

Upon motion by Richard P. Figaski, seconded by Joseph S. Kujawa, the following Ordinance was duly enacted, 2 voting in favor of enactment, 0 voting against enactment.

ORDINANCE NO. 2013-11

An Ordinance of Millcreek Township providing for the levying, assessment and collection for general revenue purposes of a tax upon transfers of interest in real property to the extent that such transfers are subject to tax under the Realty Transfer Tax Act, 72 P.S. §8101-C, et seq., as authorized by 72 P.S. §8101-D, et seq. and to be administered, collected and enforced under the Local Tax Enabling Act, 53 P.S. §6901, et seq.; requiring the filing of statements of value where the full value of the interest conveyed is not set forth in the instrument or where exemption is claimed; establishing standards for issuance of determinations and collection of the tax; establishing penalties for violation and containing repealor and severability clauses.

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WHEREAS, the Board of Supervisors by enactment of Ordinance No. 98-20 provided for the levying, assessment and collection for general revenue purposes of a realty transfer tax upon transfers of interest in real property to the extent that such transfers are subject to the State realty transfer tax imposed under 72 P.S. § 8101-C, et seq.; and

WHEREAS, under 72 P.S. § 8101-D, et seq., such local realty transfer tax is to be administered, collected and enforced under the Local Tax Enabling Act, 53 P.S. § 6901, et seq.; and

WHEREAS, 72 P.S. §§ 8102-C, et seq. and 72 P.S. § 8102-D, governing State and local realty transfer tax, since enactment of Ordinance 98-20, have been amended on several occasions, most recently by Act 52 of 2013, with respect to definition of terms, transactions excluded from realty transfer tax, collection of tax and other matters; and

WHEREAS, the Board of Supervisors has determined that proper administration, collection and enforcement of the local realty transfer tax requires amendments to and restatement of regulations governing imposition and collection of realty transfer tax.

IT IS HEREBY ORDAINED AND ENACTED by the Board of Supervisors of the Township of Millcreek, Erie County, Pennsylvania, and it is ordained and enacted, as follows:

1.01. Short Title. This Ordinance shall be known as the Millcreek Township Realty Transfer Tax Ordinance.

1.02. Authority. A local realty transfer tax is imposed in this Ordinance under authority of 72 P.S. § 8101-D, et seq., and shall be administered, collected and enforced in accordance with the Local Tax Enabling Act, 53 P.S. § 6901, et seq., provisions of 72 P.S. §§ 8101-C, et seq. and 8101-D, et seq., as applicable to local realty transfer tax, as may in the future be amended, the Second Class Township Code, 53 P.S. § 65101, et seq., the Municipal Claims Act, 53 P.S. § 7101, et seq., ordinances of Millcreek Township governing imposition of interest on sums due to the Township, civil enforcement of ordinances and imposition of attorneys' fees for enforcement and collection and Resolutions adopted by the Board of Supervisors as they may be applicable, all of which are incorporated herein.

1.03. Defined and Undefined Terms.

- (1) Definitions. The definition of terms as set forth in 72 P.S. § 8101-C, as the same may in the future be amended, are hereby adopted and incorporated herein by reference.
 - (2) Undefined Terms. Where not defined in this Ordinance or in the statute and ordinances referenced in Section 2.02 or in other applicable Pennsylvania statutes or Township ordinances, terms shall be given their common or ordinary meaning.
- 1.04. Imposition of Tax.

- (1) Millcreek Township adopts the provisions of Article XI-D of the Tax Reform Code under that Article subject to the rate limitations therein. The tax imposed under this Section shall be at the rate of one percent of the value of the real estate, this including the similar tax imposed by the Millcreek Township School District.
- (2) 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 Local tax at the rate of one percent of the value of the real estate represented by such document, which tax is hereby imposed and shall be payable at the earlier of the time the document is presented for recording or within thirty days after acceptance of such document or within thirty days of becoming an acquired company.
- (3) The payment of the tax imposed under this Ordinance shall be evidenced by the affixing of an official stamp or writing by the Recorder of Deeds upon the document whereon the date of payment of the tax, amount of the tax and the signature or seal of the collecting agent shall be set forth.
- (4) It is the intent of this Ordinance that the tax herein imposed shall not exceed the limitations prescribed upon rates of tax in the Local Tax Enabling Act, 53 P. S. §6901, et seq., such that if any other political subdivision shall impose or hereafter impose such tax on the same person or transfer, then the tax levied by Millcreek Township under this Ordinance, during the time such duplication of the tax exists, shall be one-half of the established rate, such rate being effective without any action of Millcreek Township being required; provided, however, that Millcreek Township and any other political subdivision imposing such tax on the same person or transfer may agree that, instead of limiting their respective rates to one-half of the rate provided herein, they will impose respectively different rates which in the aggregate shall not exceed the maximum rate permitted under the Local Tax Enabling Act.

1.05. Interest on Unpaid Tax. Any tax imposed under Section 1.04, above, that is not paid by the date the tax is due under said Section 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 ten percent (10%) per year from the date the document was recorded or the tax otherwise was due, whichever is earlier, to the date on which full payment thereof is made to Millcreek Township.

1.06. Exempt Parties. Those entities exempt from State realty transfer tax under 72 P. S. § 8102-C.2 as the same may be amended shall be exempt from the tax imposed by this Ordinance. The exemption of such governmental bodies shall not, however, relieve any other party to a transaction from liability for the tax.

1.07. Excluded Transactions. The local realty transfer tax imposed in this Ordinance shall not be imposed upon those transactions excluded from State realty transfer tax under 72 P.S. § 8102-C-3 governing transactions excluded from State realty transfer tax, as the same may in the future be amended.

1.08. Administration.

- (1) The tax imposed under Section 1.04 and all applicable interest and penalties shall be administered, collected and enforced under the Local Tax Enabling Act, 53 P.S. § 6901, et seq.
- (2) Whenever a declaration and/or a statement of value is required under 72 P.S. § 8101-C, et seq., a declaration and/or statement of value shall be required as to the local realty transfer tax as imposed by this Ordinance.
- (3) The Township of Millcreek authorizes and directs the Pennsylvania Department of Revenue to determine, collect and enforce the tax, interest and penalties due under this Ordinance; provided, that this shall not preclude administration and enforcement by the Township should it determine that cause for investigation exists.

1.09. Duties of Recorder of Deeds.

- (1) The Recorder of Deeds shall be the collection agent for the local realty transfer tax imposed under this Ordinance.
- (2) In order to ascertain the amount of taxes due when the property is located in more than one political subdivision, the Recorder of Deeds shall not accept a document or recording unless it is accompanied by a statement or affidavit of value which sets forth the amount of local tax due to each municipality in which the real estate is located.
- (3) The Recorder of Deeds shall not accept a document for recording unless all of the requirements of this Ordinance have been complied with.
- (4) The Recorder of Deeds shall deliver to the Township's Solicitor or other designee copies of all statements or affidavits of value, together with copies of all documents submitted therewith as required for a claim of exemption or exclusion, not later than fifteen (15) days following the end of that calendar month in which such statements, affidavits or supporting documents were received by the Recorder.
- (5) Within thirty (30) days after its receipt thereof, the Recorder of Deeds shall deliver to the Township's Solicitor or other designee copies of all notices of determination of additional tax or notices of redetermination of tax issued by the Department of Revenue, any written inquiries of the Department and/or any written confirmations of payment of additional State tax with respect to any transfer of real estate in Millcreek Township.

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- (6) On or before the tenth day of each month, the Recorder of Deeds shall pay over to Millcreek Township all local realty transfer taxes collected during the preceding calendar month as to transfers of interests in real estate within the Township, less two percent thereof for use of the County, together with a report of such transactions containing all information required by the Department in the reporting of collections of the State tax.
- (7) Notwithstanding provisions of 16 P.S. § 11011-6 and other laws which impose on the Recorder of Deeds responsibilities as collection agent and pursuant to the request of the Recorder of Deeds, the Recorder of Deeds shall not be responsible for collecting additional local tax upon redeterminations, and shall refer such matters to the Township.
- (8) Upon a redetermination and payment of additional local tax imposed by this Ordinance, the Recorder of Deeds, upon presentation of a copy of the Township's determination notice and affidavit of receipt of payment and tender of the applicable recording fee by the person desiring recordation of the same, the Recorder of Deeds is authorized to record such determination notice and affidavit of receipt of payment.

1.10. Determination and Notice of Tax.

- (1) If any person shall fail to pay any tax imposed by this Ordinance for which he or she is liable, the Board of Supervisors, the Treasurer and/or the Solicitor are hereby authorized and empowered to make a determination of additional tax, interest and other charges due by such person based upon any information within their possession. The Department of Revenue is also authorized to make a determination of additional tax, penalty and interest due under this Ordinance and 72 P.S. §§ 8101-C, et seq., in accordance with provisions of 72 P.S. § 8109-D, as may be amended.
- (2) Issuance by the Department of Revenue of a determination of additional State tax due shall be prima facie evidence and shall constitute proper cause for issuance by the Township of a determination of additional local tax, interest and other charges on the basis of the Department's determination if the Department does not issue such determination itself.
- (3) When the Township determines that additional local realty transfer tax is due, the Township, promptly after the date of such determination, shall send by mail a copy of such determination to the person(s) against whom the determination has been made.
- (4) All tax, interest and other charges determined to be due shall be payable to the order of Millcreek Township to the attention of the Treasurer.

1.11. Civil Penalties.

- (1) If any part of any underpayment of tax imposed by this Ordinance is due to fraud or misrepresentation, there shall be added to the tax an amount equal to fifty percent of the underpayment. Fraud and/or misrepresentation shall be found to have occurred when:

- (i) A document presented for recording fails to set forth the true, complete and full value and such true, full and complete value is not reported on a statement of value; or
 - (ii) A document presented for recording or a statement or affidavit of value avers a family relationship or ground for exemption or exclusion which is untrue and which the person submitting such averment or causing such averment to be made knows or should have known the same to be untrue; or
 - (iii) By reason of fraud or misrepresentation, tax due under this Ordinance is not paid upon tender of the document for recording.
- (2) In the case of failure to record a declaration or a statement or affidavit of value required under this Ordinance on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause, five percent (5%) of the amount of such tax shall be added to the tax if the failure is for not more than one month, with an additional five percent (5%) for each additional month or fraction thereof during which such failure continues, not to exceed fifty percent (50%) in the aggregate.
- (3) All persons presenting a document for recording, and all persons obligated for payment of the tax imposed under this Ordinance under contracts governing the transaction shall be liable to the penalties imposed for violation of this Section.

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1.12. Lien. The tax imposed by this Ordinance, together with all penalties, interest and other charges added thereto for failure to pay promptly, shall be and remain a lien upon the lands, tenements or hereditaments, or any interest therein, lying or being situated, wholly or in part, within the boundaries of Millcreek Township which are described in or conveyed or transferred by the deed or other document which is the subject of the tax imposed, assessed and levied by this Ordinance. Such lien shall become effective at the time the tax imposed under this Ordinance is due and payable, and shall continue until discharge by payment. The Solicitor is authorized and instructed to file a municipal or tax claim in the Court of Common Pleas of Erie County to preserve and perpetuate the lien in full force and effect and/or to collect the claim in accordance with the Municipal Claims and Liens Act, 53 P.S. § 7101, et seq., as may be amended.

1.13. Unlawful Acts; Penalties for Violation. It shall be unlawful and a violation of this Ordinance for any person to commit any of those acts or omissions identified as unlawful acts in 72 P.S. § 8113-D, as the same may be amended. A person found to have violated subsection(s) (1), (2) and/or (3) of 72 P.S. § 8113-D shall pay a civil fine of \$250.00 for each violation, plus all costs. A person found to have violated any other subsection of 72 P.S. § 8113-D shall pay a civil fine of \$500.00 for each violation, plus all costs. All persons found to have violated this Ordinance, in addition to prescribed fines, shall pay all costs and all attorneys' fees incurred in prosecution or defense of the claim, in accordance with Ordinance 96-9, as has been amended.

1.14. Enforcement; Rules and Regulations. The Board of Supervisors, the Treasurer, the Solicitor and their designees are hereby charged with enforcement of the provisions of this Ordinance and collection of the tax imposed herein in accordance with this Ordinance, the Local Tax Enabling Act and the Municipal Claims and Liens Act, and by Resolution or otherwise shall prescribe, adopt, promulgate and enforce rules and regulations relating to administration, implementation and enforcement of these regulations; investigation of transactions and reports; determinations; filing of liens for unpaid taxes; collection of unpaid tax, additional tax and claims; and institution and prosecution of enforcement actions. Except as otherwise provided herein, these regulations shall be enforced under provisions applicable to civil enforcement under Ordinance 2007-6, as the same may be amended.

1.15. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or its application to any person, property or circumstances is for any reason held invalid or unconstitutional by any court, such holding shall not be construed to affect the validity of any of the remaining provisions of this Ordinance or its application, for such portion shall be deemed as a separate, distinct and independent provision from the remaining provisions which shall be and remain in full force and effect. It is hereby declared the legislative intent that this Ordinance would have been adopted had such valid or unconstitutional provision of its application not been included herein.

1.16. Repealor. All Ordinances or parts of any Ordinances inconsistent herewith are hereby repealed, including but not limited to Ordinance 98-20, which is expressly repealed upon the effective date of this Ordinance except as its provisions are incorporated herein.

1.17. Effective Date. This Ordinance shall become effective five (5) days after the date of its enactment.

BE IT ENACTED this 3rd day of December, 2013.


Richard P. Figaski, Secretary