

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Opposing Discriminatory Treatment of Tribal Governments Under Proposed Rule Defining
"Essential Governmental Function" for Purposes of Internal Revenue Code Section 7871)

RESOLUTION NO. 06-725

- 1 **WHEREAS, the Tohono O'odham Legislative Council is vested with the power to consult with the**
2 **United States Congress and "federal agencies regarding federal activities that affect**
3 **the Tohono O'odham Nation" (Constitution of the Tohono O'odham Nation, Article**
4 **VI, Section 1(j)); and**
- 5 **WHEREAS, sovereign Indian tribes share a unique trust relationship with the United States of**
6 **America, which is embodied in the Constitution of the United States, numerous**
7 **court opinions, statutes, executive orders, and federal agency policies; and**
- 8 **WHEREAS, by its passage and implementation of the Indian Self-Determination and Education**
9 **Assistance Act (25 U.S.C. § 450 et seq.) and similar legislation, the United States of**
10 **America has recognized the need to work with Indian tribes on a government-to-**
11 **government basis and to support Indian tribal self-determination and self-**
12 **governance; and**
- 13 **WHEREAS, economic development is an essential governmental function that is performed by**
14 **tribal, state, and local governments as a means of improving the health, education,**
15 **and welfare of individuals and families within their jurisdictions; and**
- 16 **WHEREAS, unlike state and local governments, tribal governments commonly lack the ability**
17 **to impose property taxes on lands within their jurisdiction or otherwise generate**
18 **sufficient revenues to fund basic infrastructure and promote economic**
19 **development; and**
- 20 **WHEREAS, the current structure of federal tax laws contributes to the disproportionate**
21 **unemployment and poverty on Indian reservations by systematically**
22 **discriminating against Indian tribal governments; and**
- 23 **WHEREAS, Section 7871 of the Internal Revenue Code, "Indian tribal governments treated as**
24 **States for certain purposes," recognizes tribes' ability to issue tax-exempt bonds**
25 **but imposes discriminatory restrictions on such obligations that state and local**
26 **governments do not face; and**
- 27 **WHEREAS, tribal bonds may, for example, only be issued for "essential governmental**
28 **functions," a restriction that does not apply to state and municipal bonds; and**

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- 1 **WHEREAS,** in addition, the Internal Revenue Service (“IRS”) (1) has interpreted Section 7871 to
2 prevent tribes from issuing bonds for the *same* activities that are customarily
3 funded with state and municipal bonds and (2) has audited tribal tax-exempt bonds
4 at a rate 30 times greater than the rate at which municipal tax-exempt bonds are
5 audited; and
- 6 **WHEREAS,** on August 9, 2006, the IRS issued a notice of proposed rulemaking (“Proposed Rule”)
7 notifying the public of its intent to define an “essential governmental function”
8 under Section 7871 in a manner that would further hamper tribal tax-exempt bond
9 issuances (Fed. Reg. 45474 (Aug. 9, 2006)); and
- 10 **WHEREAS,** although the IRS has formally recognized its government-to-government
11 relationship with Indian tribes and the resulting need to consult with tribes on
12 matters affecting them, the IRS did not consult with tribes before publishing the
13 restrictive criteria appearing in its notice (Internal Revenue Manual, 4.86.1.1,
14 Indian Tribal Governments); and
- 15 **WHEREAS,** the National Congress of American Indians, by Resolution # SAC-06-014, has called
16 upon the IRS “to refrain from publishing guidance on critical tribal issues,
17 including but not limited to guidance on tribal corporation tax issues or a rule
18 defining ‘essential government functions’ under Internal Revenue Code Section
19 7871, without first having received tribal government input through government-
20 to-government consultation”; and
- 21 **WHEREAS,** the IRS notice indicates that the Proposed Rule would prevent tribes from issuing
22 tax-exempt bonds unless “numerous” state and local governments have been
23 conducting the activity and finance it with tax-exempt governmental bonds “for
24 many years”; and
- 25 **WHEREAS,** the Proposed Rule would also prohibit tribally issued tax-exempt bonds for a
26 “commercial or industrial facility,” despite the fact that state and local
27 governments routinely issue tax-exempt bonds for economic development to fund
28 golf courses, convention centers, hotels, and other activities; and
- 29 **WHEREAS,** the issuance of state or tribal tax-exempt bonds for these purposes is an essential
30 governmental function as the funded projects are designed to improve local

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1 **economic conditions, provide revenue to fund government operations, create jobs,**
2 **and provide recreational opportunities for residents and nonresidents alike; and**

3 **WHEREAS, Senator Gordon Smith and Senator Max Baucus have sponsored S. 3567, the "Tribal**
4 **Government Tax-Exempt Bond Parity Act of 2006" to amend Section 7871 in a**
5 **manner that would remove the discriminatory restrictions on tribally issued tax-**
6 **exempt bonds; and**

7 **WHEREAS, because the Proposed Rule would conflict with the provisions of S. 3567, the IRS**
8 **should defer to Congress and refrain from promulgating the rule described in its**
9 **August 9, 2006 notice; and**

10 **WHEREAS, if the IRS does promulgate a rule defining an essential governmental function, such**
11 **a definition should include all activities that are also funded by the tax-exempt**
12 **state or local governmental bonds, whether the activity is arguably "commercial"**
13 **or not; and**

14 **WHEREAS, it is in the Nation's best interest to comment on and oppose additional,**
15 **discriminatory rules being proposed by the IRS.**

16 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council hereby adopts**
17 **the attached "Comments of the Tohono O'odham Nation Opposing Discriminatory**
18 **Restrictions on Tribal Tax-Exempt Bond Issuances" as the Nation's official position**
19 **on the IRS Proposed Rule and (2) authorizes and directs the Nation's Chairwoman**
20 **to submit the Nation's Comments to the IRS.**

21 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 20TH Day**
22 **of OCTOBER, 2006 at a meeting at which a quorum was present with a vote of 2,440.80 FOR; -0-**
23 **AGAINST; -0- NOT VOTING; and [04] ABSENT, pursuant to the powers vested in the Council by**
24 **Section 1(j) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono**
25 **O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary -**
26 **Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48**
27 **Stat. 984).**

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TOHONO O'ODHAM LEGISLATIVE COUNCIL



Verlon M. Jose, Legislative Chairman

25 day of October, 2006

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1 **ATTEST:**

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Lucille Lopez
Lucille Lopez, Acting Legislative Secretary

20 day of October, 2006.

Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono O'odham Nation on the 25 day of October, 2006 at 9:11 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

Verlon M. Jose
Verlon M. Jose, Legislative Chairman

APPROVED

on the 25 day of October, 2006

DISAPPROVED

at 10:30 o'clock, a.M.

Vivian Juan-Saunders
VIVIAN JUAN-SAUNDERS, CHAIRWOMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 25th day of October, 2006, at 12:35 o'clock, P.M.

Lucille Lopez
Lucille Lopez, Acting Legislative Secretary

ACTION: OPPOSING DISCRIMINATORY TREATMENT OF TRIBAL GOVERNMENTS UNDER PROPOSED RULE DEFINING "ESSENTIAL GOVERNMENTAL FUNCTION" FOR PURPOSES OF INTERNAL REVENUE CODE SECTION 7871

MOVED: COUNCILWOMAN MARLENE SARAFICIO

SECOND: COUNCILMAN GERALD FAYUANT

DATE: OCTOBER 20, 2006

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 310.8	1. FRANCES MIGUEL (Vernon J. Smith)	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			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 (<i>Absent</i>) (Grace Manuel) (<i>Present</i>)	96.55	X			
HICKIWAN 167.4	1. DELMA GARCIA (Mary E. Sam)	83.70	X			
	2. SANDRA ORTEGA ()	83.70	X			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			
	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			
SELLS 421.0	1. MARLENE SARAFICIO-JUAN ()	210.50	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-	[04]

****PASSED VOTES**