

**BOROUGH OF PICTURE ROCKS
LYCOMING COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2006-04

**AN ORDINANCE OF THE BOROUGH OF PICTURE ROCKS,
LYCOMING COUNTY, PENNSYLVANIA, IMPOSING AND LEVYING A
TAX FOR GENERAL REVENUE PURPOSES ON THE TRANSFER OF
INTEREST IN REAL ESTATE UNDER THE AUTHORITY OF THE ACT
OF DECEMBER 31, 1965, BEING KNOWN AS THE LOCAL TAX
ENABLING ACT, AS AMENDED, ESTABLISHING DEFINITIONS;
EXEMPTING CERTAIN PARTIES AND EXCLUDING CERTAIN
TRANSACTIONS; REGULATING DOCUMENTS; PROVIDING FOR
CREDITS AGAINST TAX, EXTENSION OF LEASES, AND
PROCEEDS AT JUDICIAL SALES; PLACING RESPONSIBILITY FOR
COLLECTIONS IN THE RECORDER OF DEEDS AND THE
DEPARTMENT OF REVENUE, REQUIRING A STATEMENT OF
VALUE; PRESCRIBING CIVIL PENALTIES FOR ENFORCEMENT
INCLUDING THE FILING OF LIENS; AND REPEALING
ORDINANCES INCONSISTENT HEREWITH.**

BE IT ENACTED AND ORDAINED by the Council of the Borough of Picture Rocks, Lycoming County, Pennsylvania, and it is hereby ENACTED AND ORDAINED by the authority of the same as follows:

ARTICLE I

Section 1. Title.

This Ordinance may be known as cited "Realty Transfer Tax Ordinance of the Borough of Picture Rocks".

Section 2. Authority.

A realty transfer tax for general revenue purposes is hereby imposed upon the transfer of real estate or interest in real estate situated within the Borough of Picture Rocks, regardless of where the documents making the transfer are made, executed or delivered, or where the actual settlements on such transfer took place, as authorized by Article XI-D, "Local Real Estate Transfer Tax," 72 P.S. §8101, et seq.

Section 3. Definitions.

The following words when used in regard to the Real Estate Transfer Tax shall have the meaning ascribed to them in this section.

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.

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.

DEPARTMENT – The Department of Revenue of this Commonwealth.

DOCUMENT – Any deed, instrument or writing which conveys, transfers, devises, vests, confirms or evidences any transfer or devise 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 a public utility easement. "Document" shall also include a declaration of acquisition required to be presented for recording under Section 7.

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 per cent of each class of stock of the corporation is continuously owned by members of the same family. The business of agriculture shall include the leasing to members of the same family of property which is directly and principally used for agricultural purposes. 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 the use in sporting or recreational activities;
- (3) Fur farming;
- (4) Stockyard and slaughterhouse operations; or
- (5) Manufacturing or processing operations of any kind.

FAMILY FARM PARTNERSHIP – A partnership of which at least seventy-five percent of its assets are devoted to the business of agriculture and at least seventy-five percent of the interests in the partnership are continuously owned by members of the same family. The business of agriculture shall include the leasing to members of the same family of property which is directly and principally used for agricultural purposes. 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 the use in sporting or recreational activities;
- (3) Fur farming;
- (4) Stockyard and slaughterhouse operations; or
- (5) Manufacturing or processing operations of any kind.

LIVING TRUST – Any trust, other than a business trust, intended as a will substitute by the settlor which becomes effective during the lifetime of the settlor, but from which trust distributions cannot be made to any beneficiaries other than the settlor prior to the death of the settlor.

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.

ORDINARY TRUST – Any trust, other than a business trust or a living trust, which takes effect during the lifetime of the settlor and for which the trustees of the trust take title to property primarily for the purpose of protecting, managing or conserving it until distribution to the named beneficiaries of the trust. An ordinary trust does not include a trust that has an objective to carry on business and divide gains, nor does it either expressly or impliedly have any of the following features: the treatment of beneficiaries as associates, the treatment of interests in the trust as personal property, the free transferability of beneficial interests in the trust, centralized management by the trustee or the beneficiaries, or continuity of life.

PERSON – Every natural person, association, or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to associations, shall include the responsible members or general partners thereof, and as applied to corporations, the officers thereof.

REAL ESTATE –

- (1) Any lands, tenements or hereditaments within this Commonwealth, including, without limitation, buildings, structures, fixtures, mines, minerals, oil, gas, quarries, spaces with or without upper lower boundaries, trees and other improvements, immovables or interest 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.

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 per cent 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 per cent 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 –

(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.

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

VALUE –

(1) In the case of any bona fide sale of real estate at arm's length or actual monetary worth, the amount of the actual consideration therefore, paid or to be paid, including liens or other encumbrances thereon existing before the transfer and not removed thereby, whether or not the underlying indebtedness is assumed, and ground rents or a commensurate part thereof where such liens or other encumbrances and ground rents also encumber or are charged against other real estate: Provided, That where such documents shall set forth a nominal consideration, the "value" thereof shall be determined from the price set forth in or actual consideration for the contract of sale;

(2) in the case of a gift, sale by execution upon a judgment or upon the foreclosure of a mortgage by a judicial officer, transactions without consideration or for consideration less than the actual monetary worth of 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 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;

(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 grant or a related corporation, association or partnership and the grantee existing before or effective with the transfer.

Section 4. Imposition of Tax; Interest.

A. Every person who makes, executes, delivers, accepts or presents for recording any document or in whose behalf any document is made, executed, delivered, accepted or presented for recording, shall be subject to pay for and in respect to the transaction or any part thereof, 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 one (1%) per cent 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 days of acceptance of such document or within thirty days of becoming an acquired company, provided that, in computing the value of the real estate on which the tax shall be paid, any fraction of \$100 shall be regarded as a full \$100.

B. The payment of the tax imposed herein shall be evidenced by the affixing of an official stamp or writing by the recorder of deeds whereon the date of the payment of the tax, amount of the tax and the signature of the collecting agent shall be set forth.

C. Any tax imposed 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 upon delinquent Commonwealth taxes as provided in Section 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.

Section 5. Excluded Transactions.

The Real Estate Transfer Tax 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 interest succession from a personal representative of a decedent to the decedent's devisee or heir.

(8) A transfer for no or nominal actual consideration from 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 that are entitled to receive the property or proceeds from the sale of the property under the trust, whether or not such beneficiaries are contingent or specifically named. A trust clause which identifies the contingent beneficiaries by reference to the heirs of the trust settlor as

determined by the laws of the intestate succession shall not disqualify a transfer from the exclusion provided by this clause. 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.

(8.1) A transfer for no or nominal actual consideration to a trustee of a living trust from the settlor of the living trust. No such exemption shall be granted unless the recorder of deeds is presented with a copy of the living trust instrument.

(9) A transfer for no or nominal actual consideration from a trustee of an ordinary trust to a specifically named beneficiary that is entitled to receive the property under the recorded trust instrument or to a contingent beneficiary where the transfer of the same property would be exempt if the transfer was made by the grantor of the property into the trust to that beneficiary. However, any transfer of real estate from a living trust during the settlor's lifetime shall be considered for the purposes of this ordinance as if such transfer were made directly from the settlor to the grantee.

(9.1) A transfer for no or nominal actual consideration from a trustee of a living trust after the death of the settlor of the trust or from a trustee of a trust created pursuant to the will of a decedent to a beneficiary to whom the property is devised or bequeathed.

(9.2) A transfer for no or nominal actual consideration from the trustee of a living trust to the settlor of the living trust if such property was originally conveyed to the trustee by the settlor.

(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 ordinance. Where the document by which title is acquired by the grantee from, or for the benefit of, his principal, there is a rebuttable presumption that the property is the property of the grantee in his individual capacity if the grantee claims an exemption from taxation under this clause.

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

(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 on 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 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. §501(c)(3)) and which has as its primary purpose preservation of land for historic, recreational, scenic, agricultural or open space opportunities; or a transfer from such a conservancy to the United States, the Commonwealth or to any of their instrumentalities, agencies or political subdivisions; or any transfer from such a conservancy where the real estate is encumbered by a perpetual agricultural conservation easement as defined by the act of June 30, 1981 (P.L. 128, No. 43), known as the "Agricultural Area Security Law," and such conservancy has owned the real estate for at least two years immediately prior to the transfer.

(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 per cent of each class of the stock thereof.

(19.1) A transfer of real estate devoted to the business of agriculture to a family farm partnership by a member of the same family, which family directly owns at least seventy-five percent of the interests in the partnership.

(20) A transfer between members of the same family of an ownership interest in a real estate company, family farm corporation or family farm partnership which owns real estate.

(21) A transaction wherein the tax due is one dollar (\$1.00) 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 the tax under this ordinance.

Section 6. Documents relating to associations or corporations and members, partners, stockholders or shareholders thereof.

Except as otherwise provided in Section 5 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 7. 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 per cent of 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 of 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.

(b.1) A family farm partnership is an acquired company when, because of voluntary or involuntary dissolution, it ceases to be a family farm partnership or when, because of transfer of partnership interests or because of acquisition or transfer of assets that are devoted to the business of agriculture, it fails to meet the minimum requirements of a family farm partnership under this ordinance.

(c) Within thirty 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.

Seciton 8. Credits against tax.

(a) Where there is a transfer of a residential property by a licensed real estate broker which property was transferred to him within the preceding year as consideration for the purchase of other residential property, a credit for the amount of the tax paid at the time of the transfer to him shall be given to him toward the amount of the tax due upon the transfer.

(b) Where there is a transfer by a builder of residential property which was transferred to the builder within the preceding year as consideration for the purchase of new, previously unoccupied residential property, a credit for the amount of the tax paid at the time of the transfer to the builder shall be given to the builder toward the amount of tax due upon the transfer.

(c) Where there is a transfer of real estate which is devised by the grantor, a credit for the amount of tax paid at the time of the devise 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 to the grantor toward the tax due upon the deed.

(e) If the tax due upon the transfer is greater that the credits 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 9. 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 a rental charge is established.

Section 10. Proceeds of judicial sale.

The tax herein imposed shall be fully paid, and have priority out of the proceeds of any judicial sale of real estate before any other obligation, claim, lien, judgment, estate or costs of the sale and of the writ upon which the sale is made, and the sheriff, or other officer, conducting said sale, shall pay the tax herein imposed out of the first moneys paid to him in connection therewith. If the proceeds of the sale are insufficient to pay the entire tax herein imposed, the purchaser shall be liable for the remaining tax.

Section 11. Administration.

The tax imposed under Section 4 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, the Borough, pursuant to Section 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.

Section 12. Statement of Value.

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

Section 13. Penalties.

A. Civil Penalties

(1) If any part of any underpayment of taxes imposed by this ordinance is due to fraud, there shall be added to the tax an amount equal to fifty percent (50%) of the underpayment.

(2) In the case of failure to record a declaration required under this ordinance on the date prescribed therefore, unless it is shown that such failure is due to reasonable cause, there shall be added to the tax five percent (5%) of the amount of such tax if the failure is for not more than one (1) month, with an additional five percent

(5%) for each additional month or fraction thereof during which such failure continues, not exceeding fifty percent (50%) in the aggregate.

B. Fines

Any person who violates any provision of this ordinance shall, for every such violation, upon conviction shall be sentenced to pay a fine of not more than \$600, and costs of prosecution; and in default of payment of fines and costs, to undergo imprisonment for not more than thirty (30) days. Each day that a violation continues shall be a separate offense.

Section 14. Liens.

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

Section 15. Enforcement.

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

ARTICLE II

Repealer.

All ordinances, including but not limited to Ordinance No. 1-80 adopted March 3, 1980, inconsistent herewith are hereby repealed.

ARTICLE III

Effective Date.

This ordinance shall be effective immediately.

DULY ENACTED AND ORDAINED this 4th day of December, 2006, by Borough Council of the Borough of Picture Rocks, Lycoming County, Pennsylvania, in lawful session duly assembled.

ATTEST:

BOROUGH OF PICTURE ROCKS

By: William Mc Dorn
William Dorman, Secretary

By: Eugene R. Otterbein, Sr.
Eugene R. Otterbein, Sr., Council President

APPROVED this 4th day December, 2006

BY: David Bender
David Bender, Mayor