value as shall be represented by the portion of real estate or interest therein lying within the boundaries of the Township as determined by the realty transfer tax statement of value filed with the Recorder of Deeds or if no such filing is required, by affidavit of the transferor, or as separately stated in the document of transfer; provided, however, such value shall in no event be less than the highest assessed valuation for local tax purposes placed upon the real estate or the interest in the real estate in the assessment of the property within the Township.

§10. Statement of value.

Every document lodged with or presented to the Recorder of Deeds of Chester County for recording shall set forth therein and as part of such document the true, full and complete value thereof. When the full, complete and actual consideration which is subject to the tax is not set forth in the document, the person liable for the tax shall, contemporaneously with the filing of the document, file with the Recorder of Deeds a "realty transfer tax statement of value" identical to that promulgated by the Department of Revenue of the Commonwealth of Pennsylvania or, in the instance of an acquired company, a "realty transfer tax declaration of acquisition" identical to that promulgated by the Department of Revenue of the Commonwealth of Pennsylvania. The provisions of this section shall not apply to any excludable real estate transfers which are exempt from taxation based on family relationship.

§11. Recorder of Deeds.

The tax imposed hereby, including any amount payable to the Township based on a redetermination of the amount of tax due by the Commonwealth of Pennsylvania pursuant to §3 hereof shall be collected by the Recorder of Deeds of Chester County who shall act as agent for the Township in the collection of the transfer tax as provided in 16 P.S. § 11011-6, as amended. The tax thus collected shall be payable by the Recorder to the Treasurer of West Pikeland Township at least monthly or at such other intervals as the Township and the Recorder of Deeds shall mutually determine.

§12. Documentary stamps or other evidence of payment.

The payment of the tax imposed by this article when received by the Recorder of Deeds shall be evidenced by the affixing of a documentary stamp or stamps or other evidence of payment as approved by the Pennsylvania Department of Revenue.

§13. Determination of additional tax due or redetermination.

- A. In the event a determination or redetermination of transfer tax due is made by the Pennsylvania Department of Revenue pursuant to Section 1111-C of Act 1986-77, 72 P.S. § 8111-C, such determination or redetermination shall be deemed to have been also made by the Secretary of West Pikeland Township, and there shall be due and owing to the Township, as additional transfer tax, the amount determined or redetermined by the Department to be due the Commonwealth of Pennsylvania.
- B. Upon redetermination of the amount of realty transfer tax due by the Commonwealth of Pennsylvania, the Recorder shall re-record the document only when the transfer tax imposed by this article has been paid.

§14. Enforcement.

The Secretary of West Pikeland Township is hereby authorized and empowered to prescribe, adopt and enforce rules and regulations relating to the registration and notation of transactions, the collection of transfer taxes, interest and penalties due hereunder, the prosecution of violations hereunder, and any other matter pertaining to administration and enforcement of the provisions of this article; provided however that the regulations which have been promulgated by the Pennsylvania Department of Revenue under 72 P.S. § 1101-C et seq., as the same are from time to time amended, are incorporated into and made part of this article and shall be deemed to have been adopted by the Township Secretary.

§15. Collection of delinquent transfer taxes; imposition of interest and penalties.

- A. Any tax imposed under §1 and §3 that is not paid by the date the tax is due shall bear interest as prescribed for interest on delinquent municipal claims under the Act of May 16, 1923 (P.L. 207, No. 153) (53 P.S. §§ 7101, et seq.), as amended, known as "The Municipal Claims and Tax Liens Act." The interest rate shall be the lesser of the interest rate imposed upon delinquent Commonwealth taxes as provided in Section 806 of the Act of April 9, 1929 (P.L. 343, No. 176) (72 P.S. § 806), as amended, known as "The Fiscal Code," or the maximum interest rate permitted under the Municipal Claims and Tax Liens Act for tax claims.
- B. The transfer tax when due and unpaid, together with all interest and penalties thereon, shall be a lien in favor of the Township on real estate or interest in the real estate which is described in the document which the tax is imposed, and upon any other property, both real and personal, of the person failing to pay the tax due, after said lien has been entered and adopted of record by the Prothonotary of Chester County accordance with the Municipal Claims and Tax Liens Law.
- C. If any part of any underpayment of tax imposed by this article is due to fraud, there shall be added to the tax an amount equal to 50% of the underpayment.
- D. The tax imposed by this article shall be collected and enforced in accordance with the Local Tax Enabling Act. The Township Solicitor is authorized to pursue any and all remedies available by law for collection of the tax, and all such remedies shall be cumulative and not exclusive.
- E. The tax imposed under §1 and §3 and all applicable interest and penalties shall be administered, collected and enforced under the Act of December 31, 1965 (P.L. 1257, No. 511), as amended, known as "The Local Tax Enabling Act"; provided, that if the correct amount of the tax is not paid by the last date prescribed for timely payment, West Pikeland Township, pursuant to Section 1102-D of the Tax Reform Code of 1971 (72 P.S. § 8102-D) authorizes and

directs the Department of Revenue of the Commonwealth of Pennsylvania to determine, collect, and enforce the tax, interest, and penalties.

§16. Violations and penalties.

- A. It shall be unlawful for any person to:
1. Accept or present for recording or cause to be accepted or presented for recording any document, without the full amount of the tax thereon being duly paid; or
 2. Fail, neglect or refuse to comply with or violate the provisions of this article or the rules or regulations prescribed, adopted and promulgated by the Secretary under the provisions of this article.
- B. Any person who violates or permits the violation of any of the provisions of this §16 shall be subject to a fine in the amount of at least \$25, but not to exceed \$600, plus all court costs, including reasonable attorney fees incurred by the Township. Upon a finding of liability for committing said violation or permitting said violation, in a civil enforcement proceeding commenced by the Township, the defendant shall pay the fine plus costs and attorney fees. No judgment shall be imposed until the date of determination of a violation by a District Justice. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgment pursuant to the applicable Rules of Civil Procedure.

Section 2. If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective.

Section 3. This Ordinance shall take effect five days after enactment.

ENACTED and **ORDAINED** this _____ day of _____, 2007.

**BOARD OF SUPERVISORS
WEST PIKELAND TOWNSHIP**

, Chairman

, Vice-Chairman

, Member

ATTEST:

, Secretary