

ORDINANCE NO. 272-A

AN ORDINANCE OF MILESBURG BOROUGH, IMPOSING  
A TAX ON THE TRANSFER OF LANDS OR INTERESTS THEREIN  
AND OTHER TRANSFERS RELATING OR INTERESTS IN LAND  
AND REAL ESTATE, AS HEREIN DEFINED: PROVIDING FOR  
THE COLLECTION THEREOF: AND PROVIDING PENALTIES  
FOR VIOLATIONS OF THIS ORDINANCE

BE IT RESOLVED by the Borough of Milesburg  
and it is hereby resolved as follows:

SECTION 1. AUTHORITY FOR ENACTMENT

This ordinance is adopted under authority of the Local Tax Enabling Act, P.L. 1257, No. 511, December 31, 1965, 53 P.S. 6901, et seq. (1982), as amended; and also pursuant to the authority granted by the Act of the General Assembly of 1986, being Act No. 77, Article XI (d), Section 1101(d).

SECTION 2. DEFINITIONS

"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 or 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 instruments 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 thirty years, or instruments which solely grant, vest or confirm public utility easements. "Document" shall also include a declaration or acquisition required to be presented for recording under Section Two of this article.

"Family Farm Corporation." A corporation of which at least seventy-five percent (75%) of its assets are devoted to the business of agriculture, and at least seventy-five percent (75%) 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, carping, 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.

"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

decedents 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."

(1) Any lands, tenements or hereditaments within this Commonwealth, 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.

"Real Estate Company." A corporation or association which is primarily engaged in the business of holding, selling or leasing real estate ninety percent (90%) or more of the ownership interest in which is held by thirty-five (35) or fewer persons and which:

(1) Derives sixty percent (60%) 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 (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."

(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 estate, 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 (30) years or more or a leasehold interest or possessory interest in real estate in which the lessee has equity.

"Realty Transfer Tax Collector." The person designated by the Borough to enforce and administer this ordinance.

"Borough." The Borough of Milesburg.

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

"Value."

(1) In the case of a 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 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, or 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 principle of the grantor or a related corporation, association or partnership and the grantee existing before or effective with the transfer.

SECTION 3. IMPOSITION OF TAX

After the effective date of this resolution, on every document whereby any lands, tenements or hereditaments, or any interest thereon, lying and being situate wholly or part within the boundaries of the Borough shall be granted, bargained, sold or otherwise conveyed, a tax for general revenue purposes is hereby imposed and assessed on each such document at the rate of one-half of one percent (1/2%) on every \$100.00 of the value of the real estate, lands, tenements or hereditaments, or any interest therein, which is conveyed or transferred by such document; provided, that where any lands, tenements or hereditaments being situate partly within and partly without the boundaries of the Borough are conveyed, such tax so levied shall be collected on the valuation of the portion of such lands and tenements lying within the limits of the Borough; provided further that on all transactions where the value by which the tax is determined involves a figure not divisible by \$100.00, no tax shall be collected on that part of the value or selling price over and above the highest even \$100.00 valuation.

SECTION 4. PAYMENT AND LIABILITY

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 tax at the rate of one percent (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 thirty (30) days of acceptance of such document or within thirty (30) days of becoming an acquired company.

This tax shall apply to the privilege of transferring title to real estate lying within the Borough or any interest thereon as herein defined.

SECTION 5. 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.

SECTION 5A. EXCLUDED TRANSACTIONS

The tax imposed by Section Three 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 conveyance may include property line adjustments, provided said reconveyance is made within one year from the date of condemnation.

(2) A document which the Commonwealth 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 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.

(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 the 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 (1) year shall be subject to tax as if the grantor were making such transfer.

(7) A transfer for no or nominal actual consideration or property passing by testate or intestate succession from a personal

representative or 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 sale 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.

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 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 (2) 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 conversion, 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 transfer or for commercial purposes.

(18) A transfer to a conservancy which possesses a tax exempt status pursuant to Sections 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 seventy-five percent (75%) of each class of the 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 one dollar (\$1.00) or less.

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

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 or the reason such document is not subject to tax under this article.

SECTION 6. DOCUMENTS RELATING TO ASSOCIATIONS OR CORPORATIONS AND MEMBERS, PARTNERS, STOCKHOLDERS OR SHAREHOLDERS THEREOF

Except as otherwise provided, 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 article, corporations and associations are entities separate from their members, partners, stockholders or shareholders.

SECTION 7. ACQUIRED COMPANY

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

- (i) does not affect the continuity of the company; and
- (ii) of itself or together with prior changes has the effect of transferring, directly or indirectly, ninety percent (90%) or more of the total ownership interest in the company within a period of three (3) years.

(2) With respect to real estate acquired after February 16, 1986, a family farm corporation is an acquired company when, because of voluntary or involuntary disposition, 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 resolution.

(3) Within thirty (30) 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 8. CREDITS AGAINST TAX

(1) Where there is a transfer of 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 tax due upon the transfer.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

#### SECTION 9. EXTENSION OF LEASE

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.

#### SECTION 10. EVIDENCE OF PAYMENT

The payment of the tax imposed by this ordinance shall be evidenced by an official stamp imprinted on every document indicating the amount of the tax paid. The person using said stamp shall write or cause to be written on the stamp so imprinted the date upon which such stamp is imprinted on the document.

#### SECTION 11. DUTIES OF REALTY TRANSFER TAX COLLECTOR

The Realty Transfer Tax Collector shall prescribe, prepare and furnish the rubber stamp required to imprint the payment of the tax imposed and assessed by this ordinance.

#### SECTION 12. AUTHORITY OF REALTY TRANSFER TAX COLLECTOR

The Realty Transfer Tax Collector is hereby charged with the enforcement of the provisions of this ordinance and is authorized and

empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to imprinting the stamp on such document and any other matter or thing pertaining to administration and enforcement of the provisions of this ordinance.

SECTION 13. AFFIDAVIT REQUIRED WITH CERTAIN DOCUMENTS

Every document upon which a tax is imposed by this ordinance and which does not reflect the actual value of the land, tenements or hereditaments, or interest therein granted, bargained, sold or conveyed by said document shall be accompanied by an affidavit executed by a responsible person connected with the transaction, showing such connecting and setting forth the true, full, complete and actual value thereof.

SECTION 14. PROHIBITED ACTS

It shall be unlawful for any person to:

(1) Make, execute, issue, deliver or accept, or cause to be made, executed, issued, delivered or accepted, any document without the full amount of tax thereon being duly paid; or

(2) Make use of any stamps to denote payment of any tax imposed by this ordinance without cancelling such stamp, as required by this ordinance, or as prescribed by the Realty Transfer Tax Collector; or

(3) Fail, neglect, or refuse to comply with, or violate the rules and regulations prescribed, adopted and promulgated by the Realty Transfer Tax Collector under the provisions of this ordinance.

SECTION 15. INTEREST ADDED TO UNPAID TAX

All taxes imposed by this ordinance not paid when due shall

bear interest thereon at the rate of one-half or one percent (1/2% or 1%) per month until paid.

SECTION 16. RECOVERY OF TAXES AND INTEREST

All taxes imposed by this ordinance together with interest from the due date shall be recovered as other debts of like character are recovered.

SECTION 17. TAX CONSTITUTES LIEN AGAINST PROPERTY

The tax imposed by this ordinance shall become a lien upon the lands, tenements or hereditaments, or any interest therein, lying, being, and situate, wholly or in part, within the boundaries of the Borough, which lands, tenements, hereditaments, or interest thereon are described in or conveyed or transferred by the documents which is the subject of such tax imposed and assessed by this ordinance, said lien to begin at the time when the tax under this ordinance is due and payable and continue until discharged by payment or in accordance with the law. The Solicitor is authorized to file a municipal or tax claim in the Court of Common Pleas.

SECTION 18. PENALTIES

Any person who shall violate any provision of this ordinance shall, upon conviction thereof, be sentenced to pay a fine of not more than three hundred dollars (\$300.00) and/or to imprisonment for a term not to exceed ninety (90) days.

SECTION 19. REPEALER

All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed.

SECTION 20. SEVERABILITY

If any sentence, clause, section, or part of this ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this ordinance. It is hereby declared as the intent of the Borough that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 21. EFFECTIVE DATE

This ordinance shall be effective on \_\_\_\_\_ and shall continue thereafter on a calendar year basis without annual reenactment.

Enacted as an ordinance of Milesburg Borough this  
2 day of *March*, 1987.

MILESBURG BOROUGH COUNCIL

*Robert B Park*

*Ed K Dech* MAYOR

*Betty L. Hill*