

**CHAPTER 34: TAX, FUNDS AND FINANCE**

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**GENERAL PROVISIONS**

**§ 34.01 BILLING RECIPIENTS OF EMERGENCY SERVICES.**

(A) The recitals contained in the ordinance from which this section is derived are incorporated herein to the extent as may be applicable to the interpretation and enforcement of this section.

(B) The borough and/or its Volunteer Fire Department are hereby authorized to bill recipients of emergency services, or in the alternative, to directly bill the recipient's homeowners or other insurance policy carriers, if appropriate, for the reasonable costs and expenses incurred by the borough or Fire Department.

(C) The services which may be billed by the borough or its Volunteer Fire Department and the costs, fees and expenses for same will be established by the Borough Council, from time to time, by resolution. Such schedule of services and fees, as may be currently in effect as evidenced by the most recent resolution, shall be enforceable pursuant to the terms of this section and in accordance with law.

(D) The Borough and Volunteer Fire Department, through their designated representatives, shall have the authority to establish such policies, protocols and systems as may be necessary to ensure the collection of such reimbursements as may be due and to take such steps as may be necessary, including applicable legal action to enforce the provisions herein.

(E) The monies received in reimbursement from recipients of emergency services, or from their respective insurance carriers, shall be payable and distributed to the borough or the Fire Department, as the case may be.

(F) The failure of any responsible party, whether individual, corporation, partnership or insurance carrier, to remit or reimburse the cost of any emergency services provided, within 30 days following receipt of an invoice, shall subject that party to legal process and such penalties as may be authorized by the laws of the commonwealth.

(Ord. 128, passed 5-10-2000)

### ***TAX FOR GENERAL REVENUE***

#### **§ 34.15 SHORT TITLE.**

This subchapter shall be known as the "Realty Transfer Tax Ordinance of New Alexandria Borough".

(Ord. 99, passed 12-10-1986)

#### **§ 34.16 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 borough, 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.

(Ord. 99, passed 12-10-1986)

**§ 34.17 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**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.

**BOROUGH.** The Borough of New Alexandria, Westmoreland County, Pennsylvania, including, where applicable, its duly elected Council.

**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 county 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 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 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.

**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:

- (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.

**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. 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) All lands, tenements or hereditaments within the borough, 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 or land, but excluding permanently attached machinery, and equipment in an industrial plant;

(2) A condominium unit; and

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

**REAL ESTATE COMPANY.**

(1) A corporation or association which is primarily engaged in the business of holding, selling or 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;

(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;

(c) 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 a 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 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;

(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 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;

(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; or

(k) 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 or her principal, no tax would be imposed under subchapter.

(2) 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 or her principal, there is a rebuttable presumption that the property is the property of the grantee in his or her individual capacity if the grantee claims an exemption from taxation under this clause.

### ***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 30 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.**

(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* 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, an occupancy agreement, a leasehold or possessory interest, any exchange or 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 State Department of Revenue for state realty transfer tax base calculations;

(3) In the case of an easement or other interest in real estate the value of which is not determinable under divisions (1) or (2) above, 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 of a related corporation, association or partnership and the grantee existing before or effective with the transfer.

(Ord. 99, passed 12-10-1986)

**§ 34.18 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 evidenced by the affixing of an official stamp or writing by the Recorder/other designee 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 subchapter 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, 1955, Pub. L. No. 1257, 53 P.S. §§ 6924.101 to 6924.312, 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 under the authority of that Act shall during the time such duplication of the tax exists, except as hereinafter otherwise provided, be one-half of the rate and such one-half rate shall become effective without any action on the part of the borough; provided, however, that the borough 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 one-half 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.

(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.

(Ord. 99, passed 12-10-1986)

**§ 34.19 EXEMPT PARTIES.**

(A) 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 subchapter.

(B) The exemption of such governmental bodies shall not, however, relieve any other party to a transaction from liability for the tax.

(Ord. 99, passed 12-10-1986)

**§ 34.20 EXCLUDED TRANSACTIONS.**

(A) The tax imposed by § 34.18 shall not be imposed upon transfers as set forth in 72 P.S. § 8102-C.3, which is incorporated herein by reference and made a part hereof as if appearing in total.

(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.

(C) A copy of the Pennsylvania Realty Transfer Tax Statement of Value may be submitted for this purpose.

(D) 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 subchapter.

(Ord. 99, passed 12-10-1986)

**§ 34.21 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 subchapter, corporations and associations are entities separate from their members, partners, stockholders or shareholders.

(Ord. 99, passed 12-10-1986)

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

(C) 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.

(Ord. 99, passed 12-10-1986)

**§ 34.23 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 or her 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 or her shall be given to him or her 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 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 amount or tax due, no refund or carryover credit shall be allowed.

(Ord. 99, passed 12-10-1986)

#### **§ 34.24 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.

(Ord. 99, passed 12-10-1986)

#### **§ 34.25 PROCEEDS OF JUDICIAL SALE.**

The tax herein imposed shall be fully paid, and have priority out of the proceeds or 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 monies paid to him or her 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.

(Ord. 99, passed 12-10-1986)

#### **§ 34.26 DUTIES OF RECORDER OF DEEDS.**

(A) As provided in 16 P.S. § 11011-6, as amended by Act of July 7, 1983 (Pub. L. No. 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 the state 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 tenth of each month, the Recorder shall pay over to the borough all local realty transfer taxes collected, less 2% for use of the county, together with a report containing the information as is required by the commonwealth in reporting collections of the state 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, the Recorder shall re-record the deed or record the additional realty transfer tax form only when both the state and local amounts and a re-recording or recording fee has been tendered.

(Ord. 99, passed 12-10-1986)

#### § 34.27 STATEMENT OF VALUE.

(A) 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 subchapter.

(B) A copy of the Pennsylvania Realty Transfer Tax Statement of Value may be submitted for this purpose. The provisions of this division (B) shall not apply to any excludable real estate transfers which are exempt from taxation based on family relationship.

(C) 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 subchapter.

(Ord. 99, passed 12-10-1986)

#### § 34.28 LIEN.

The tax imposed by this subchapter 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, are described in or conveyed by or transferred by the deed which is the subject of the tax imposed, assessed and levied by this subchapter, said lien to begin at the time when the tax under this subchapter is due and payable, and continue until discharge 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 the 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.

(Ord. 99, passed 12-10-1986)

**§ 34.29 ENFORCEMENT.**

All taxes imposed by this subchapter, together with interest and penalties prescribed herein, shall be recoverable as other debts of like character are recovered.  
(Ord. 99, passed 12-10-1986)

**§ 34.30 REGULATIONS.**

(A) The Borough Council and the Mayor is charged with enforcement and collection of tax and is empowered to promulgate and enforce reasonable regulations for enforcement and collection of the tax.

(B) The regulations which above been promulgated by the State Department of Revenue under 72 P.S. §§ 8101-C et seq. are incorporated into and made a part of this subchapter.  
(Ord. 99, passed 12-10-1986)

**§ 34.99 PENALTY.**

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99.

(B) (1) If any part of any underpayment of tax imposed by §§ 34.15 through 34.30 is due to fraud, there shall be added to the tax an amount equal to 50% of the underpayment.

(2) In the case of failure to record a declaration required under §§ 34.15 through 34.30 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 of fraction thereof during which such failure continues, not exceeding 50% in the aggregate.

(Ord. 99, passed 12-10-1986)

