

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Calling upon the Internal Revenue Service to Meet its Trust Obligation by Promptly and Fully Consulting with Indian Tribes in Developing and Adopting a Consultation Policy Pursuant to Executive Order 13175 and to Communicate Directly with Responsible Tribal Officials)

RESOLUTION NO. 06-576

- 1 **WHEREAS, sovereign Indian tribes share a unique trust relationship with the United States of**
2 **America, which is embodied in the Constitution of the United States, numerous**
3 **court opinions, statutes, executive orders, and federal agency policies; and**
- 4 **WHEREAS, by its passage and implementation of the Indian Self-Determination and Education**
5 **Assistance Act (25 U.S.C. § 450 et seq.) and similar legislation, the United States of**
6 **America has recognized the need to work with Indian tribes on a government-to-**
7 **government basis and to support Indian tribal self-determination and self-**
8 **governance; and**
- 9 **WHEREAS, on November 6, 2000 the President of the United States issued Executive Order**
10 **13175, "Consultation and Coordination with Indian Tribal Governments"**
11 **("Consultation Order"), thereby mandating that Executive Branch agencies work**
12 **with tribes when formulating and implementing policies or taking other actions**
13 **that have a substantial direct effect on any Indian tribe; and**
- 14 **WHEREAS, the Consultation Order and additional executive orders and memoranda require**
15 **that all Executive Branch agencies ensure that there is "meaningful" and "timely"**
16 **tribal input when formulating or implementing policies that have tribal**
17 **implications; and**
- 18 **WHEREAS, like other federal agencies, the Internal Revenue Service (the "IRS") is required to**
19 **develop a consultation policy to implement the Consultation Order; and**
- 20 **WHEREAS, although various tribes worked with the IRS to develop a draft IRS-tribal**
21 **consultation policy that was completed in November 2004, not all tribes were**
22 **provided adequate notice of policy drafting sessions and the IRS has not adopted**
23 **the policy resulting from those discussions; and**
- 24 **WHEREAS, according to the Internal Revenue Manual ("IRM"), the IRS established the Indian**
25 **Tribal Government office ("ITG") in 2000 for the purposes of assisting and providing**
26 **education to Indian tribes on tax issues and providing a single point of contact for**
27 **assistance and service (IRM 4.86.1.1.1); and**
- 28 **WHEREAS, in pursuing its mission, it is the ITG's policy to "develop a functional and interactive**
29 **government-to-government relationship between the IRS and Indian tribal**

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Page 2 of 5

1 governments," "be guided by principles of respect for Indian tribal self-government
2 and sovereignty" (IRM 4.86.1.1.); and
3 **WHEREAS,** the ITG is further dedicated by IRS policy to "work with tribes to minimize any
4 intrusion," and "to work with tribes to mitigate the need for enforcement," (IRM
5 4.86.1.1.1 and 4.86.1.1.2); and
6 **WHEREAS,** despite its stated goals of providing education and assistance to tribes while
7 minimizing intrusions, the ITG is currently investing substantial resources to plan
8 or actually audit or engage in compliance reviews of Indian tribes and tribal
9 enterprises across the United States; and
10 **WHEREAS,** as part of this approach, the ITG has scheduled site visits with the departments and
11 enterprises of Indian tribes and is reviewing records, for example, to determine
12 whether tribal governments properly reported burial and clothing assistance, as
13 well as other types of general assistance payments to enrolled members who lack
14 the financial resources to meet their basic needs; and
15 **WHEREAS,** IRS policies further provide that "If the tribe, in a resolution of the tribal council or
16 other exercise of its powers as a sovereign government, duly designates in
17 accordance with regulatory requirements an individual or individuals as the
18 primary point of contact for the IRS, ITG will honor that designation and contacts
19 should be made through that individual. The designation may be made with regard
20 to specific matters or on an on-going basis." (IRM 4.86.1.6.1.2, Responsible Officials);
21 and
22 **WHEREAS,** despite the ITG's policy of meeting "with the leaders of the tribe to discuss, on a
23 government-to-government basis, tax issues of mutual interest and concern" the
24 ITG has in some cases approached subdivisions of tribal governments, tribal
25 enterprises, and employees directly to gather enforcement-related information
26 without first consulting with leaders of the tribe to develop a protocol within which
27 the tribe may identify those persons who should serve as the tribe's official point of
28 contact (IRM 22.41.1.2, Protocol for Contacting Tribes); and
29 **WHEREAS,** the actions of the ITG have a substantial direct effect on Indian tribes and, in
30 accordance with the Consultation Order and IRS policies, all tribes are therefore

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Page 3 of 5

1 entitled to meaningful and timely input on the ITG's policies as they relate to
2 communicating with tribes and promptly identifying the duly authorized tribal
3 officials who represent the tribe; and

4 WHEREAS, in the absence of an IRS tribal government consultation policy, it is unclear
5 whether the IRS and ITG have a uniform process for contacting tribal governments,
6 subdivisions, and enterprises that truly honors the government-to-government
7 relationship and supports tribal sovereignty and self-determination as mandated
8 by the Consultation Order (Consultation Order, Section 2(c)); and

9 WHEREAS, on August 9, 2006, the IRS published a proposed rule on defining "essential
10 government functions" under Internal Revenue Code Section 7871, and the IRS has
11 also indicated this year that it is about to publish guidance on the taxation of tribal
12 corporations, both of which are issues critically important to the self-determination
13 of tribal governments and which merit tribal input through a process of
14 government-to-government consultation (Fed. Reg. 45474 (Aug. 9, 2006); IRM
15 4.88.1.4(6)(b)).

16 NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council
17 hereby (1) calls upon the IRS to meet its trust obligation by fully consulting with
18 Indian tribes in promptly developing and adopting a consultation policy, (2) urges
19 the IRS and ITG to communicate with tribal governments, subdivisions, and
20 enterprises only through the responsible official designated by the respective tribe
21 or otherwise in accordance with the tribe's protocol for communications with the
22 IRS, and (3) calls upon the IRS to refrain from publishing guidance on critical tribal
23 issues, including but not limited to guidance on tribal corporation tax issues or a
24 rule defining "essential government functions" under Internal Revenue Code
25 Section 7871, without first having received tribal government input through
26 government-to-government consultation.

27 BE IT FINALLY RESOLVED that the Tohono O'odham Legislative Council hereby (1)
28 authorizes and directs the Legislative Attorney's Office to submit this Resolution in
29 the required format to the National Congress of American Indians ("NCAI") for
30 action during the upcoming NCAI Annual Session and (2) authorizes the Nation's

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Page 4 of 5

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delegation to the NCAI Annual Session to present this Resolution to the NCAI and obtain its passage.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 30th Day of AUGUST, 2006 at a meeting at which a quorum was present with a vote of 2,440.80 FOR; -0- AGAINST; -0- NOT VOTING; and [06] ABSENT, pursuant to the powers vested in the Council by Section 1 (f) & (j) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

TOHONO O'ODHAM LEGISLATIVE COUNCIL


Evelyn B. Juan Manuel, Legislative Chairwoman

1st day of September, 2006

ATTEST:


Lucille Lopez, Acting Legislative Secretary

30th day of August, 2006.

Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono O'Odham Nation on the 1st day of September, 2006 at 10:35 o'clock, A.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon her approval or upon her failure to either approve or disapprove it within 48 hours of submittal.

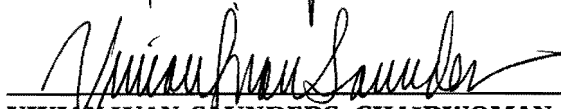
TOHONO O'ODHAM LEGISLATIVE COUNCIL


Evelyn B. Juan Manuel, Legislative Chairwoman

on the 1 day of September, 2006
at 2:54 o'clock, P.M.

APPROVED

DISAPPROVED


VIVIAN JUAN-SAUNDERS, CHAIRWOMAN
TOHONO O'ODHAM NATION

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Page 5 of 5

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Returned to the Legislative Secretary on the 1st day of

September, 2006, at 3:07 o'clock, P.M.

Lucille Lopez for:
Lucille Lopez, Acting Legislative Secretary

ACTION: CALLING UPON THE INTERNAL REVENUE SERVICE TO MEET ITS TRUST OBLIGATION BY PROMPTLY AND FULLY CONSULTING WITH INDIAN TRIBES IN DEVELOPING AND ADOPTING A CONSULTATION POLICY PURSUANT TO EXECUTIVE ORDER 13175 AND TO COMMUNICATE DIRECTLY WITH RESPONSIBLE TRIBAL OFFICIALS

MOVED: COUNCILWOMAN GLORIA RAMIREZ

SECOND: COUNCILMAN GERALD FAYUANT

DATE: AUGUST 30, 2006

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 310.8	1. FRANCES MIGUEL (<i>Absent</i>) (Vernon J. Smith) (<i>Present</i>)	155.40	X			
	2. FRANCES G. ANTONE (Lucilda J. Valenzuela (Norris))	155.40	X			X
CHUKUT KUK 258.7	1. ETHEL GARCIA ()	129.35	X			
	2. VERLON M. JOSE (David Garcia)	129.35	X			
GU ACHI 221.6	1. TIMOTHY L. JOAQUIN (Jonas Robles)	110.80	X			
	2. CYNTHIA E. MANUEL (Louis L. Johnson)	110.80	X			
GU VO 193.1	1. RAYMOND VICTOR ()	96.55	X			
	2. MICHAEL FLORES (Grace Manuel)	96.55	X			X
HICKIWAN 167.4	1. DELMA GARCIA (Mary E. Sam)	83.70	X			
	2. SANDRA ORTEGA ()	83.70	X			
PISINEMO 171.8	1. BARBARA SALVICIO ()	85.90	X			
	2. GERALD FAYUANT ()	85.90	X			
SAN LUCY 169.0	1. JOHN W. LAWSON, SR. ()	84.50	X			X
	2. GLORIA RAMIREZ ()	84.50	X			
SAN XAVIER 193.8	1. FELICIA NUÑEZ ()	96.90	X			X
	2. OLIVIA VILLEGAS-LISTON (Eileen A. Estrada-Lopez)	96.90	X			
SCHUK TOAK 146.9	1. FRANCES B. CONDE ()	73.45	X			
	2. PHYLLIS JUAN ()	73.45	X			X
SELLS 421.0	1. MARLENE SARAFICIO-JUAN ()	210.50	X			X
	2. EVELYN B. JUAN MANUEL (Kimberly Listo)	210.50	X			
SIF OIDAK 186.7	1. WAVALENE SAUNDERS (Isidro Lopez)	93.35	X			
	2. DARLENE ANDREW (Rita Martinez)	93.35	X			
TOTAL		2,440.80	2,440.80	-0-	-0-	[06]

****PASSED VOTES**