

ARTICLE IV
Realty Transfer Tax
[Adopted 2-4-1988 by Ord. No. 81]

401
§ 78-27. Title.

This article shall be known as the "Realty Transfer Tax Ordinance of the Borough of Callery."

402
§ 78-28. Authority.

A realty transfer tax for general revenue purposes is hereby imposed upon the transfer of real estate or interest in real estate situated within the Borough of Callery, 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.

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§ 78-29. Definitions.⁹

As used in this article, the words and phrases defined in 72 P.S. § 8101-C shall have the meanings ascribed to them in said section.

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§ 78-30. Imposition of tax; interest on unpaid taxes.

- 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 of 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 evidenced by the affixing of an official stamp or writing by the Recorder 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 hereafter shall impose such tax on the same person or transfer then the tax levied by the Borough of Callery under the authority of that Act shall during the time such duplication of the 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 the Borough of Callery; provided, however, that the Borough of Callery, and any other political subdivision which imposes 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

⁹ Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

impose respectively different rates, the total of which shall not exceed the maximum rate permitted under the Local Tax Enabling Act.

- D. If for any reason the tax is not paid when due, interest, at the rate in effect at the time the tax is due, shall be added and collected.

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§ 78-31. 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.

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§ 78-32. Excluded transactions.

- A. The tax imposed by § 78-30 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 Borough of Callery is prohibited from taxing under the Constitution or statutes of the United States.
- (3) A conveyance to the 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 interstate succession and held by co-tenants; 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 for no or nominal actual consideration between principal and agent or straw party; or 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 years.
- (14) A transfer from a nonprofit industrial development agency or authority to a grantee purchasing directly from it, but only if:
 - (a) 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
 - (b) The agency or authority has the full ownership interest in the real estate transferred.
- (15) 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.
- (16) A transfer by a mortgagor to the holder of a bona fide mortgage in a 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 purposes preservation of land for historic, recreational, scenic, agricultural or open space opportunities, or a transfer from such a conservancy to the United States, the commonwealth or to any of their instrumentalities, agencies or political subdivisions; or any transfer from such a conservancy where the real estate is encumbered by a perpetual agricultural conservation easement as defined by the act of June 30, 1981 (P.L. 128, No. 43), known as the "Agricultural Area Security Law,"¹⁰ and such conservancy has owned the real estate for at least two years immediately prior to the transfer.¹¹
- (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 the stock thereof.
- (20) A transfer of real estate devoted to the business of agriculture to a family farm partnership by a member of the same family, which family directly owns at least 75% of the interests in the partnership.¹²
- (21) A transfer between members of the same family of an ownership interest in a real estate company, family farm corporation or family farm partnership which owns real estate.¹³
- (22) A transaction wherein the tax due is \$1 or less.
- (23) Leases for the production or extraction of coal, oil, natural gas or minerals and assignments thereof.
- 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.

¹⁰ Editor's Note: See 3 P.S. § 901 et seq.

¹¹ Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. D).

¹² Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. D).

¹³ Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. D).

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§ 78-33. Documents relating to associations or corporations.

Except as otherwise provided in § 78-32, 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.

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§ 78-34. 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 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.
- 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 article.
- C. A family farm partnership is an acquired company when, because of voluntary or involuntary dissolution, it ceases to be a family farm partnership or when, because of transfer of partnership interests 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 partnership under this act.¹⁴
- D. Within 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. A copy of the Pennsylvania Realty Transfer Tax Declaration of Acquisition may be submitted for this purpose.

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§ 78-35. 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 tax due.

¹⁴ Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. D).

- C. Where there is a transfer of real estate which is leased by the grantor, a credit for the amount of tax paid at the time of the lease 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 tax due, no refund or carryover credit shall be allowed.

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 § 78-36. 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.

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 § 78-37. Proceeds of judicial sale.

The tax herein imposed 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, except the state realty transfer tax, and the Sheriff or other officer conducting said sale shall pay the tax herein imposed out of the first moneys 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.

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 § 78-38. Duties of Recorder of Deeds.

- A. As provided in 16 P.S. § 11011-6, as amended by Act of July 7, 1983 (P.L. 40, No. 21), the Recorder of Deeds shall be the collection agent for the local realty transfer tax, including any amount payable to the borough based on a redetermination of the amount of tax due by the Commonwealth of Pennsylvania of the Pennsylvania Realty Transfer Tax, without compensation from the Borough.
- B. In order to ascertain the amount of taxes due when the property is located in more than one political subdivision, the Recorder shall not accept for recording such a deed unless it is accompanied by a statement of value showing what taxes are due each municipality.
- C. On or before the 10th of each month, the Recorder shall pay over to the Borough all local realty transfer taxes collected less than 2% for use of the county, together with a report containing the information as is required by the Commonwealth of Pennsylvania in reporting collections of the Pennsylvania Realty Transfer Tax. The 2% commission shall be paid to the county.
- D. Upon a redetermination of the amount of realty transfer tax due by the Commonwealth of Pennsylvania, the Recorder shall rerecord the deed or record the additional realty transfer

tax form only when both the state and local amounts and rerecording or recording fee has been tendered.

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§ 78-39. Statement of value.

Every document lodged with or presented to the Recorder of Deeds for recording shall set forth therein and as a part of such document the true, full and complete value thereof, or shall be accompanied by a statement of value executed by a responsible person connected with the transaction showing such connection and setting forth the true, full and complete value thereof or the reason, if any, why such document is not subject to tax under this article. A copy of the Pennsylvania Realty Transfer Tax Statement of Value may be submitted for this purpose. The provisions of this section shall not apply to any excludable real estate transfers which are exempt from taxation based on family relationship. Other documents presented for the affixation of stamps shall be accompanied by a certified copy of the document and statement of value executed by a responsible person connected with the transaction showing such connection and setting forth the true, full and complete value thereof or the reason, if any, why such document is not subject to tax under this article.

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§ 78-40. Civil penalties.

- A. 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.
- B. In the case of failure to record a declaration required under this article on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause, there shall be added to the tax 5% of the amount of such tax if the failure is for not more than one month, with an additional 5% for each additional month or fraction thereof during which such failure continues, not exceeding 50% in the aggregate.

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§ 78-41. Unpaid tax to become lien.

The tax imposed by this article shall become a lien upon the lands, tenements or hereditaments, or any interest therein lying, being situated, wholly or in part, within the boundaries of the borough, which lands, tenements, hereditaments or interest therein described in, or conveyed by, or transferred by the deed which is the subject of the tax imposed, assessed and levied by this article, said lien to begin at the time when the tax under this article is due and payable and continue until discharged by payment or in accordance with the law, and the Solicitor is authorized to file a municipal or tax claim in the Court of Common Pleas of Butler County in accordance with the provisions of the Municipal Claims and Liens Act of 1923, 53 P.S. § 7101 et seq., its supplements and amendments.

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§ 78-42. Taxes recoverable as like debt.

All taxes imposed by this article, together with interest and penalties prescribed herein, shall be recoverable as other debts of like character are recovered.

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§ 78-43. Enforcement; regulations.

The Borough Council of the Borough of Callery is charged with enforcement and collection of tax and is empowered to promulgate and enforce reasonable regulations for enforcement and collection of the tax. The regulations which have been promulgated by the Pennsylvania Department of Revenue under 72 P.S. § 8101-C et seq. are incorporated into and made a part of this article.

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