

TITLE 22 - TAXATION

CHAPTER 1 - TOBACCO TAX

Legislative History: The "Tobacco Tax Ordinance," Ordinance No. 95-149, became effective retroactively on April 1, 1995 by Resolution No. 95-148; amended by Resolution No. 02-565 (amending Section 2.B.) on November 25, 2002; amended (to increase tax rates to reflect changes in Arizona law) and codified by Resolution No. 06-812 effective December 7, 2006; amended (to increase tax rates to reflect additional changes in Arizona law) by Resolution No. 06-839 effective December 7, 2006; amended by Resolution No. 07-133 effective March 16, 2007 (to repeal tax increases adopted by Resolutions No. 06-812 and 06-839).

Related History: Resolution No. 95-150, "Amending Transaction Privilege Tax Ordinance No. 3-81," was approved on April 13, 1995 and exempted the sale of tobacco product subject to tax levied by the Tobacco Tax Ordinance from taxes imposed under the Transaction Privilege Tax, Ordinance No. 03-81.

TITLE 22 - TAXATION

CHAPTER 1-TOBACCO TAX

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TITLE 22-TAXATION

CHAPTER 1-TOBACCO TAX

Section 1101 Purpose.

This Chapter imposes a tax on the sale of tobacco products sold within the Tohono O'odham Nation for purposes of accomplishing the following:

- (A) to reduce the harmful impact upon the health of the members of the Tohono O'odham Nation caused by the use of tobacco products;
- (B) to reduce the use of tobacco products, particularly among the young people of this Nation;
- (C) to resist the attempts of the State of Arizona to impose state taxes upon on-reservation activities; and
- (D) to defray the necessary and ordinary expenses of the Tohono O'odham Nation.

Section 1102 Levy of Tobacco Tax.

(A) There is levied and shall be collected by the Treasurer of the Nation, or the Chief Financial Officer of the Nation in lieu of an appointed Treasurer, a tax upon every person engaging in the business of selling tobacco products at retail within the Tohono O'odham Nation.

- (B) Such tax is levied on the sale of tobacco products in the following amounts:
- (1) On each cigarette, 5 cents.
 - (2) On smoking tobacco, snuff, fine cut chewing tobacco, cut and granulated tobacco, shorts and refuse of fine cut chewing tobacco, and refuse, scraps, clippings, cuttings and sweepings of tobacco, excluding tobacco powder or tobacco products used exclusively for agricultural or horticultural purposes and unfit for human consumption, 11.3 cents per ounce or major fraction thereof.
 - (3) On all cavendish, plug or twist tobacco, 2.8 cents per ounce or fractional part thereof.
 - (4) On each twenty small cigars or fractional part thereof weighing not more than three pounds per thousand, 22.3 cents.
 - (5) On cigars of all descriptions except those included in paragraph 4 of this

subsection, made of tobacco or any substitute therefore, if manufactured to retail at not more than 5 cents each, 11.0 cents on each three cigars, but if manufactured to retail at more than 5 cents each, 11.0 cents on each cigar.

Section 1103 Collection and Enforcement.

(A) Notwithstanding any provision of Ordinance No. 03-81 to the contrary, the tax levied by this Chapter shall be due and payable to the Nation on the fifteenth day of each month following the month in which the taxable sales were made.

(B) Persons subject to the tax levied by this Chapter shall otherwise comply with all requirements of Ordinance No. 03-81, including the licensing and reporting requirements.

(C) In addition to the reporting requirements of Ordinance 03-81, persons subject to the tax levied by this Chapter shall submit to the treasurer of the Nation, or Chief Financial Officer of the Nation in lieu of an appointed Treasurer, with the payment of the tax imposed pursuant to this Chapter, monthly written activity reports which account for all sales subject to taxation under this Chapter.

(D) The Treasurer of the Nation, or Chief Financial Officer of the Nation in lieu of an appointed Treasurer, shall enforce the provisions of this Chapter and shall collect the taxes due hereunder in accordance with applicable law including the provisions of Ordinance No. 03-81.

Section 1104 Interpretation.

The provisions of this Chapter formerly appeared within Ordinance No. 95-149, as amended, and any references within the Tohono O'odham Code or the other laws of the Nation to the provisions of Ordinance No. 95-149 or its amendments shall be construed as referring to the corresponding, renumbered provisions of this Chapter.

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Enacting the Tobacco Tax Ordinance)**

RESOLUTION NO. 95-148

WHEREAS, Article VI, Section 1(c) of the Nation's Constitution authorizes the Legislative Council to enact ordinances as an exercise of the inherent sovereign powers of the Nation; and

WHEREAS, Article VI, Section 1(d)(4) of the Nation's Constitution authorizes the Legislative Council to levy taxes on any person, corporation or association residing or doing business within the Nation; and

WHEREAS, in accordance with Resolution No. 94-119, it is in the Nation's interests to adopt an ordinance for the levy of taxes upon the sale of tobacco products within the Nation.

NOW, THEREFORE, BE IT RESOLVED THAT:

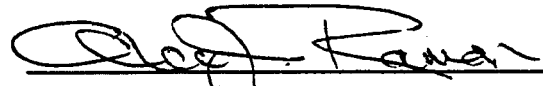
- 1. The Tobacco Tax Ordinance, in the form attached hereto, is hereby enacted as an ordinance of the Tohono O'Odham Nation and shall be designated Ordinance Number 95-149.**
- 2. The Nation's Chairman is authorized and directed to take all reasonable and necessary steps to implement this Resolution and the Tobacco Tax Ordinance.**

RESOLUTION NO. 95-148
(Enacting the Tobacco Tax Ordinance)

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The foregoing Resolution was passed by the Tohono O'Odham Legislative Council on the 5TH day of APRIL, 1995 at a meeting at which a quorum was present with a vote of 1,583.0 FOR; -0- AGAINST; -0- NOT VOTING; and 180.0 [08] ABSENT, pursuant to the powers vested in the Council by Section 1(c) & (d)(4) 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).

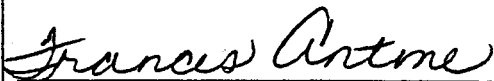
TOHONO O'ODHAM LEGISLATIVE COUNCIL



Alex J. Ramon, Legislative Chairman

11th day of April, 1995

ATTEST:



Frances Antone, Legislative Secretary


10th day of April, 1995

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 11th day of April, 1995 at 10:22 o'clock, A.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.

RESOLUTION NO. 95-148
(Enacting the Tobacco Tax Ordinance)
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TOHONO O'ODHAM LEGISLATIVE COUNCIL



Alex J. Ramon, Legislative Chairman

APPROVED

on the 13 day of April, 1995

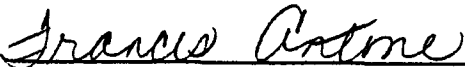
DISAPPROVED

at 9:42 o'clock, 1.M.


SYLVESTER LISTO, Chairman
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 13th day of

April, 1995, at 10:48 o'clock, A.M.


Frances Antone, Legislative Secretary

TOHONO O'ODHAM NATION
TOBACCO TAX ORDINANCE

ORDINANCE NO. 95-149

SECTION 1: Purpose

This Ordinance imposes a tax on the sale of tobacco products sold within the Tohono O'odham Nation for purposes of accomplishing the following:

1. to reduce the harmful impact upon the health of the members of the Tohono O'odham Nation caused by the use of tobacco products;
2. to reduce the use of tobacco products, particularly among the young people of this Nation;
3. to resist the attempts of the State of Arizona to impose state taxes upon on-reservation activities; and
4. to defray the necessary and ordinary expenses of the Tohono O'odham Nation.

SECTION 2: Levy of Tobacco Tax

- A. There is levied and shall be collected by the Treasurer of the Nation, or the Chief Financial Officer of the Nation in lieu of an appointed Treasurer, a tax upon every person engaging in the business of selling tobacco products at retail within the Tohono O'odham Nation.

ORDINANCE NO. 95-149

Tobacco Tax Ordinance

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B. Such tax is levied on the sale of tobacco products in the following amounts:

1. On each cigarette, 2 cents.
2. On smoking tobacco, snuff, fine cut chewing tobacco, cut and granulated tobacco, shorts and refuse of fine cut chewing tobacco, and refuse, scraps, clippings, cuttings and sweepings of tobacco, excluding tobacco powder or tobacco products used exclusively for agricultural or horticultural purposes and unfit for human consumption, 4.5 cents per ounce or major fraction thereof.
3. On all cavendish, plug or twist tobacco, 1.1 cents per ounce or fractional part thereof.
4. On each twenty small cigars or fractional part thereof weighing not more than three pounds per thousand, 8.9 cents.
5. On cigars of all descriptions except those included in paragraph 4 of this subsection, made of tobacco or any substitute therefor, if manufactured to retail at not more than 5 cents each, 4.4 cents on each three cigars, but if manufactured to retail at more than 5 cents each, 4.4 cents on each cigar.

ORDINANCE NO. 95-149

Tobacco Tax Ordinance

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SECTION 3: Collection and Enforcement

- A. Notwithstanding any provision of Ordinance No. 03-81 to the contrary, the tax levied by this Ordinance shall be due and payable to the Nation on the fifteenth day of each month following the month in which the taxable sales were made.
- B. Persons subject to the tax levied by this Ordinance shall otherwise comply with all requirements of Ordinance No. 03-81, including the licensing and reporting requirements.
- C. In addition to the reporting requirements of Ordinance 03-81, persons subject to the tax levied by this Ordinance shall submit to the Treasurer of the Nation, or Chief Financial Officer of the Nation in lieu of an appointed Treasurer, with the payment of the tax imposed pursuant to this Ordinance, monthly written activity reports which account for all sales subject to taxation under this Ordinance.
- D. The Treasurer of the Nation, or Chief Financial Officer of the Nation in lieu of an appointed Treasurer, shall enforce the provisions of this Ordinance and shall collect the taxes due hereunder in accordance with applicable law including the provisions of Ordinance No. 03-81.

ORDINANCE NO. 95-149

Tobacco Tax Ordinance

Page 4 of 4

SECTION 4: Effective Date

The Effective date of this Ordinance is April 1, 1995.

The foregoing Ordinance was passed by the Tohono O'Odham Legislative Council on the 5TH day of APRIL, 1995 at a meeting at which a quorum was present with a vote of 1,583.0 FOR; -0- AGAINST; -0- NOT VOTING; and 180.0 (08) ABSENT, pursuant to the powers vested in the Council by Section 1(c) & (d)(4) 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



Alex J. Ramon, Legislative Chairman

ATTEST:



Frances Antone, Legislative Secretary

ORDINANCE APPROVED this 17 day of April, 1995.



SYLVESTER LISTO, Chairman
TOHONO O'ODHAM NATION

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Amending Transaction Privilege Tax Ordinance No. 3-81)

RESOLUTION NO. 95-150

WHEREAS, by Resolution No. 95-148 the Legislative Council enacted the Tobacco Tax Ordinance, Ordinance No. 95-149, which levies a tax upon every person engaging in the business of selling tobacco products within the Tohono O'Odham Nation; and

WHEREAS, the Legislative Council has determined that the Nation will be best served to exempt from the levy of taxes imposed under the Transaction Privilege Tax Ordinance, Ordinance No. 3-81, the sale of tobacco products which are subject to the tax levied by the Tobacco Tax Ordinance, Ordinance No. 95-149; and

WHEREAS, the Legislative Council has determined that in accordance with Resolution No. 94-319, the Nation will be best served to amend Section 5(B) (13) of the Transaction Privilege Tax Ordinance, Ordinance No. 3-81, to limit the ability of the State of Arizona to levy taxes upon on-reservation activities.

NOW, THEREFORE, BE IT RESOLVED THAT:

The Transaction Privilege Tax Ordinance, Ordinance No. 3-81, as amended by Resolution Nos. 224-84, 338-87, and 357-87, is hereby

RESOLUTION NO. 95-150

(Amending Transaction Privilege Tax Ordinance No. 3-81)

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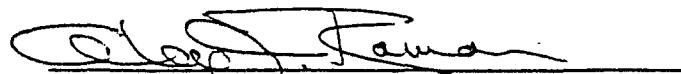
amended, effective April 1, 1995, by replacing subsection 5(B) (13)

with the following:

13. The sale of tobacco products which are subject to the tax
levied by the Tobacco Tax Ordinance, Ordinance No. 95-149.

The foregoing Resolution was passed by the Tohono O'Odham Legislative Council on the 5TH day of APRIL, 1995 at a meeting at which a quorum was present with a vote of 1.583.0 FOR; -0- AGAINST; -0- NOT VOTING; and 180.0 [08] ABSENT, pursuant to the powers vested in the Council by Section 1(c) & (d)(4) 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).

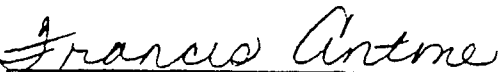
TOHONO O'ODHAM LEGISLATIVE COUNCIL



Alex J. Ramon, Legislative Chairman

11th day of April, 1995

ATTEST:



Frances Antone, Legislative Secretary

10th day of April, 1995

RESOLUTION NO. 95-150


(Amending Transaction Privilege Tax Ordinance No. 3-81)

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Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 11th day of April, 1995 at 10:14 o'clock, A.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



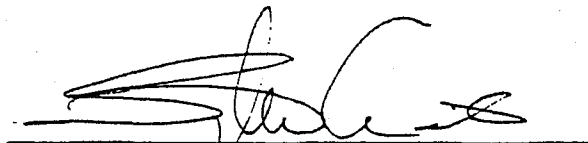
Alex J. Ramon, Legislative Chairman

APPROVED

on the 13 day of April, 1995

DISAPPROVED

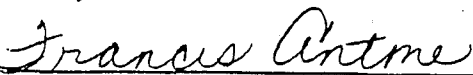
at 9:51 o'clock, A.M.



SYLVESTER LISTO, Chairman
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 13th day of

April, 1995, at 10:49 o'clock, A.M.



Frances Antone, Legislative Secretary

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Amending Tobacco Tax Ordinance, Ordinance No. 95-149, to Increase Tax Rates)

RESOLUTION NO. 02-565

1 **WHEREAS, by Resolution No. 95-148 the Legislative Council enacted the Tobacco Tax Ordinance,**
2 **Ordinance No. 95-149, which levies a tax upon every person engaging in the business**
3 **of selling tobacco products within the Tohono O'odham Nation; and**

4 **WHEREAS, one purpose of the Ordinance is "to resist the attempts of the State of Arizona to**
5 **impose state taxes upon on-reservation activities" (Ordinance No. 95-149, Section**
6 **1(1)); and**

7 **WHEREAS, because the Nation's tax is currently levied at a rate equal to the Arizona tobacco tax,**
8 **the State of Arizona does not collect its tobacco tax on the Nation; and**

9 **WHEREAS, on November 5, 2002, Arizona voters approved Proposition 303, which will amend**
10 **Arizona law to increase the state tax on tobacco sales; and**

11 **WHEREAS, in order to ensure that the State of Arizona is prevented from collecting the amount**
12 **of the increased tax on the Nation and to accomplish the Ordinance's other purposes,**
13 **it is necessary to amend Section 2(B) of the Tobacco Tax Ordinance to increase the tax**
14 **rates therein as follows:**

- 15 **"B. Such tax is levied on the sale of tobacco products in the following amounts:**
- 16 **1. On each cigarette, ~~2~~ 5 cents.**
 - 17 **2. On smoking tobacco, snuff, fine cut chewing tobacco, cut and granulated**
18 **tobacco, shorts and refuse of fine cut chewing tobacco, and refuse, scraps,**
19 **clippings, cuttings and sweepings of tobacco, excluding tobacco powder or**
20 **tobacco products used exclusively for agricultural or horticultural**
21 **purposes and unfit for human consumption, ~~4-5~~ 11.3 cents per ounce or**
22 **major fraction thereof.**
 - 23 **3. On all cavendish, plug or twist tobacco, ~~1-1~~ 2.8 cents per ounce or fractional**
24 **part thereof.**
 - 25 **4. On each twenty small cigars or fractional part thereof weighing not more**
26 **than three pounds per thousand, ~~8-9~~ 22.3 cents.**
 - 27 **5. On cigars of all descriptions except those included in paragraph 4 of this**
28 **subsection, made of tobacco or any tobacco substitute therefor, if**
29 **manufactured to retail at not more than 5 cents each, ~~4-4~~ 11.0 cents on each**

RESOLUTION NO. 02-565

(Amending Tobacco Tax Ordinance, Ordinance No. 95-149, to Increase Tax Rates)

Page 2 of 3

1 three cigars, but if manufactured to retail at more than 5 cents each, 4-4
2 11.0 cents on each cigar." ; and

3 WHEREAS, the Legislative Council Commerce and Budget and Finance Committees have
4 reviewed these proposed amendments and recommend their adoption.

5 NOW, THEREFORE, BE IT RESOLVED by the Tohono O'odham Legislative Council that it
6 hereby approves the above amendments to Section 2(B) of the Tobacco Tax
7 Ordinance, Ordinance No. 95-149.

8 BE IT FURTHER RESOLVED these amendments shall become effective at midnight on November
9 25, 2002.

10 BE IT FINALLY RESOLVED that the Tobacco Tax Ordinance shall be reprinted in its entirety
11 showing a revision date of November 25, 2002.

12 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 25TH Day
13 of NOVEMBER, 2002 at a meeting at which a quorum was present with a vote of 2,417.5 FOR; -0-
14 AGAINST; -0- NOT VOTING; and [04] ABSENT, pursuant to the powers vested in the Council by
15 Section 1 (c)(1), (2) and (d)(4) of Article VI of the Constitution of the Tohono O'Odham Nation,
16 adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy
17 Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act
18 of June 18, 1934 (48 Stat. 984).

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20 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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24 Rita A. Martinez, Legislative Chairwoman

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26 25th day of November, 2002

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28 ATTEST:

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32 Julianna Saraficio, Acting Legislative Secretary

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34 25 day of November, 2002.

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37 Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham
38 Nation on the 25th day of November, 2002 at 4:56 o'clock, P.M.,
39 pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective
40 upon his approval or upon his failure to either approve or disapprove it within 48 hours of
41 submittal.

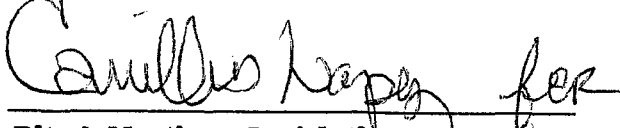
RESOLUTION NO. 02-565

(Amending Tobacco Tax Ordinance, Ordinance No. 95-149, to Increase Tax Rates)

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TOHONO O'ODHAM LEGISLATIVE COUNCIL



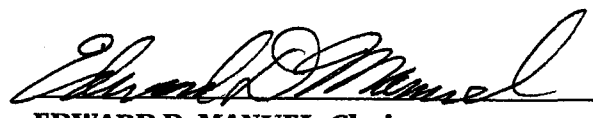
Rita A. Martinez, Legislative Chairwoman

APPROVED

on the 25th day of November, 20 02

DISAPPROVED

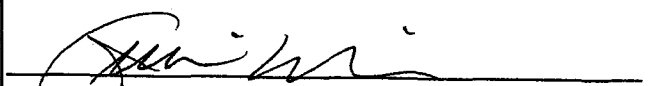
at 4:59 o'clock, P.M.



**EDWARD D. MANUEL, Chairman
TOHONO O'ODHAM NATION**

Returned to the Legislative Secretary on the 25 day of

November, 20 02, at 5:03 o'clock, P.M.


Julianna Saraficio, Acting Legislative Secretary

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Repealing Tobacco Tax Increases)**

RESOLUTION NO. 07-133

1 **WHEREAS, the Tohono O'odham Legislative Council is vested with the power to levy taxes on any**
2 **person or entity doing business within the Nation (Constitution of the Tohono**
3 **O'odham Nation, Article VI, Section 1(d)(4)); and**

4 **WHEREAS, federal and state court opinions and Arizona statutes permit the State of Arizona to**
5 **tax certain sales of tobacco products on Indian reservations within Arizona; and**

6 **WHEREAS, pursuant to A.R.S. §42-3302, if an Indian tribe within Arizona levies a tobacco tax at**
7 **a rate equal to the Arizona tobacco tax, the State of Arizona tax rate will be zero**
8 **percent; and**

9 **WHEREAS, by Resolution No. 95-148 the Legislative Council enacted the Tobacco Tax Ordinance,**
10 **Ordinance No. 95-149, which levied a tax upon every person engaging in the business**
11 **of selling tobacco products within the Tohono O'odham Nation; and**

12 **WHEREAS, in response to tobacco tax increases enacted by Arizona voters in 2002, the Nation**
13 **increased its tobacco tax rates to match Arizona tax rates (Resolution No. 02-565); and**

14 **WHEREAS, on November 7, 2006, Arizona voters approved Propositions 201 and 203, which**
15 **amended Arizona law to further increase the state tax on tobacco sales; and**

16 **WHEREAS, in response, the Legislative Council passed Resolutions No. 06-812 and No. 06-839 to**
17 **(1) codify its tobacco tax law as Tohono O'odham Code Title 22, Chapter 1 and (2)**
18 **increase the Nation's tobacco tax rate to match the increases in the state tax that**
19 **became effective December 7, 2006; and**

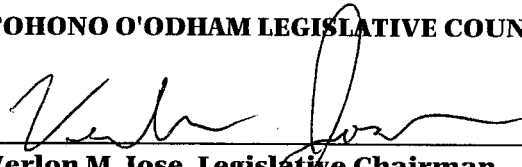
20 **WHEREAS, after the Arizona tax increases took effect and the Nation increased its tax, the**
21 **Arizona Attorney General issued opinions determining that the tax increases levied**
22 **by Propositions 201 and 203 would not apply to on-reservation sales by tribal**
23 **members and tribal entities; and**

24 **WHEREAS, it is therefore in the Nation's best interest to repeal the tax increases imposed by**
25 **Resolutions No. 06-812 and No. 06-839.**

26 **NOW, THEREFORE, BE IT RESOLVED by the Tohono O'odham Legislative Council that it**
27 **hereby repeals the tobacco tax increases imposed by Resolutions No 06-812 and No.**
28 **06-839; provided that the Nation's Tobacco Tax shall remain codified as Tohono**
29 **O'odham Code Title 22, Chapter 1, as dated for reference January 2007.**

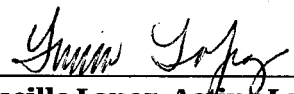
The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 07TH Day of MARCH, 2007 at a meeting at which a quorum was present with a vote of 1,173.5 FOR; 516.6 AGAINST; 583.3 NOT VOTING; and 167.4 [03] ABSENT, pursuant to the powers vested in the Council by Section 1 (c)(1), (c)(2), and (d)(4) 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


Verlon M. Jose, Legislative Chairman

14 day of March, 2007

ATTEST:


Lucille Lopez, Acting Legislative Secretary

07 day of March, 2007.

Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono O'Odham Nation on the 14 day of March, 2007 at 11:28 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, Legislative Chairman

APPROVED

on the 16 day of March, 2007

DISAPPROVED

at 11:03 o'clock, a.m.



VIVIAN JUAN-SAUNDERS, CHAIRWOMAN
TOHONO O'ODHAM NATION

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RESOLUTION NO. 07-133
(Repealing Tobacco Tax Increases)
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Returned to the Legislative Secretary on the 16 day of
March, 2007, at 11:03 o'clock, A.M.



Lucille Lopez, Acting Legislative Secretary