

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving Joining Other Tribes in an Amicus Curiae Brief in the *Barona Band of Mission Indians v. Yee* tax case)

RESOLUTION NO. 08-432

1 **WHEREAS, the Tohono O'odham Nation ("Nation") has enacted a Transaction Privilege Tax**
2 **Ordinance, Ordinance No. 03-81, Title 22 Chapter 2 of the Tohono O'odham Code,**
3 **which applies to construction contracts performed on the Nation's lands; and**

4 **WHEREAS, when construction contractors pay this tax to the Nation, neither the general**
5 **contractor nor the subcontractors pay the similar transaction privilege tax to the state**
6 **of Arizona, under a tax ruling of the Arizona Department of Revenue known as TPR 95-**
7 **11; and**

8 **WHEREAS, on June 18, 2008, the U.S. Court of Appeals for the Ninth Circuit issued an opinion in**
9 **a case entitled *Barona Band of Mission Indian v. Yee* which requires an Indian tribe**
10 **to reimburse a subcontractor for a tax payment that the subcontractor was required**
11 **to pay to the state of California under the California sales tax on a casino construction**
12 **project on tribal lands; and**

13 **WHEREAS, the Gila River Indian Community has retained the services of the Dorsey & Whitney**
14 **LLP law firm to file an *amicus curiae* brief in the Ninth Circuit Court of Appeals to seek**
15 **a rehearing *en banc* on the *Barona Band* decision, and has invited other tribes to join**
16 **in the *amicus curiae* brief and to share the cost of the legal fees of Dorsey & Whitney;**
17 **and**

18 **WHEREAS, the Domestic Affairs Committee has reviewed the matter with the Acting Attorney**
19 **General and has not taken a position.**

20 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council:**

- 21 **1. Approves joining an *amicus curiae* brief with other tribes seeking a rehearing *en***
22 ***banc* by the Ninth Circuit Court of Appeals in the case of *Barona Band of Mission***
23 ***Indians v. Yee* and, if a rehearing is granted, approves joining in a brief on the**
24 **merits seeking to persuade the court to change its decision.**
- 25 **2. Authorizes the Office of Attorney General to negotiate an attorney contract or**
26 **letter of engagement with the Dorsey & Whitney LLP law firm and to pay a**
27 **proportionate share of the costs of preparing the brief or briefs from the**
28 **professional services budget of the Office of Attorney General, up to a maximum**
29 **of \$15,000.**
- 30 **3. Authorizes the Chairman of the Nation to execute the attorney contract or letter**
31 **of engagement negotiated by the Office of Attorney General for this matter.**

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1 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 10TH Day**
2 **of JULY, 2008 at a meeting at which a quorum was present with a vote of 2,534.5 FOR; -0- AGAINST;**
3 **-0- NOT VOTING; and 02]ABSENT, pursuant to the powers vested in the Council by Section 1 (d)(4)**
4 **of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono O'Odham**
5 **Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs**
6 **(Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).**

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8 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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11 **Verlon M. Jose, Legislative Chairman**

12
13 10th day of July, 2008

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15 **ATTEST:**

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18 **Lucille Lopez, Acting Legislative Secretary**

19
20 10 day of July, 2008.

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22 **Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham**
23 **Nation on the 10th day of July, 2008 at 5:07 o'clock, P.M.,**
24 **pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective**
25 **upon his approval or upon his failure to either approve or disapprove it within 48 hours of**
26 **submittal.**

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28 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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32 **Verlon M. Jose, Legislative Chairman**

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36 **APPROVED**

on the 11 day of July, 2008

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38 **DISAPPROVED**

at 9:12 o'clock, A.M.

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42 **NED NORRIS, JR., CHAIRMAN**
43 **TOHONO O'ODHAM NATION**

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Returned to the Legislative Secretary on the 11 day of

July, 2008, at 9:15 o'clock, A.M.

Lucille Lopez
Lucille Lopez, Acting Legislative Secretary

ACTION: APPROVING JOINING OTHER TRIBES IN AN AMICUS CURIAE BRIEF IN THE *BARONA BAND OF MISSION INDIANS V. YEE TAX CASE*

Moved: COUNCILMAN TIMOTHY JOAQUIN

Second: COUNCILWOMAN EVELYN JUAN MANUEL

DATE: JULY 10, 2008

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 316.9	1. FRANCES MIGUEL (Roberta Harvey)	158.45	X			
	2. FRANCES G. ANTONE (Vernon Smith)	158.45	X			
CHUKUT KUK 264.8	1. ETHEL GARCIA ()	132.40	X			
	2. VERLON M. JOSE ()	132.40	X			X
GU ACHI 227.9	1. TIMOTHY L. JOAQUIN (Louis L. Johnson)	113.95	X			
	2. CYNTHIA E. MANUEL ()	113.95	X			
GU VO 199.2	1. GRACE MANUEL ()	99.60	X			
	2. RAYMOND VICTOR ()	99.60	X			X
HICKIWAN 172.0	1. MICHELLE ORTEGA ()	86.00	X			
	2. SANDRA ORTEGA ()	86.00	X			
PISINEMO 182.4	1. CHESTER ANTONE (Tony Murrietta)	91.20	X			
	2. GERALD FAYUANT ()	91.20	X			
SAN LUCY 181.1	1. LORRAINE EILER ()	90.55	X			
	2. GLORIA RAMIREZ ()	90.55	X			
SAN XAVIER 196.5	1. FELICIA NUÑEZ (Adam P. Andrews)	98.25	X			
	2. OLIVIA VILLEGAS-LISTON (Eileen A. Estrada-Lopez)	98.25	X			
SCHUK TOAK 154.6	1. FRANCES B. CONDE (Frederick Jose)	77.30	X			
	2. PHYLLIS CACHORA (Agnes Joaquin)	77.30	X			
SELLS 444.7	1. KIMBERLY LISTO ()	222.35	X			
	2. EVELYN B. JUAN MANUEL ()	222.35	X			
SIF OIDAK 194.4	1. WAVALENE ROMERO ()	97.20	X			
	2. MARY LOPEZ ()	97.20	X			X
TOTAL		2,534.5	2,534.5	-0-	-0-	[03]

**PASSED VOTES