

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Authorizing the Nation's Attorney General to file
an Amicus Curiae Brief with the Arizona Court of
Appeals in the Case of State of Arizona v.
Harry Dillon, Sr., Case No. 1-CA-TX-90-033)

RES. NO. 91-115

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3 WHEREAS, Harry Dillon, Sr. operates Dillon's Tobacco Barn in the
4 San Xavier District of the Tohono O'odham Nation, a retail
5 outlet for the sale of cigarettes and tobacco products to
6 members and non-members of the Tohono O'odham Nation; and

7 WHEREAS, the Arizona Department of Revenue performed two audits of
8 Dillon's Tobacco Barn and issued State luxury tax
9 assessments totalling \$1,358,708., for the period of
10 October 1981 through August 1983, and \$1,430,485., for the
11 period of September 1983 through December 1985, for the
12 purpose of collecting the state cigarette tax on sales
13 made at Dillon's Tobacco Barn; and

14 WHEREAS, Mr. Dillon contested the assessment of the State luxury
15 tax on several grounds, including that the State tax
16 imposed upon on-reservation sales made by a federally
17 licensed Indian trader, who himself happens to be a
18 Puyallup Indian, is preempted by federal laws which
19 regulate the on-reservation conduct of federally licensed
20 Indian traders; and

21 WHEREAS, the Arizona Board of Tax Appeals ruled that the State
22 luxury tax is preempted, a decision that was overturned
23 on appeal by the Maricopa County Superior Court; and

24 WHEREAS, Mr. Dillon has timely appealed the Superior Court's Order
25 to the Arizona Court of Appeals; and

26 WHEREAS, the issue presented on appeal is whether the State of
27 Arizona has the authority to impose its luxury tax on
28 sales of tobacco on the Nation's lands; and

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3 WHEREAS, in the event a final judgment is entered against Mr.
4 Dillon and the State luxury tax on sales made at Dillon's
5 Tobacco Barn is upheld, then, according to Mr. Dillon, he
6 will not be able to remain in business; and

7 WHEREAS, in the event Dillon's Tobacco Barn goes out of business,
8 the Nation will be adversely affected through the loss of
9 jobs for approximately seven members of the Nation who are
10 regularly employed at Dillon's Tobacco Barn, and the loss
11 of significant revenue from transaction privilege taxes
12 paid by Mr. Dillon to the Nation (estimated to average
13 approximately \$200,000., per year); and

14 WHEREAS, the Nation uses the revenues generated by its transaction
15 privilege tax to fund essential tribal governmental
16 services which promote, protect and provide for the
17 health, safety, education and general welfare of the
18 Nation and its members; and

19 WHEREAS, imposition of the State luxury tax would be an
20 impermissible intrusion on the Nation's sovereignty and
21 rights to self-government and economic development
22 designed to achieve self-sufficiency, by adversely
23 affecting or causing the cessation of other commercial
24 enterprises operating within the Nation (such as King's
25 Smokeshop), it would deprive the Nation of a much needed
26 source of revenue, and it would further state encroachment
27 on the Nation's sovereignty; and
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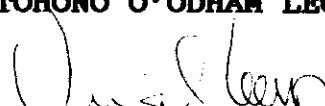
WHEREAS, the State of Arizona has also initiated administrative
steps to impose its transaction privilege tax on other
Reservation businesses, which if successful, would
substantially increase the fiscal damage to the Nation for
the foregoing reasons.

NOW, THEREFORE, BE IT RESOLVED THAT:

The Tohono O'odham Legislative Council hereby authorizes
the Nation's Attorney General to file an amicus curiae
brief with the Arizona Court of Appeals in Case No.
1-CA-TX-90-033 in order to oppose the State of Arizona's
imposition of the luxury tax upon on-Reservation sales
made by businesses operating within the Nation.

The foregoing Resolution was passed by the Tohono O'odham Council
on the 4th day of April, 1991 at a meeting at which a quorum was
present with a vote of 1,451.0 for; -0- against; 166.0 not
voting; 107.0 [8] absent, pursuant to the powers vested in the
Council by Section 1(c)(1) & (2), and (i)(1), and Section 2 (c) 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


for Edward D. Manuel, Legislative Chairman

8th day of April, 19 91.

ATTEST:


Teresa M. Choyguba, Legislative Secretary

8th day of April, 19 91.

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Said Resolution was submitted for approval to the office of the
Chairman of the Tohono O'odham Nation on the 8th day of
April, 1991, at 12:15 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


Ed Edward D. Manuel, Legislative Chairman

[] APPROVED) on the 10 day of April, 1991.
[] DISAPPROVED) at 8:33 o'clock, A.M.


ANGELO J. JOAQUIN, SR., Chairman
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 10th day of
April, 1991, at 11:24 o'clock, A.M.


Teresa M. Choyguha
Legislative Secretary

MOVED: COUNCILMAN EUGENE ENISSUBJECT: AUTHORIZING NATION'S ATTORNEY GEN. TO FILE ANSECOND: COUNCILWOMAN MARY ANN ANTONEAMICUS CURIAE BRIEF W/ARIZONA COURT OF APPEALS IN CASEDATE: APRIL 4, 1991OF ST. OF AZ V. HARRY DILLON SR. CASE NO.1-CA-TX-90-033

DISTRICTS	REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 229.0	1. Earl A. Francisco (Kenneth Chico)	114.5	X			
	2. Joann Garcia (Frances Miguel)	114.5	X			X
CHUKUT KUK 163.0	1. Rosita Ruiz (Rosemary Lopez)	81.5	X			
	2. Kenneth Williams (Harriet Toro)	81.5	X			
GU ACHI 166.0	1. Percy Lopez ()	83.0			X	X
	2. Alex Ramon (Fernando Joaquin)	83.0			X	
GU VO 114.0	1. Cross Antone (Juan Joe Cipriano)	57.0	X			
	2. Virgil Lewis (Michael Flores)	57.0	X			X
HICKIWAN 125.0	1. Lloyd Francisco (Billy C. Manuel)	62.5	X			
	2. Lenora Montana ()	62.5	X			
PISINENO 119.0	1. Johnson Jose ()	59.5	X			X
	2. Edward Manuel (Alex Antone)	59.5	X			
SAN LUCY 106.0	1. Albert Manuel, Jr. (Max P. Jose)	53.0	X			
	2. John Reno ()	53.0	X			X
SAN XAVIER 127.0	1. Eugene Enis, Sr. (Michael Rios)	63.5	X			
	** 2. Joanne C. Preston (Carmelita Mattias)	63.5	X			
SCHUK TOAK 107.0	1. JoAnn Francisco (David Valenzuela, Sr)	53.5				X
	2. Joseph Juan (Frances Francisco)	53.5				X
SELLS 310.0	1. Joseph F. Joaquin (Larry Garcia)	155.0	X			
	2. Andrew Patricio (Daniel Lopez)	155.0	X			
SIF OIDA 158.0	1. Mary Ann Antone (Mina Jose)	79.0	X			
	2. Willard Juan, Sr. (Melissa Gregorio)	79.0	X			X
TOTAL		1,724.0	1,451.0	-0-	166.0	107.0 [8]

**PASSED VOTES