

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Applying Internal Revenue Service Revenue Ruling 59-354 to the Compensation
of Elected Officials and Authorizing Submittal of Claims for Reimbursement
of Applicable Taxes for Calendar Years 2006-2010)**

RESOLUTION NO. 10-270

1 **WHEREAS, the people of the Tohono O'odham Nation adopted a constitution in 1986 under the**
2 **authority of Section 16 of the Indian Reorganization Act, 25 U.S.C. § 476, which**
3 **established the Legislative Council to carry out the legislative functions of the Nation**
4 **and a chairperson and vice-chairperson of an Executive Branch to carry out the**
5 **executive functions of the Nation; and**

6 **WHEREAS, in exercise of the powers provided in the Constitution, Legislative Council members**
7 **and a chairperson and vice-chairperson of the Tohono O'odham Nation ("Elected**
8 **Officials") are elected by the people of the Nation and are paid compensation for their**
9 **service; and**

10 **WHEREAS, historically compensation to Elected Officials has been subject to the same**
11 **withholding for federal taxation as tribal employees whereby federal income taxes,**
12 **Federal Insurance Contributions Act ("FICA") taxes, and Medicare taxes are**
13 **mandatorily withheld from all employee paychecks by the Nation's Payroll Office; and**

14 **WHEREAS, in 1959 Internal Revenue Service Ruling 59-354 held that because tribal council**
15 **members are elected by the people and are a policy making body, payments to tribal**
16 **council members for services are not "wages" for the taxation purposes of FICA,**
17 **Medicare taxes, and the Federal Unemployment Tax Act ("FUTA"), and that tribal**
18 **council members are not required to pay FICA, Medicare taxes and FUTA; and**

19 **WHEREAS, although compensation to Elected Officials meets the definition of "gross income" and**
20 **is therefore subject to payment of federal income taxes, Revenue Ruling 59-354 also**
21 **held that withholding of federal income tax from the compensation of Elected Officials**
22 **was not mandatory, but voluntary; and**

23 **WHEREAS, payment of FICA and Medicare taxes involves payment of a portion of the tax by the**
24 **individual taxpayer and a portion by the employer (the Nation); and**

25 **WHEREAS, the Nation acknowledges Revenue Ruling 59-354 and wishes to apply it to the**
26 **compensation for services paid to the Nation's Elected Officials; and**

27 **WHEREAS, the Nation has been unnecessarily withholding FICA and Medicare taxes from Elected**
28 **Officials' paychecks and paying those taxes to the Internal Revenue Service ("IRS"),**
29 **and the Nation and Elected Officials are currently entitled to file a claim with the IRS**
30 **to seek reimbursement of previously paid FICA and Medicare taxes for Elected**
31 **Officials who served during the 2006-2010 calendar years; and**

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1 **WHEREAS, Elected Officials may voluntarily continue to have federal income tax withheld from**
2 **their compensation by the Nation's Payroll Office, or may choose to pay their income**
3 **tax to the IRS individually without any withholding from their paycheck; and**

4 **WHEREAS, if Elected Officials choose to have federal income taxes withheld by the Nation, they**
5 **must authorize the Nation to do so by completing Form W-4V, entitled Voluntary**
6 **Withholding Request, and submitting the form to the Tohono O'odham Payroll Office.**

7 **NOW, THEREFORE, BE IT RESOLVED THAT the Tohono O'odham Legislative Council:**

- 8 **1. Hereby applies as the Nation's policy Revenue Ruling 59-354 to the compensation**
9 **of Elected Officials from the effective date of this resolution forward, and**
10 **retroactively to the extent possible.**
- 11 **2. Authorizes and directs the Nation's Payroll Office to implement Revenue Ruling**
12 **59-354 on behalf of the Nation by not withholding or paying FICA and Medicare**
13 **taxes on behalf of Elected Officials or the Nation, and providing a choice to Elected**
14 **Officials to have their federal income tax withheld by the Nation using Form W-4V**
15 **or to pay federal income taxes on their own.**
- 16 **3. Authorizes and directs the Nation's Controller to submit claims to the Internal**
17 **Revenue Service for reimbursement of FICA and Medicare taxes paid by the Nation**
18 **on behalf of Elected Officials and the Nation for calendar years 2006 to 2010 and to**
19 **repay individual Elected Officials the amounts due to them after the Nation's**
20 **Controller has.**
 - 21 **(a) contacted all Elected Officials from 2006 to the effective date of this resolution**
22 **about Revenue Ruling 59-354's impacts to FICA and Medicare taxes.**
 - 23 **(b) sought the necessary certification that elected officials won't independently**
24 **seek reimbursements of their FICA and Medicare taxes.**
- 25 **4. Ratifies actions taken by the Nation's Controller in April 2010 to submit claims to**
26 **the Internal Revenue Service for reimbursement of FICA and Medicare taxes paid**
27 **on behalf of Elected Officials and the Nation in 2006.**
- 28 **5. Authorizes and directs the Nation's Controller to implement the immediate return**
29 **of individual amounts due to Elected Officials from 2006.**
- 30 **6. Directs that the Nation's portion of reimbursed taxes will be considered general**
31 **revenues and will be deposited in the general fund of the Nation.**

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The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 15TH Day of JULY, 2010 at a meeting at which a quorum was present with a vote of 2,595.50 FOR; -0- AGAINST; -0- NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council by Article VI, Section 1 (d)(2) 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

Verlon Jose
Verlon M. Jose, Legislative Chairman
15 day of July, 2010

ATTEST:

Evonne Wilson
Evonne Wilson, Legislative Secretary
15 day of July, 2010.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 15 day of July, 2010 at 5:36 o'clock, P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Verlon Jose
Verlon M. Jose, Legislative Chairman

APPROVED

on the 15 day of July, 2010

DISAPPROVED

at 5:45 o'clock, P.M.

Ned Norris, Jr.
NED NORRIS, JR., CHAIRMAN
TOHONO O'ODHAM NATION

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1 Returned to the Legislative Secretary on the 15 day of

2
3 July, 2010, at 5:40 o'clock, P.M.

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7 Evonne Wilson, Legislative Secretary

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ACTION: APPLYING INTERNAL REVENUE SERVICE REVENUE RULING 59-354 TO THE COMPENSATION OF ELECTED OFFICIALS AND AUTHORIZING SUBMITTAL OF CLAIMS FOR REIMBURSEMENT OF APPLICABLE TAXES FOR CALENDAR YEARS 2006-2010

Moved: COUNCILWOMAN OLIVIA LISTON

SECOND: COUNCILWOMAN FRANCES MIGUEL

DATE: JULY 15, 2010

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF ODAK 198.7	1. WAVALENE ROMERO (Nicholas Jose)	99.35	X			
	2. MARY LOPEZ ()	99.35	X			
SELLS 449.6	1. KIMBERLY LISTO ()	224.80	X			
	2. EVELYN B. JUAN MANUEL ()	224.80	X			
SCHUK TOAK 159.0	1. FRANCES B. CONDE (Fredrick Jose)	79.50	X			
	2. LINDA PARLEY (Agnes Joaquin)	79.50	X			
SAN XAVIER 204.7	1. FELICIA NUÑEZ ()	102.35	X			X
	2. OLIVIA VILLEGAS-LISTON (Eugene Enis)	102.35	X			
SAN LUCY 187.1	1. LORRAINE EILER ()	93.55	X			
	2. GLORIA RAMIREZ ()	93.55	X			
PISINEMO 184.5	1. CHESTER ANTONE (Tony Murrietta)	92.25	X			
	2. EDWARD MANUEL (Gerald Fayuant)	92.25	X			
HICKIWAN 174.5	1. MICHELLE ORTEGA ()	87.25	X			
	2. SANDRA ORTEGA ()	87.25	X			
GU VO 206.3	1. GRACE MANUEL ()	103.15	X			
	2. PAMELA ANGHILL (Angela Ortiz)	103.15	X			
GU ACHI 230.1	1. TIMOTHY L. JOAQUIN ()	115.05	X			
	2. CYNTHIA E. MANUEL ()	115.05	X			
CHUKUT KUK 277.0	1. ETHEL GARCIA (Sara Mae Williams)	138.50	X			
	2. VERLON M. JOSE ()	138.50	X			
BABOQIVARI 324.0	1. FRANCES MIGUEL (Roberta Harvey)	162.0	X			
	2. FRANCES G. ANTONE (Vernon Smith)	162.0	X			
TOTAL		2,595.50	2,595.50	-0-	-0-	-02-