

ORDINANCE NO. 196

AN ORDINANCE OF THE BOROUGH OF PATTERSON HEIGHTS AMENDING AND IN PART REINACTING ORDINANCE NO. 153 IMPOSING A TAX UPON THE TRANSFER OF REAL PROPERTY OR ANY INTEREST THEREIN, SITUATE WHOLLY OR PARTLY WITHIN SAID BOROUGH; PROVIDING FOR ITS LEVY AND COLLECTION; CONFERRING AND IMPOSING POWERS AND DUTIES ON THE COLLECTOR AND IMPOSING PENALTIES FOR VIOLATION THEREOF.

BE IT ORDAINED AND ENACTED by the Borough Council of the Borough of Patterson Heights and it is hereby ordained and enacted by virtue of the authority of the same, and pursuant to the authority of the Act of December 31, 1965, P.L. 1257, and the Act of July 2, 1986, P.L. (Act No. 77), their supplements and amendments, as follows:

Section I. A tax for general revenue purposes is hereby imposed, assessed and levied upon the transfer of real property or any interest therein situate wholly or partly within the Borough of Patterson Heights.

Section II. The following words when used in this Ordinance shall have the meanings ascribed to them in this Section, except in those instances where the context clearly indicates a different meaning.

(a) "Association" A partnership, limited partnership, or any other form of unincorporated enterprise, owned or

conducted by two or more persons.

(b) "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.

(c) "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 or 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 a public utility easement. "Document" shall also include a declaration of acquisition required to be presented for recording under Section 1102-C.5. of the Act of 1986, P.L. (Act No. 77).

(d) "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 association, shall include the responsible members or general partners thereof, and as applied to corporation, the officers thereof.

(e) "Family Farm Corporation" A corporation of which at least seventy-five percent of its assets are devoted to the business of agriculture and at least seventy-five percent of each class of stock of the corporation is continuously owned by members of the same family. The business of agriculture shall not be deemed to include: (1) Recreational activities such as, but not limited to, hunting, fishing, 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 slaughter house operations; or (5) Manufacturing or processing operations of any kind.

(f) "Members of the Same Family" Any individual, such individual's brothers and sisters, brothers and sisters of such individual's parents and grandparents, the ancestors and lineal descendent's of any of the foregoing, a spouse of any of the foregoing and the estate of any of the foregoing. Individuals related by half blood or legal adoption shall be treated as if they were related by whole blood.

(g) "Real Estate" (1) Any lands, tenements or

hereditaments within this Commonwealth, including, without limitation, buildings, structures, fixtures, mines, minerals, oil, gas, quarries, spaces with or without upper or lower boundaries, trees and other improvements, immovables or interests which by custom, usage or law pass with a conveyance of land, but excluding permanently attached machinery and equipment in an industrial plant.

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

(h) "Real Estate Company" A corporation or association which is primarily engaged in the business of holding, selling or leasing real estate ninety per cent or more of the ownership interest in which is held by thirty-five or fewer persons and which: (1) derives sixty percent or more of its annual gross receipts from the ownership or disposition of real estate; or (2) holds real estate, the value of which comprises ninety percent or more of the value of its entire tangible asset holding, exclusive of tangible assets which are freely transferable and actively traded on an established market.

(i) "Title to Real Estate." (1) Any interest in real estate which endures for a period of time, the termination of which is not fixed or ascertained by a specific number of

years, including, without limitation, an estate in fee simple, life estate or perpetual leasehold; or (2) Any interest in real estate enduring for a fixed period of years but which, either by reason of the length of the term or the grant of a right to extend the term by renewal or otherwise, consists of a group of rights approximating those of an estate in fee simple, life estate or perpetual leasehold, including, without limitation, a leasehold interest or possessory interest under a lease or occupancy agreement for a term of thirty years or more or a leasehold interest or possessory interest in real estate in which the lessee has equity.

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

(k) "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 and ground rents, or a commensurate part of the 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 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, transaction 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 of properties, or the real estate of an acquired company, the actual monetary worth of the real estate by adjusting the assessed value of the real estate for local real estate tax purposes for the common level ratio of assessed values to market values of the taxing district as established by the State Tax Equalization Board, or a commensurate part of the assessment where the assessment includes other real estate. (3) In the case of an easement or other interest in real estate the value of which is not determinable under clause (1) or (2), the actual monetary worth of such interest; or (4) The actual consideration for or actual monetary worth of any executory agreement for the construction of buildings, structures or other permanent improvements to real estate between the grantor and other persons existing before the transfer and not removed thereby or between the grantor, the agent or

principal of the grantor or a related corporation, association or partnership and the grantee existing before or effective with the transfer.

(k) "Tax Collector" The persons appointed by the Borough Council to collect this tax.

Section III. 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 which document transfers any real estate, interest in real estate or title to real estate situate in the Borough of Patterson Heights, 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 to and for the benefit of the Borough of Patterson Heights at the rate of one-half of one percent of the value of the real estate or interest in 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 days of acceptance of such document or within thirty days of becoming an acquired company.

Section IV. When the real estate or the interest therein or title thereto which is transferred by such document is situate partly within and partly without the

Borough of Patterson Heights, the tax shall be calculated on the valuation of that portion of such property lying within the Borough.

Section V. Exempt Parties - The United States, the Commonwealth or any of their instrumentalities, agencies or political subdivisions shall be exempt from payment of the tax imposed by this article. The exemption of such governmental bodies shall not, however, relieve any other party to a transaction from liability for the tax.

Section VI. Excluded Transactions - The tax imposed by Section III hereof 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 Commonwealth is prohibited from taxing under the Constitution or statutes of the United States. (3) A conveyance to a municipality, township, school district or county pursuant to acquisition by the municipality, township, school district or county of

a tax delinquent property at Sheriff Sale or tax claim bureau sale. (4) A transfer for no or nominal actual consideration which corrects or confirms a transfer previously recorded, but which does not extend or limit existing record legal title or interest. (5) A transfer of division in kind for no or nominal actual consideration of property passed by testate or intestate succession and held by cotenants; 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 indentifies the grantor and all possible beneficiaries. (9) A transfer for no or nominal actual consideration from a trustee to a beneficiary of an ordinary trust. (10) A transfer for no or nominal actual consideration from trustee to successor trustee. (11) A transfer: (i) for no or nominal actual consideration between principal and agent or straw party; or (ii) from or to an agent or straw party where, if the agent or straw party were his principal, no tax would be imposed under this article. Where the document by which title is acquired by a grantee or statement of value fails to set forth that the property was acquired by the grantee from, or for the benefit of, his principal, there is a rebuttable presumption that the property is the property of the grantee in his individual capacity if the grantee claims an exemption from taxation under this clause. (12) A transfer made pursuant to the statutory merger or consolidation of a corporation or statutory division of a nonprofit

corporation, except where the collector 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 of property conveyed by the grantee to that agency or authority as security for a debt of the grantee or a transfer to a nonprofit industrial development agency or authority. (15) A transfer from a nonprofit industrial development agency or authority to a grantee purchasing directly from it, but only if: (i) the grantee shall directly use such real estate for the primary purpose of manufacturing, fabricating, compounding, processing, publishing, research and development, transportation, energy conversion, energy production, pollution control, warehousing or agriculture; and (ii) the agency or authority has the full ownership interest in the real estate

transferred. (16) A transfer by a mortgagor to the holder of a bona fide mortgage in default in lieu of a foreclosure or a transfer pursuant to a judicial sale in which the successful bidder is the bona fide holder of a mortgage, unless the holder assigns the bid to another person. (17) Any transfer between religious organizations or other bodies or persons holding title for a religious organization if such real estate is not being or has not been used by such 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. Section 501(c)(3)) and which has as its primary purpose preservation of land for historic, recreational, scenic, agricultural or open-space opportunities. (19) A transfer of real estate devoted to the business of agriculture to a family farm corporation by a member of the same family which directly owns at least seventy-five percent of each class of the stock thereof. (20) A transfer between members of the same family of an ownership interest in a real estate company or family farm corporation. (21) A transaction wherein the tax due is one dollar (\$1) or less. (22) Leases for the production or extraction of coal, oil, natural gas or minerals and assignments thereof.

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

Section VII. Documents Relating to Associations or Corporations and Members, Partners, Stockholders or Shareholders Thereof. - Except as otherwise provided in Section IV, 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 section, corporations and associations are entities separate from their members, partners, stockholders or shareholders.

Section VIII. 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: (1) does not affect the continuity of the company; and (2) of itself or together with prior changes has the effect of transferring, directly or indirectly, ninety percent 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 Ordinance. (c) Within thirty days after becoming an acquired company, the company shall present a declaration of acquisition with the collector for the affixation of documentary stamps. Such declaration shall set forth the value of real estate holdings of the acquired company in the Borough.

Section IX. Credits Against Tax - (a) Where there is a transfer of a residential property by a licensed real estate broker which property was transferred to him within the preceding year as consideration for the purchase of other residential property, a credit for the amount of the tax paid at the time of the transfer to him shall be given to him toward the amount of the tax due upon the transfer. (b) Where there is a transfer by a builder of residential property which was transferred to the builder within the preceding year as consideration for the purchase of new, previously unoccupied residential property, a credit for the

amount of the tax paid at the time of the transfer to the builder shall be given to the builder toward the amount of the tax due upon the transfer. (c) Where there is a transfer of real estate which is demised by the grantor, a credit for the amount of tax paid at the time of the demise shall be given the grantor toward the tax due upon the transfer. (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 of tax due, no refund or carryover credit shall be allowed.

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

Section XI. Payment of the tax shall be made at the office of the tax collector and shall be evidenced on the document itself by the affixing of stamps or in such other manner as the tax collector shall determine. Whatever method of indicating payment is used, the notation on the

document shall show the date of payment, the amount of the tax paid, and the name of the tax collector.

Section XII. Every document lodged with or presented to the Recorder of Deeds of Beaver County for recording, shall set forth therein and as a part of such document the true, full and complete value of the real estate or interest in real estate transferred thereby, 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 of the real estate or interest in real estate transferred thereby or the reason, if any, why such transfer is not subject to tax.

Section XIII. To determine whether or not there is any evasion of the tax, the tax collector may request the Solicitor for the Borough to examine the records in the Office of the Recorder of Deeds of Beaver County, Pennsylvania, and the Borough Council shall pay the Solicitor for the services so rendered.

Section XIV. The tax collector shall keep a record of all collections of taxes showing the parties to the transfer for which the tax was paid.

Section XV. The tax collector shall have the right to bring a suit before any Justice of the Peace, or in the Court of Common Pleas of Beaver County, Pennsylvania, to

enforce the collection of any tax due under the terms of this Ordinance.

Section XVI. It shall be unlawful for any person to:

- (a) fail or refuse to pay the tax imposed by this ordinance;
- (b) fail or refuse to comply with the provisions of this ordinance or regulations adopted by the tax collector;
- (c) make any notation upon any deed or other document of conveyance indicating payment of the tax.

Section XVII. In the event that the tax is not paid when due, the tax collector shall collect in addition to the tax, interest at the rate of six percent (6%) per annum on the unpaid balance, which interest shall accrue from the date of delivery of the document transferring the real estate or interest in real estate.

Section XVIII. Any person violating this Ordinance or any portion thereof shall be subject to a fine of not more than \$200.00 Dollars for each offense, and in default of payment, shall be subject to imprisonment in the Beaver County Jail for not more than 30 days.

Section XIX. The provisions of this Ordinance are severable and if any section, clause, sentence, part or provision thereof shall be held illegal, invalid or unconstitutional, the decision of the Court shall not affect or impair any of the remaining sections, clauses, sentences,

parts or provisions of this Ordinance. It is hereby declared to be the intent of the Borough Council of the Borough of Patterson Heights that this Ordinance would have been adopted if such illegal, invalid or unconstitutional section, clause, sentence, part or provision had not been included herein.

ENACTED AND ORDAINED THIS 2nd day of March, 1987.

BOROUGH OF PATTERSON
HEIGHTS

By Karl A. Arnold

President, Borough
Council

ATTEST:

William H. DeLant
Secretary, Borough Council

APPROVED THIS 2nd DAY OF March, 1987.

Forest Justice
Mayor