

CHAPTER 24

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Part 1
Real Estate Tax

§101. Levy Set. Pursuant to §1302(a) of the Borough Code, 53 P.S. §46302(a), the following tax is hereby levied for general Borough purposes for the year beginning January 1, 1995:

A. A real estate tax on each parcel of real property located within the Borough of Millheim, Centre County, Pennsylvania, which has been valued and assessed by the County of Centre, and which is subject to taxation under the Fourth to Eighth Class County Assessment Law, 72 P.S. §5453.201.

B. The rate of this tax is hereby fixed at 1.65 mills per dollar, which is .165 cents per one hundred dollars (\$100.00) of the assessed valuation of real estate situate within the Borough of Millheim, Centre County, Pennsylvania.

(Ord. 184, 12/12/1994, §1)

§102. Effective Date. This Part and the real estate tax hereby levied shall take effect on January 1, 1995, and shall continue in full force and effect until further amended or repealed. (Ord. 184, 12/12/1994, §2)

Part 2

Per Capita Tax

§201. Authority for Enactment. This Part 2 is enacted under authority of the Local Tax Enabling Act, P.L. 1257, No. 511, December 31, 1965, 53 P.S. §§6901 *et seq.* (1982) as hereafter amended, supplemented, modified or reenacted by the General Assembly of Pennsylvania. (Ord. 147, 12/27/1982; as revised by Ord. 151, 11/12/1984)

§202. "Resident" Defined. The word "resident" as used in this Part 2 shall mean every adult eighteen (18) years or older who lives within the Borough of Millheim. (Ord. 147, 12/27/1982; as revised by Ord. 151, 11/12/1984)

§203. Imposition of Tax. Every resident 18 years of age or older shall pay a per capita tax in the amount of ten dollars (\$10.00) per calendar year effective with the calendar year commencing January 1, 2010, and each year thereafter; provided, the tax hereby imposed shall not be levied upon any resident whose total income during the taxable year is less than or equal to \$3,200.00. (Ord. 147, 12/27/1982; as revised by Ord. 151, 11/12/1984; and as amended by Ord. 240, 12/8/2009, §2)

§204. Collection. All taxes, interests, costs and penalties imposed by this Part 2 shall be collected by the Borough Tax Collector. (Ord. 147, 12/27/1982; as revised by Ord. 151, 11/12/1984)

§205. Effective Date. This Part 2 shall become effective on January 1, 1983 and shall continue in effect on a calendar year basis without annual reenactment. (Ord. 147, 12/27/1982; as revised by Ord. 151, 11/12/1984)

Part 3
Earned Income Tax

§301. Definitions.

ASSOCIATION - a partnership, limited partnership or any other unincorporated group of two (2) or more persons.

BOROUGH - the Borough of Millheim.

BUSINESS - an enterprise, activity, profession or any other undertaking of an unincorporated nature conducted for profit or ordinarily conducted for profit whether by a person, partnership, association or any other entity.

CORPORATION - a corporation or joint stock association organized under the laws of the United States, the Commonwealth of Pennsylvania, or any other state, territory, foreign country or dependency.

CURRENT YEAR - the remainder of the calendar year 1972 from the effective date of the tax until December 31, 1972. Thereafter, the calendar year for which the tax is levied.

DOMICILE - the place where one lives and has his permanent home and to which he has the intention of returning whenever he is absent. Actual residence is not necessarily domicile, for domicile is the fixed place of abode which, in the intention of the taxpayer, is permanent rather than transitory. Domicile is the place in which a man has voluntarily fixed the habitation of himself and his family, not for a mere special or limited purpose, but with the present intention of making a permanent home. In the case of businesses or associations, the domicile is that place considered as the center of business affairs and the place where its functions are discharged.

EARNED INCOME - salaries, wages, commissions, bonuses, incentive payments, fees, tips and other compensation received by a person or his personal representative for services rendered, whether directly or through an agent, and whether in cash or in property; not including, however, wages or compensation paid to persons on active military service, periodic payments for sickness and disability other than regular wages received during a period of sickness, disability or retirement or payments arising under workmen's compensation acts, occupational disease acts and similar legislation, or payments commonly recognized as old age benefits, retirement pay or pensions paid to persons retired from service after reaching a specific age or after a stated period of employment or payments commonly known as public assistance, or unemployment compensation payments by any governmental agency or payments to reimburse expenses or payments made by employers or labor unions for wage and salary supplemental programs, including, but not limited to, programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits, strike benefits, social security and retirement.

EMPLOYER - a person, partnership, association, corporation, institution, governmental body or unit or agency, or any other entity employing one or more persons for a salary, wage, commission or other compensation.

INCOME TAX OFFICER or OFFICER - person, public employee or private agency designated by governing body to collect and administer the tax on earned income and net profits.

NET PROFITS - the net income from the operation of a business, profession or other activity, except corporations, after provision for all costs and expenses incurred in the conduct thereof, determined either on a cash or accrual basis in accordance with the accounting system used in such business, profession or other activity, but without deduction of taxes based on income.

NONRESIDENT - a person, partnership, association or other entity domiciled outside the taxing district.

PERSON or INDIVIDUAL - a natural person.

PRECEDING YEAR - the calendar year before the current year.

RESIDENT - a person, partnership, association or other entity domiciled in the taxing district.

SUCCEEDING YEAR - the calendar year following the current year.

TAXPAYER - a person, partnership, association or any other entity, required hereunder to file a return of earned income or net profits, or to pay a tax thereon.

The singular shall include the plural and the masculine shall include the feminine and the neuter.

(Ord. 113, 6/8/1972, §1)

§302. Imposition of Tax. The following annual tax is hereby imposed for general Borough purposes.

1. One-half (1/2) of one percent (1%) of the earned income received on or subsequent to July 1, 1972, by residents, and also on nonresidents who are employed within the Borough of Millheim.

2. One-half (1/2) of one percent (1%) of the net profits earned or received after July 1, 1972, of businesses, professions and other activities engaged in or conducted by residents, and on nonresidents who conduct such businesses, professions or other activities within the Borough.

Said tax shall first be levied and collected and paid with respect to the earned income earned from and after July 1, 1972, and with respect to the net profits of businesses, professions or other activities earned during that part of the calendar year, 1972, beginning from and after July 1st, 1972. Provided, however, that where the fiscal year of a business, profession or other activity differs from the calendar year, the tax shall be applicable only to that part of the net profits for the fiscal year as shall be earned from and after July 1, 1972.

(Ord. 113, 6/8/1972, §2)

§303. Declaration and Payment of Tax.

1. Net Profits -

A. Every taxpayer making net profits shall pay to the officer an annual payment of tax due on or before April 15th of the succeeding year for the period beginning July 1, 1972, and ending December 31, 1972. Thereafter, on or before April 15th of the current year, make and file with the officer on a form prescribed or approved by the officer, a declaration of his estimated net profits during the period beginning January 1, and ending December 31, of the then current year, and pay to the officer in four (4) equal quarterly installments the tax due thereon as follows: the first installment at the time of filing the declaration, and the other installments on or before June 15 of the current year, September 15 of the current year, and January 15 of the succeeding year, respectively.

B. Any taxpayer who first anticipates any net profits after April 15th of the then current year (commencing with the year 1973), shall make and file the declaration hereinabove required on or before June 15th, of the then current year, September 15th of the then current year, or December 31st of the then current year, whichever of these dates next follows the date on which the taxpayer first anticipates such net profit, and pay to the officer in equal installments the tax due thereon or before the quarterly payment dates which remain after the filing of the declaration.

C. On or before April 15th of each year, every person who was a resident of the Borough of Millheim, for all or any part or portion of the preceding calendar year shall file with the collector an Annual Tax Return showing all income, as well as net profits received and/or earned, for the previous year. (Ord. 113)

At the time of filing the final return, the taxpayer shall pay to the officer the balance of tax due, or shall make demand for refund or credit in the case of overpayment.

Any taxpayer may, in lieu of paying the fourth quarterly installment of his estimated tax, elect to make and file with the officer on or before January 31st of the succeeding year, the final return as hereinabove required.

Every person who has filed an extension to file his or her Federal and/or State income tax return and is requesting an extension to file his/her local tax return must request an extension from the local tax collector and submit eighty (80) percent of the estimated local earned income tax liability with the request for an extension. [Ord. 183]

D. The officer is hereby authorized to provide by regulation for the making and filing of adjusted declarations of estimated net profits, and for the payment of the estimated tax in cases where a taxpayer who has filed the declaration hereinabove requested, anticipates additional net profits not previously declared or finds that he has overestimated his anticipated net profits.

E. Every taxpayer who discontinues business prior to December of the current year shall, within thirty (30) days after the discontinuance of business file his final return as hereinabove required and pay the tax due.

2. Annual Earned Income Tax Return - On or before April 15th of each year, every person who was a resident of the Borough of Millheim for all or any part or portion of the preceding calendar year shall file with the collector an Annual Tax Return showing all income as well as net profits received and/or earned for the previous year. (Ord. 146)

At the time of filing the final return, the taxpayer shall pay the balance of the tax due or shall make demand for refund or credit in the case of overpayment.

Every person who has filed an extension to file his or her Federal and/or State income tax return and is requesting an extension to file his/her local tax return must request an extension from the local tax collector and submit eighty (80) percent of the estimated local earned income tax liability with the request for an extension. [Ord. 183]

3. Earned Income Not Subject to Withholding - Every taxpayer who is employed for a salary, wage, commission or other compensation and who received any earned income not subject to the provisions relating to collection at source, shall:

A. Every employer having an office, factory, workshop, branch, warehouse or other place of business within the taxing jurisdiction of the Borough of Millheim, who employs one or more persons, other than domestic servants, for a salary, wage, commission or other compensation, who has not previously registered shall, within fifteen (15) days after becoming an employer, register with the officer, his name and address and such other information as the officer may require.

B. Every employer having an office, factory, workshop, branch, warehouse, or other place of business within the taxing jurisdiction of the Borough of Millheim, who employs one or more persons, other than domestic servants, for a salary, wage, commission or other compensation, shall deduct at the time of payment thereof, the tax imposed in this Part 3 on the earned income due to his employee or employees, and shall, on or before October 31st of the current year, and January 31st of the succeeding year, file a return and pay to the officer the amount of taxes deducted during the preceding three (3) month period ending in 1972 with October 31st and January 31st of 1972; thereafter, such employer shall, on or before April 30th of the then current year and January 31st of the succeeding year, file such a return and pay to the officer the amount of taxes deducted during the preceding three (3) month period ending May 31st of the current year, June 30th of the current year, September 30th of the current year and December 31st of the current year, respectively. Such return unless otherwise agreed upon between the officer and the employer shall show the name and social security number of each such employee, the earned income of such employee during such preceding three (3) month period, the tax deducted therefrom, the political subdivision imposing the tax upon such employee, the total earned income of all such employees during such preceding three (3) month period, and the total tax deducted therefrom and paid with the return.

Any employer who, for two (2) of the preceding four (4) quarterly periods, has failed to deduct the proper tax, or any part thereof, or has failed to pay over the proper amount of tax to the Borough, may be required by the officer to file his return and pay the tax monthly, in such cases, payments of tax shall be made to the officer on or before

the last day of the month succeeding the month for which the tax was withheld.

C. On or before February 28th of the succeeding year, every employer shall file with the officer:

(1) An annual return showing the total amount of earned income tax paid, the total amount of tax deducted, and the total amount of tax paid to the officer for the period beginning July 1st of the current year, and ending December 31st of the current year, 1972; thereafter, for the period beginning January 1st of the then current year, and ending December 31 of the then current year.

(2) A return withholding statement for each employee employed during all or any part of the period beginning July 1st of the current year, and ending December 31st of the current year, 1972, (thereafter, for the period beginning January 1st of the then current year and ending December 31st of the then current year), setting forth the employee's name, address and social security number, the amount of earned income paid to the employee during said period, the amount of tax deducted, the political subdivisions imposing the tax upon such employee, the amount of tax paid to the officer. Every employer shall furnish two (2) copies of the individual return to the employee for whom it is filed.

D. Every employer who discontinues business prior to December 31st of the current year, shall, within thirty (30) days after the discontinuance of business, file the return and withholding statements hereinabove required and pay the tax due.

E. Except as otherwise provided in §309, every employer who wilfully or negligently fails or omits to make the deductions required by this section shall be liable for the payment of the taxes which he was required to withhold to the extent that such taxes have not been recovered from the employee.

F. The failure or omission of any employer to make the deductions required by this section shall not relieve any employee from the payment of the tax, or from complying with the requirements of the ordinance relating to the filing of declarations and returns.

4. Other Provisions -

A. Taxpayers are not allowed to off-set a gain in one class of income against a loss in another class of income. If a net loss is incurred, zero (0) must be entered on the appropriate line of the annual Earned Income and Net Profits Tax Return. Losses may be applied only in the year which the loss was actually incurred and may not be carried over to subsequent years. One persons loss may not be deducted from his or her spouses earnings.

B. The rents derived from mere "passive" or "investment" ownership or subleasing of real estate without the furnishing by the lessor (taxpayer) of services to the leased premises or to the lessee other

than gas, electricity, water, sewerage and heat shall not be included as earned income or net profits and therefore, not subject to this tax. Such rents are considered to be the return solely from invested capital and net profits from the operation of a business activity or enterprise taxed by this Part. Furnishing of services to common portions and general preservation of rented real estate shall not make rents described in this paragraph taxable.

(Ord. 11, 6/8/1972, §3; as amended by Ord. 146, 12/27/1982, §1; and by Ord. 183, 12/11/1995, §1)

§304. Powers and Duties of Officer.

1. It shall be the duty of the officer to collect and receive the taxes, fines and penalties imposed by this Part. It shall also be his duty to keep a record showing the amount received by him from each person or business paying the tax and the date of such receipt.

2. Each officer, before entering upon his official duties, shall give and acknowledge a bond to the Borough of Millheim, which bond shall be joint and several, with one (1) or more corporate sureties which shall be surety companies authorized to do business in the Commonwealth, and duly licensed by the Insurance Commissioner of this Commonwealth.

Each bond shall be conditioned upon the faithful discharge by the officer, his clerks, assistants and appointees of all trusts confided in him by virtue of his office, upon the faithful execution of all duties required of him by virtue of his office, upon the just and faithful accounting or payment over, according to law, of all moneys and all balances thereof paid to, received or held by him by virtue of his office and upon the delivery to his successor or successors in office of all books, papers, documents or other official things held in right of his office.

Each bond shall be taken in the name of the Borough and shall be for the use of the Borough, and for the use of such other person or persons for whom money shall be collected or received, or as his or her interest shall appear, in case of a breach of any of the conditions thereof by the acts or neglect of the principal on the bond.

The Borough, or any person, may sue upon the said bond in its own name for his or its own use.

The bond shall contain the name or names of the surety company or companies bound thereon. The Borough shall from time to time fix the amount of the bond which shall be equal to the maximum amount of taxes which may be in the possession of the officer at any given time.

The bond shall be in the custody of the Borough Treasurer.

3. The officer charged with the administration and enforcement of the provisions of the ordinance is hereby empowered to prescribe, adopt, promulgate and enforce, rules and regulations relating to any matter pertaining to the administration and enforcement of the ordinance, including provisions for

the reexamination and correction of declarations and returns, and of payments alleged or found to be incorrect, or as to which an overpayment is claimed or found to have occurred, and to make refunds in case of overpayment, for any period of time not to exceed six (6) years subsequent to the date of payment of the sum involved, and to prescribe forms necessary for the administration of the ordinance. No rule or regulation of any kind shall be enforceable unless it has been approved by ordinance by the governing body. A copy of such rules and regulations currently in force shall be available for public inspection.

4. The officer shall refund, on petition of, and proof by the taxpayer, earned income tax paid on the taxpayer's ordinary and necessary business expenses, to the extent that such expenses are not paid by the taxpayer's employer.

5. The officer and agents designated by him are hereby authorized to examine the books, papers and records of any employer or of any taxpayer or of any person whom the officer reasonably believes to be an employer or taxpayer, in order to verify the accuracy of any declaration or return, or if no declaration or return was filed, to ascertain the tax due. Every employer and every taxpayer and every person whom the officer reasonably believes to be an employer or taxpayer, is hereby directed and required to give to the officer, or to any agent designated by him, the means, facilities and opportunity for such examination and investigations, as are hereby authorized.

6. Any information gained by the officer, his agents or by any other official or agent of the taxing district, as a result of any declarations, returns, investigations, hearings or verifications required or authorized by this Part, shall be confidential, except for official purposes and except in accordance with a proper judicial order, or as otherwise provided by law.

7. The officer is authorized to establish different filing, reporting and payment dates for taxpayers whose fiscal years do not coincide with the calendar year.

(Ord. 11, 6/8/1972, §4)

§305. Compensation of Income Tax Officer. The Income Tax Officer shall receive such compensation for his services and expenses as shall be determined by the Borough Council for each year of the tax. (Ord. 11, 6/8/1972, §5)

§306. Suit for Collection of Tax.

1. The officer may sue in the name of the Borough for the recovery of taxes due and unpaid under this Part.

2. Any suit brought to recover the tax imposed by this Part, shall be begun within three (3) years after such tax is due, or within three (3) years after the declaration or return has been filed, whichever date is later: provided, however, that this limitation shall not prevent the institution of a suit for the collection of any tax due or determined to be due in the following cases:

A. Where no declaration or return was filed by any person although a declaration or return was required to be filed by him under provisions of this Part, there shall be no limitation.

B. Where an examination of the declaration of return filed by any person, or of other evidence relating to such declaration or return in the possession of the officer, reveals a fraudulent evasion of taxes, there shall be no limitation.

C. In the case of substantial understatement of tax liability of twenty-five percent (25%) or more and no fraud, suit shall be begun within six (6) years.

D. Where any person has deducted taxes under the provisions of this Part, and has failed to pay the amounts so deducted to the officer, or where any person has wilfully failed or omitted to make the deductions required by this section, there shall be no limitation.

E. This section shall not be construed to limit the governing body from recovering delinquent taxes by any other means provided by this Act.

F. The Officer may sue for recovery of an erroneous refund provided such suit is begun two (2) years after making such refund, except that the suit may be brought within five (5) years if it appears that any part of the refund was induced by fraud or misrepresentation of material fact.

(Ord. 11, 6/8/1972, §6)

§307. Interest and Penalties. If for any reason the tax is not paid when due, interest at the rate of six percent (6%) per annum on the amount of said tax, and an additional penalty of one-half (½) of one percent (1%) of the amount of the unpaid tax for each month or fraction thereof during which the tax remains unpaid, shall be added and collected. Where suit is brought for the recovery of any such tax, the person liable therefor shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed. (Ord. 11, 6/8/1972, §7)

§308. Fines and Penalties for Violation of Ordinance.

1. Any person who fails, neglects, or refuses to make any declaration or return required by this Part, any employer who fails, neglects or refuses to register or to pay the tax deducted from his employees, or fails, neglects, or refuses to deduct or withhold the tax from his employees, any person who refuses to permit the officer or any agent designated by him to examine his books, records, and papers, and any person who knowingly makes any incomplete, false or fraudulent return, or attempts to do anything whatsoever to avoid the full disclosure of the amount of his net profits or earned income in order to avoid the payment of the whole or any part of the tax imposed by this Part, shall, upon conviction therefor, be sentenced to pay a fine of not more than five hundred dollars (\$500.00) for each offense, and costs, and in default of payment, to be imprisoned for a period not exceeding thirty (30) days. [Ord. 189]

2. Any person who divulges any information which is confidential under the provisions of this Part, shall, upon conviction therefor, be sentenced to pay a fine of not more than five hundred dollars (\$500.00) for each offense, and costs, and in default of payment, to be imprisoned for a period not exceeding thirty (30) days. [Ord. 189]

3. The penalties imposed under this section shall be in addition to any other penalty imposed by any other section of this Part.

4. The failure of any person to receive or procure forms required for making the declaration or returns required by this Part shall not excuse him from making such declaration.

(Ord. 11, 6/8/1973, §8; as amended by Ord. 151, 11/12/1984; by Ord. 160, 1/12/1987, §1; and by Ord. 189, 6/1/1999)

§309. Right of Appeal. Any person aggrieved by any action of the officer shall have the right of appeal as provided by law. (Ord. 11, 6/8/1972, §9)

Part 4
Realty Transfer Tax

§401. Authority for Enactment. This Part 4 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). (Ord. 161, 3/9/1987, §1)

§402. 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.

BOROUGH - The Borough of Millheim.

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.

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:

- 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 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.

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 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:

A. Derives sixty percent (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 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 -

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, wither 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 Part.

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

VALUE -

A. 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 the 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.

B. 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.

C. 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.

D. 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.

(Ord. 161, 3/9/1987, §2)

§403. Imposition of Tax.

1. After the effective date of this Part 4, 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 one hundred (\$100.00) dollars 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 one hundred (\$100.00) dollars, no tax shall be collected on the part of the value or selling price over and above the highest even one hundred (\$100.00) dollars valuation.

2. The tax referenced in subsection .1 of this Section 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, Millheim Borough, pursuant to §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. [Ord. 229]

3. Any tax imposed as referenced in subsection .1 of this Section 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 on delinquent Commonwealth taxes as provided in §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. [Ord. 229]

(Ord. 161, 3/9/1987, §3; as amended by Ord. 229, 12/12/2006, §§2, 3)

§404. 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 0.5 percent (0.5%) 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.

(Ord. 161, 3/9/1987, §4)

§405. 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 Part. The exemption of such governmental bodies shall not, however, relieve any other party to the transaction from liability for the tax. (Ord. 161, 3/9/1987, §5)

§406. Excluded Transactions. The tax imposed by §403 shall not be imposed upon:

A. A transfer to the Commonwealth, or to any of its instrumentalities, agencies or political subdivisions, by gift, dedication or deed in lieu of condemnation or deed or 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.

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

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

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

E. A transfer of division in kind for no or nominal actual consideration of property passed by testate or intestate succession and held by cotenants; 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 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.

G. A transfer for no or nominal actual consideration of property passing by testate or intestate succession from a personal representative or 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 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.

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

J. A transfer for no or nominal actual consideration from trustee to successor trustee.

K. A transfer (i) for no or nominal actual consideration between principal and agent or straw party; or (ii) from or to an agent or straw party where, if the agent or straw party were his principal, no tax would be imposed under this Part. Where the document by which title is acquired by a grantee or statement of value fails to set forth that the property was acquired by the grantee from, or for the benefit of, his principal, there is a rebuttable presumption that the property is the property of the grantee in his individual capacity if the grantee claims an exemption from taxation under this clause.

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

M. A transfer from a corporation or association of real estate held of record in the name of the corporation or association where the grantee owns stock of the corporation or an interest in the association in the same proportion as his interest in or ownership of the real estate being conveyed and where the stock of the corporation or the interest in the association has been held by the grantee for more than two (2) years.

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

O. A transfer from a nonprofit industrial development agency or authority to a grantee purchasing directly from it but only if: (i) the grantee shall directly use such real estate for the primary purpose of manufacturing, fabricating, compounding, processing, publishing, research and development, transportation, energy conversion, energy production, pollution control, warehousing or agriculture; and (ii) the agency or authority has the full ownership interest in the real estate transferred.

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

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

R. A transfer to a conservancy which possesses a tax exempt status pursuant to §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.

S. A transfer of real estate devoted to the business of agriculture to a family farm corporation by a member of the same family which directly owns at least seventy-five percent (75%) of each class of the stock thereof.

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

U. A transaction wherein the tax due is one dollar (\$1.00) or less.

V. 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 Part.

(Ord. 161, 3/9/1987, §5A)

§407. 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 Part 4, corporations and associations are entities separate from their members, partners, stockholders or shareholders. (Ord. 161, 3/9/1987, §6)

§408. 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.

(Ord. 161, 3/9/1987, §7)

§409. 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 to 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 of 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.

(Ord. 161, 3/9/1987, §8)

§410. 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. 161, 3/9/1987, §9)

§411. Evidence of Payment. The payment of the tax imposed by this Part 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. (Ord. 161, 3/9/1987, §10)

§412. 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 Part. (Ord. 161, 3/9/1987, §11)

§413. Authority of Realty Transfer Tax Collector. The Realty Transfer Tax Collector is hereby charged with the enforcement of the provisions of this Part 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 Part. (Ord. 161, 3/9/1987, §12)

§414. Affidavit Required With Certain Documents. Every document upon which a tax is imposed by this Part 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 connection and setting forth the true, full, complete and actual value thereof. (Ord. 161, 3/9/1987, §13)

§415. Prohibited Acts. It shall be unlawful for any person to:

A. 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

B. Make use of any stamps to denote payment of any tax imposed by this Part 4 without cancelling such stamp, as required by this Part, or as prescribed by the Realty Transfer Tax Collector; or

C. 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 Part.

(Ord. 161, 3/9/1987, §14)

§416. Interest Added to Unpaid Tax. All taxes imposed by this Part not paid when due shall bear interest thereon at the rate of one half of one percent (½% of 1%) per month until paid. (Ord. 161, 3/9/1987, §15)

§417. Recovery of Taxes and Interest. All taxes imposed by this Part together with interest from the due date shall be recovered as other debts of like character are recovered. (Ord. 161, 3/9/1987, §16)

§418. Tax Constitutes Lien Against Property. The tax imposed by this Part 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 therein are described in or conveyed or transferred by the document which is the subject of such tax imposed and assessed by this Part, said lien to begin at the time when the tax under this Part 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. (Ord. 161, 3/9/1987, §17)

§419. Penalty. Any person, firm or corporation who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine of not more than six hundred dollars (\$600.00) plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed thirty (30) days. (Ord. 161, 3/9/1987, §18; as amended by Ord. 189, 6/1/1999)

§420. Repealer. Any and all transfer tax ordinances (or parts thereof relating thereto) heretofore adopted are hereby repealed. (Ord. 161, 3/9/1987, §19)

§421. Effective Date. This Part shall be effective on March 9, 1987 and shall continue thereafter on a calendar year basis without annual re-enactment. (Ord. 161, 3/9/1987, §21)

