

Amendment to
Article III ordinance No.23

Realty transfer tax

(a) Definitions.

As used in this ordinance, except where context clearly indicates a different meaning;

- (1) "Document" means any deed, instrument or writing whereby real estate within this town or any interest therein, shall be quitclaimed, granted, bargained, sold or otherwise conveyed to the grantee, but shall not include the following:
 - a. Any will;
 - b. Any lease other than those described or defined in (4) below;
 - c. Any mortgage;
 - d. Any conveyance between corporations operating housing projects pursuant to 31 Del. Code Chapter 45 and the shareholders thereof;
 - e. Any conveyance between nonprofit industrial development agencies and industrial corporations purchasing from them;
 - f. Any conveyance to nonprofit industrial development agencies
 - g. Any conveyance between husband and wife;
 - h. Any conveyance between persons who were previously husband and wife, but who have been since divorced; provided such conveyance is made after the granting of the final decree in divorce and the real estate or interest therein subject to such conveyance was acquired by the husband and wife, or husband or wife, prior to the granting of the final decree in divorce;
 - i. Any conveyance between parent and child or the spouse of such child;
 - j. Any conveyance (a) to trustee, nominee or straw party for the grantor as beneficial owner, 9b0 for the beneficial ownership or a person other than the grantor where, if such person were the grantee, no tax would be imposed upon the conveyance pursuant to this ordinance, or (c) from a trustee, nominee or straw party to the beneficial owner;
 - k. Any conveyance between a parent corporation and a wholly-owned subsidiary corporation; provided such conveyance is without actual consideration;
 - l. Correctional deeds without actual consideration;
 - m. Any conveyance to or from the United States or the State of Delaware, or to or from any of their instrumentality's, agencies or political subdivisions and the University of Delaware or the Town of Camden;
 - n. Any conveyance to or from a corporation, or a partnership, where the grantor or grantee owns stock of the corporation or an interest in the partnership in the same proportion as his interest in or ownership of, the real estate being conveyed; provided however, that this paragraph shall not apply to any distribution in liquidation or other conveyances resulting from the partial or complete liquidation of a corporation, unless the stock of the corporation being liquidated has been held

- by the grantor for more than 3 years; provided further, this paragraph shall not apply to any conveyance from a partnership to its partner unless the partners' interest in the partnership has been held for more than 3 years;
- o. Any conveyance by the owner of previously occupied residential premises to a builder of new residential premises are taken in trade by such builder as part of the consideration from the purchaser of new, previously unoccupied premises.
 - p. Any conveyance to the lender holding a bona fide mortgage, which is genuinely in default, either by a sheriff conducting a foreclosure sale or by the mortgagor in lieu of foreclosure.
 - q. Any conveyance to a religious organization or other body or person holding title to real estate for a religious organization, if such real estate will not be used following such transfer by the grantee, or by any privy of the grantee, for any commercial purpose; provided, however, that only that portion of the tax which is attributable to and payable by the religious organization under (b) of this ordinance shall be exempt.
 - r. Any conveyance to or from a volunteer fire company, organized under the laws of this State, provided, however, that only that portion of the tax which is attributable to and payable by the volunteer Fire Company under (b) shall be exempt.
- (2) "Transaction" means the making, executing, delivering, accepting, or presenting for recording of a document.
 - (3) "Value" means, in the case of any document granting, bargaining, selling or otherwise conveying any real estate or interest therein, the amount of the actual consideration thereof, including liens or other encumbrances thereon and ground rents, or a commensurate part of the liens or other encumbrances and tenements or hereditaments; provided, that where such documents shall set forth a small or nominal consideration, the "value" thereof shall be determined from the set forth in, or actual consideration for, the contract of sale or lease, or, in the case of a gift or any other document without consideration, from the actual monetary worth of the property granted, bargained, sold or otherwise conveyed, which, in either event, shall not be less than the amount of the highest assessment of such lands, tenements or other hereditaments for local tax purposes.
 - (4) The term "document" defined in subdivision (1) of this ordinance shall include the following:
 - a. Any writing purporting to transfer a title interest or possessory interest for a term of more than 5 years in a condominium unit or any unit properties subject to the unit Propriety Act;
 - b. Any writing purporting to transfer a title interest or possessory interest of any lessee or other person in possession of real estate owned by the Town of Camden;
 - c. Any writing purporting to assign or transfer a leasehold interest or possessory interest in residential property under a lease for a term of more than 5 years. For this purpose, the term "residential property" means any structure or part of a structure which is intended for residential use, and excluding any commercial unit subject to tax under paragraph (88) of

subsection (a) of § 2301 of Title 30 of the Delaware Code, relating to commercial lessors.

- (5) In determining the term of a lease under subdivision (4) above, it shall be presumed for the purpose of computing the lease term that any rights or options to renew extend or will be exercised.
- (6) For purposes of subdivision (3), in the case of document described in subdivision (4) under which the consideration is based in whole or in part on a percentage of the income or receipts provision; provided, however, and notwithstanding any other provisions of this ordinance, that the tax imposed by this ordinance shall be due and payable to the Town of Camden within 30 days after the date such amounts become due and payable under the agreement.

(b) rate of tax; when payable; exception.

- (1) Every person who makes, executes, delivers, accepts or presents for recording any document, except as defined or described in (a) (4) of this ordinance, or in whose behalf any document is made, executed, delivered, accepted or presented for recording shall be subject to pay for and in respect to the transaction, or any part thereof, a realty transfer tax at the rate of $1\frac{1}{2}$ percent of the value of the property represented by such document, which tax shall be payable at the time of the making, execution, delivery, acceptance or presenting of such document for recording. Said tax is to be apportioned equally between grantor and grantee.
- (2) No tax shall be imposed on conveyances when the actual value of the property being transferred is less than 100.
- (3) Notwithstanding subsection (a) of this section, where a valid written contract is entered into on or before January 5, 1987, the tax for such transfer shall be at the rate imposed on or before January 5, 1987.
- (4) Every person who makes executes, delivers, accepts or presents for recording any document as defined or described in (a) (4) of this ordinance, or in whose behalf any such document is made, executed, delivered, accepted or presented for recording shall be subject to pay for and in respect to the transaction, or in any part thereof, a realty transfer tax at the rate of $1\frac{1}{12}$ percent of the value of the property represented by such document, which tax shall be payable as follows:
 - a. The tax on the on the consideration attributed to the first year of the term being payable at the time of making, execution, delivery, acceptance or presenting of such document for recording;
 - b. The tax on the consideration attributed to each successive year of the term thereafter shall be paid annually to the Town of Camden.
- (5) There shall be no tax imposed on any document described in (a) (4) of this ordinance entered into on or before January 5, 1987.

(c) Transfer by broker.

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 part of the 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. If the tax due upon the transfer from the licensed real estate broker is greater than the credit given for the prior transfer, the difference shall be paid and if the credit allowed is greater than the amount of the tax due, no refund shall be allowed.

(d) Payment from proceeds of judicial sale.

The tax imposed by this chapter shall be fully paid and have priority out of the proceeds of any judicial sale of real estate before any other obligation . claim. Lien, judgement, estate or cost 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 imposed out of the first moneys paid to him in connection therewith; provided, that if prior delivery of the deed pursuant to said sale, the purchaser shall deliver to the sheriff an affidavit as described in (i) of this ordinance that the transfer is exempt from tax under paragraph p. of subdivision (1) of (a) of this ordinance, the sheriff shall not pay the tax, but shall deliver the affidavit to the Recorder of Deeds as agent for the Town of Camden.

(e) Documentary stamps; affixing, cancellation, other methods.

- (1) The payment of the tax imposed by this ordinance shall be evidenced by the affixing of a documentary stamp or stamps to every document by the person making, executing, delivering, or presenting such document for recording. Such stamps shall be affixed in such manner that their removal will require the continued application of steam or water and the person using or affixing such stamps shall write, stamp or cause to be written or stamped thereon the initials of his name and the date upon which such stamps are affixed or used so that such stamps may not again be used; provided that the Town of Camden may prescribe such other method of cancellation as it may deem expedient.
- (2) The Town of Camden may by regulation, provide for the evidence of the payment of the tax to be shown on the document by means other than the affixing of documentary stamps.

(f) Furnishing stamps; sale; agents; compensation; bond premiums.

- (1) The Town of Camden may prescribe, prepare and furnish stamps, of such denominations and quantities as may be necessary, for the payment of the tax imposed and assessed by this chapter. The Town of Camden may make provisions for the sale of such stamps in such places as it may deem necessary.
- (2) The Town of Camden may appoint the Recorder of Deeds in each County, and other person within or without the Town as agents for the sale of stamps to be used in paying tax to said agents of 1 1/2 percent of the face value of the stamps.

- (3) The Town of Camden shall pay the premium on any bond required by the Town of Camden to be procured by the agent for the performance of his duties under this ordinance.

(g) Enforcement; rules and regulations.

The Town of Camden shall enforce this ordinance and may adopt and enforce rules and regulations relating to:

- (1) The method and means to be used in affixing or canceling of stamps in substitution for, or in addition to, the method and means provided in this chapter;
- (2) The denomination and sale of stamps;
- (3) any other matter or thing pertaining to the administration and enforcement of this ordinance.

(h) Failure to affix stamps.

No document upon which tax is imposed by this ordinance shall be recorded in the office of any Recorder of Deeds of any County of the State of Delaware, unless proof of the payment of the reality transfer tax appears on the document as is provided in this ordinance.

(i) Value to be stated in document of affidavit; penalty for recording without documentary stamp.

Every document when lodged with, or presented to, any Recorder of Deeds in the State of Delaware for recording shall set forth therein and as a part of such document the true, full and complete value thereof, or shall be accompanied by an affidavit executed by a responsible person connected with the transaction showing such connection and setting forth the true, full and complete value thereof and the reason, if any why such document is not subject to tax under this ordinance; provided that in the case of a transaction exempt from tax under paragraph p. of (a) of this ordinance , the affidavit shall be made by the grantee.

(j) Unlawful acts; penalty.

- (1) It shall be unlawful for any person to:
 - a. Make, execute, deliver, accept or present for recording or cause to be made, executed, delivered, accepted or presented for recording any document without the full amount of tax thereon being duly paid;
 - b. Make use of any documentary stamp to denote payment of the realty transfer tax without canceling such stamp as required by this ordinance;
 - c. Fail, neglect or refuse to comply with or violate the rules and regulations prescribed, adopted, and promulgated by the Town of Camden under this ordinance;

- d. Fraudulently cut, tear or remove from a document any documentary stamp or other evidence of payment of the realty transfer tax.
 - e. Fraudulently affix to any document upon which tax is imposed by this ordinance any documentary stamp or other evidence of payment of the realty transfer tax which has been removed from any other document upon which tax is imposed by this ordinance, or any documentary stamp or other evidence of payment of the realty transfer tax or any impression of any forged or counterfeited stamp, die, plate or other article;
 - f. Willfully remove or alter the cancellation marks of any documentary stamp, or restore any such documentary stamp, with intent to use or cause the same to be used, or knowingly buy, sell, offer for sale, or give away any such altered or restored stamp to any persons for use, or knowingly use the same;
 - g. Knowingly have in his possession any altered or restored documentary stamp which has been removed from any document upon which tax is imposed by this ordinance; provided, that the possession of such stamps shall be prima facie evidence of an intend to violate the provisions of this clause;
 - h. Knowingly or willfully prepare, keep, sell, or offer for sale or have in his possession, any forged or counterfeited documentary stamps; or,
 - i. Accept for recording in the office of any Recorder of Deeds any document upon which the realty transfer is imposed, without the proper documentary stamp or other evidence of payment of the tax affixed thereto, as required by this ordinance and as is indicated in such document or accompanying affidavit.
- (2) Whoever violates this section shall be fined not more than \$500 or imprisoned for not more than 1 year, or both.
 - (3) The Justice Of The Peace Court No. 7 shall have jurisdiction over offenses under this section.

(k) Failure to pay tax; determination; redetermination; review; interest.

- (1) If any person shall fail to pay any realty transfer tax for which he is liable, the Town of Camden may make a determination of additional tax and interest due any such person, based upon any information within its possession or that shall come into its possession. All of such determinations shall be made so that notice thereof shall reach the parties against whom made within 3 years after the date of the recording of the document.
- (2) Promptly after the date of such determination, the Town of Camden shall send, by registered mail, a copy thereof to the person against whom it was made. Within 90 days after the date upon which the copy of any such determination was mailed, such persona may file with the Town of Camden a petition for redetermination of such taxes. Every petition for redetermination shall state specifically the reasons which the petitioner believes entitle him to such redetermination, and it shall be supported by facts set forth therein are true. It shall be the duty of the Town Council, within 6 months after the date of any

- determination, to dispose of any petition for redetermination shall be given to the petitioner promptly after the date of redetermination by the Town Council.
- (3) Any person shall have the right to review by the Tax Appeal Board and appeal to the Superior Court in the same manner and within the same time as provided by law in the case of other tax appeals.
 - (4) Interest added to any determination of additional tax shall be computed at the rate of 1% per month, or fraction thereof, from the date the realty transfer tax should have been paid.

(l) Grantor to pay tax.

As between the parties to any transaction, which is subject to the realty transfer tax imposed by this ordinance, in the absence of an agreement to the contrary, the burden for paying the tax shall be on the grantor.

(m) Refund, interest, payment.

- (1) Upon determining that any tax collected with respect to this ordinance had been collected improperly, the Town of Camden shall refund to the taxpayer the sums so paid with interest from the date of payment.
- (2) Interest on such refund shall be allowed at the rate of 1% per month, or fraction thereof, from the date the tax was paid to the date the refund is made.

AMENDED THIS 3RD DAY OF AUGUST, 1998

Synopsis

This amends Ordinance No 23-§(b) (1) and (b) (4) by striking 1 percent and making it 1 ½ percent. Making it effective August 3, 1998

The purpose of this amendment is to increase the amount of tax that will be collected by the Town of Camden to 1 ½ percent. At the same time the State of Delaware will be decreasing the amount collect to ½ percent. There will be no additional tax collected because of this amendment.

FIRST READING JULY 22, 1998

SECOND READING AUGUST 3, 1998

ADOPTED BY UNANIMOUS VOTE OF COUNCIL AUGUST 3, 1998

Adopted 8-3-98

Jean M. Denny