

TRANSACTION PRIVILEGE TAXES

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## TRANSACTION PRIVILEGE TAXES

STATEMENT OF PURPOSE: An ordinance to regulate and license certain persons engaged in business on the Tohono O’odham Nation, including on all lands identified in Article I, Section 1 of the Constitution of the Tohono O’odham Nation; to raise public money to be used in liquidating outstanding obligations of the Tohono O’odham Nation; and to aid in defraying the necessary and ordinary expenses of the Tohono O’odham Nation by a levy and imposition of privilege taxes measured by the amount or volume of business transacted on the Tohono O’odham Nation.

BE IT ENACTED by the Tohono O’odham Legislative Council , as follows:

### Section 1. Short Title

This ordinance may be cited as the Transaction Privilege Taxes Ordinance of the Tohono O’odham Nation.

### Section 2. Interpretation

This ordinance shall be deemed an exercise of the police power of the Tohono O’odham Nation for the protection of the public welfare, health, peace and morals of the people of the Nation and all provisions of this ordinance shall be liberally construed for the accomplishment of this purpose.

### Section 3. Definitions

In this ordinance, unless the context otherwise requires:

- (1) “Business” includes all activities or acts, personal or corporate, engaged in or caused to be engaged in with the object of gain, benefit or advantage, either directly or indirectly, but not casual activities or sales.
- (2) “Contracting” means engaged in a business as a contractor.
- (3) “Contractor” is synonymous with the term “Builder” and means a person, firm, partnership, corporation, association or other organization, or a combination of any of them, who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subcontract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structure or works in connection therewith, and includes subcontractors and specialty contractors. For all purposes of taxation or deduction, this definition shall govern without regard to whether or not the contractor is acting in fulfillment of a contract.

- (4) “Engaging” when used with reference to engaging or continuing in business, includes the exercise of corporate or franchise powers.
- (5) “Gross income” means the gross receipts of a taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible personal property, or service, or both, and without any deduction on account of losses.
- (6) “Gross proceeds of sales” means the value proceeding or accruing from the sale of tangible personal property without any deduction on account of the cost of property sold, expense of any kind, or losses, but cash discounts allowed and taken on sales shall not be included as gross income.
- (7) “Gross income” or “gross proceeds of sales” shall not be construed to include goods, wares or merchandise, or value thereof, returned by customers when the sale price is refunded either in cash or by credit, nor the sale of any article accepted as part payment on any new article sold, if and when the full sale price of the new article is included in the gross income or gross proceeds of sale, as the case may be.
- (8) “Gross receipts” means the total amount of the sale, lease or rental price, as the case may be, of the retail sales of retailers, including any services that are a part of the sales, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property of every kind or nature, and any amount for which credit is allowed by the seller to the purchaser without any deduction therefrom on account of the cost of the property sold, materials used, labor or service performed, interest paid, losses or any other expense, but does not include cash discounts allowed and taken nor the sale price of property returned by customers when the full sale price thereof is refunded either in cash or by credit.
- (9) “Person” or “company” includes individual, firm, partnership, joint venture, association, corporation, municipal corporation, estate, trust or any other group or combination acting as a unit, and the plural as well as the singular number.
- (10) “Prime contracting” means engaging in business as a prime contractor.
- (11) “Prime contractor” means the contractor who supervises, performs or coordinates the construction, alteration, repair, addition, subtraction, improvement, movement, wreckage or demolition of any building , highway, road, railroad, excavation or other structure, project, development or improvement including the contracting, if any, with any subcontractors or specialty contractors and is responsible for the completion of the contract.
- (12) “Retailer” includes every person engaged in the business of making sales at retail, and when in the opinion of the Treasurer it is necessary for the efficient administration of this ordinance, includes dealers, distributors, supervisors, employers and salesmen, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the

tangible personal property sold by them, whether in making sales on their own behalf or on behalf of the dealers, distributors, supervisors or employers.

- (13) “Sale” means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatever, of tangible personal property, for a consideration.
- (14) “Sale at retail” means a sale for any purpose other than for resale in the form of tangible personal property, but transfer of possession, lease and rental as used in the definition of sale means only such transactions as are found upon investigation to be in lieu of sales as defined without the words lease or rental.
- (15) “Tangible personal property” means personal property which may be seen, weighed, measured, felt, touched or is in any other manner perceptible to the senses.
- (16) “Taxpayer” means any person liable for any tax imposed by this ordinance.
- (17) “Tax year” or “taxable year” means either the calendar year or the taxpayer’s fiscal year when permission is obtained from the Treasurer to use a fiscal year as the tax period instead of the calendar year.
- (18) “Treasurer” means the Treasurer of the Tohono O’odham Nation.

Section 4. Privilege License:

- A. Prime Contractor License: Every person desiring to engage or continue in the business of prime contractor on the Tohono O’odham Nation shall, before commencing any work on the job site, make application to the Treasurer, upon forms prescribed by the Treasurer, for a privilege license, accompanied by a fee of five dollars and a tax payment bond, with a surety or sureties satisfactory to the Treasurer, for the payment of all privilege taxes imposed by this ordinance.
  - (1) The payment bond shall be in an amount equal to the amount of the privilege taxes imposed by this ordinance and shall be payable to the Tohono O’odham Nation upon demand of the Treasurer at any time after the taxes levied under this ordinance have become due and payable. The Tohono O’odham Nation shall have the right to sue on such payment bond in the Tohono O’odham Judicial Court or in any other court of competent jurisdiction for the amount, or the balance thereof, of unpaid taxes at the time of institution of such suit.
  - (2) The Treasurer is authorized to waive the requirement of a payment bond for any contractor owned or operated by the Tohono O’odham Nation, or for any contractor organized or operating pursuant to the laws of the Tohono O’odham Nation.

- (3) Such licenses shall be effective for a period equal to the term or terms of any contract, and any and all modifications thereof, pursuant to which the contractor is engaging in business on the Tohono O'odham Nation. Such contractor shall not engage or continue in business until he has obtained or renewed a privilege license.
- B. Retail License: Every person, other than a prime contractor, who receives gross proceeds of sales or gross income upon which a privilege tax is imposed by this ordinance, desiring to engage or continue in business on the Tohono O'odham Nation shall make application to the Treasurer, upon forms prescribed by the Treasurer, for a privilege license, accompanied by a fee of five dollars. Such licenses shall be effective for a period of five years. Such person shall not engage or continue in business until he has obtained or renewed a privilege license.
- C. With respect to every application for a license filed, and with respect to every license issued pursuant to this Section:
- (1) If the applicant is not in arrears in payment of any tax imposed by this ordinance, the Treasurer shall issue a license authorizing him to engage and continue in such business, upon condition that he complies with this ordinance. The license shall specify whether the business is located on or off the Tohono O'odham Nation.
  - (2) The privilege license shall not be transferable upon a change of ownership or change of location of the business.
  - (3) When the ownership or location of a business upon which a privilege tax is imposed by this ordinance has been changed, the licensee shall surrender the license to the Treasurer. The license shall be reissued to the new owners or for the new location upon application by the taxpayer and payment by him of the five dollar fee.
  - (4) A person engaged in or conducting a business in two or more locations shall procure a license for each location.

Section 5. Levy of Tax: Contractors: Retailers

There is levied and there shall be collected by the Treasurer privilege taxes at an amount equal to five per cent (5%) of the gross proceeds of sales or gross income from the business upon every person engaging or continuing within the exterior boundaries of the Tohono O'odham Nation in the following businesses:

- A. Prime contracting, but an amount equal to thirty-five per cent of gross income or gross proceeds of sale in lieu of any labor employed in construction, improvements or repairs shall not be subject to such tax. Subcontractors or others who perform services in respect to any improvement, building, highway, road, railroad, excavation or other structure, project, development or improvement shall not be subject to such tax if they can

demonstrate that the job was within the control of a licensed prime contractor or prime contractors and that such prime contractor and his surety(ies) are liable for such tax upon the gross income, gross proceeds of sale or gross receipts attributable to the job and from which the subcontractors or others were paid.

B. Selling any tangible personal property at retail.

(1) Exemptions: the tax shall not apply to gross proceeds of sales or gross income from:

- a. The sale of stocks and bonds.
- b. Professional or personal service occupations, or business which involve sales or transfers of tangible property only as inconsequential element thereof.
- c. The sale of native baskets, silverware, pottery and artifacts produced on the Tohono O'odham Nation and sold for resale.
- d. The sale of livestock, poultry, crops, plants and plant products produced on the Tohono O'odham Nation.
- e. Sale of electricity, current, power or gas, natural or artificial, and of water.
- f. Sale of newspapers, magazines or other periodicals and publications, including advertising and notices, when published within the Tohono O'odham Nation.
- g. The sale by retailers, other than retailers in the grocery or vending machine business, of articles used by human beings for food, drink or condiment, where such articles are customarily prepared and served in cooked or prepared form for direct consumption by patrons.
- h. Sales of motor fuel and use fuel upon which the State of Arizona has imposed a tax under the provisions of A.R.S. 28-1501 et seq., 28-1551 et seq.
- i. Sales of tangible personal property to a person who holds a valid privilege tax license for engaging or continuing in the business of contracting under Section 4 of this ordinance when the tangible personal property so sold is incorporated or fabricated by the contractor into the structure, project, development or improvement in fulfillment of a contract therefor.
- j. The sale of drugs on the prescription of a member of the medical, dental or veterinarian profession who is licensed by law to administer such drugs; the sale of insulin; prosthetic appliances; syringes; eyeglasses; contact lenses; hearing aids; hospital beds; neck, back, arm or leg braces, crutches, wheelchairs, corrective shoes or materials prescribed or recommended by a physician, dentist or other licensed professional.

k. Sales in interstate or foreign commerce when prohibited from being so taxed by the Constitution of the United States.

l. Sales of tangible personal property by any non-profit organization organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder of individual.

m. The sale of tobacco products which are subject to the tax levied by the Tobacco Tax Ordinance, Ordinance No. 95-149.<sup>1</sup>

n. The sale of items purchased with United States Department of Agriculture food coupons issued under the Food Stamp Act of 1977, as amended, 7 U.S.C. 2011 et seq.<sup>2</sup>, or with food instruments issued under section 17 of the Child Nutrition Act of 1966, as amended, 42 U.S.C. 1786 et seq.<sup>3</sup>

(2) Reduction in Transaction Privilege Tax due to Applicability of Arizona Transaction Privilege Tax. Gross receipts from the sale of tangible personal property which are subject to the Arizona Transaction Privilege Tax shall be taxed at the rate of two per cent (2%) of the gross proceeds of sales or gross income. Persons who claim this reduction shall provide the Treasurer proof of payment of Arizona Transaction Privilege Tax to the Treasurer.

#### Section 6. Mandatory Issuance of Receipt of Transaction

Every person engaging or continuing within the Tohono O'odham Nation in the business of prime contracting, as defined by Section 3, shall present to the purchaser of such prime contracting a written receipt of the gross income or gross proceeds of sale from such activity and shall separately state the additional charge made to cover the taxes levied pursuant to Section 5, subsection A.

#### Section 7. Monthly Return; Time for Payment; Extension of Time

- A. Except as provided in subsection B of this Section, the taxes levied under this ordinance shall be due and payable monthly on or before the first day of the second month next succeeding the month in which the tax accrues, and shall be delinquent five days thereafter.
- B. The Treasurer may, for any taxpayer whose estimated annual liability for taxes imposed by this ordinance is between two hundred and five hundred dollars, authorize such taxpayer to pay such taxes on a quarterly basis. The Treasurer may, for any taxpayer whose estimated annual liability for taxes imposed by this ordinance is two hundred dollars or less, authorize such taxpayer to pay such taxes on an annual basis.

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<sup>1</sup> Amended by Resolution No. 95-150

<sup>2</sup> Amended by Resolution No. 357-87 (*with United States...7 U.S.C. 2011 et seq.*)

<sup>3</sup> Amended by Resolution No. 338-87 (*addition of item n*)

- C. The taxpayer shall on or before the day on which the taxpayer's tax payments are due and payable prepare a return showing the amount of the tax for which he is liable for the preceding month, and shall mail the return together with a remittance, in the form required by Section 9, for the amount of the tax, to the Treasurer. The return shall be verified by the oath of the taxpayer or an authorized agent.
- D. Any taxpayer who fails to pay such tax within five days from the date upon which the payment becomes due shall be subject to and shall pay a penalty of ten per cent per month or fraction of a month from the time the tax was due and payable until paid.
- E. The monthly returns required under this ordinance shall be made upon forms prescribed by the Treasurer.
- F. The Treasurer, for good cause, may extend the time for making any return required by this ordinance and may grant such reasonable additional time within which to make the return as he deems proper, but the time for filing the return shall not be extended beyond the first day of the third month next succeeding the regular due date of the return.

Section 8. Method of Payment

All remittances of taxes imposed by this ordinance shall be made by bank draft, check, cashier's check, money order or money to the Treasurer, who shall issue receipts therefor to the taxpayers, but no remittance other than cash shall be final discharge of liability for the tax levied by this ordinance until it has been paid in cash to the Treasurer.

Section 9. Refunds of Excess Payments

If, upon examination of a monthly return made under this ordinance it appears that an amount of tax has been paid in excess of the tax lawfully due, then the excess amount shall be credited against any tax then due from such taxpayer under any other monthly return. The Treasurer, in his discretion, may issue to the taxpayer a credit voucher for any balance of the excess, or may, upon an audit of the taxpayer's accounts and records, refund to the taxpayer such amount as may be found due.

Section 10. Deficiencies; Penalty; Notice; Payment

- A. If a taxpayer fails to file a return, or if the Treasurer is not satisfied with the return and payment of the amount of tax required by this ordinance to be paid to the Tohono O'odham Nation by any person, he may examine the return and recompute and re-examine the amount required to be paid, based upon the facts contained in the return or upon any information within his possession or which comes into his possession. All additional amounts determined to be due under the provisions of this Section shall bear interest at the rate of one per cent per month or fraction of a month from the time the additional tax was due and payable until paid.



- B. If any part of the deficiency for which a determination of an additional amount due is made is found to be due to negligence or intentional disregard of this ordinance, but without intent to defraud, a penalty of ten per cent of such amount shall be added, plus interest at the rate of one per cent per month or fraction of a month from the time the additional tax was due and payable until paid.
- C. If any part of the deficiency for which a determination of an additional amount due is made is found to be due to fraud, or to have been done with an intent to evade this ordinance, a penalty of twenty-five per cent of such amount shall be added, plus interest at the rate of one per cent per month or fraction of a month from the time the additional tax was due and payable until paid.
- D. The Treasurer shall give to the taxpayer written notice of his determination of a deficiency by mail, and such deficiency, plus penalties and interest, shall be due and payable thirty days after receipt of the notice and demand, or if an appeal is taken to the Treasurer within ten days after the order or decision of the Treasurer has become final.
- E. Except in the case of a fraudulent return, failure or refusal to make a return, every notice of a determination of an additional amount due shall be mailed within three years after the fifteenth day of the calendar month following the period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires later.

Section 11. Appeal to Treasurer; Petition for Redetermination; Finality of Order

- A. Any person from whom an amount is determined to be due under this ordinance may apply to the Treasurer by a petition in writing within thirty days after the notice required by Section 10 is received by him, or within such additional time as allowed by the Treasurer, for a hearing, correction or redetermination of the action taken by the Treasurer. The petition shall set forth the reasons why such hearing, correction or redetermination should be granted and the amount in which the tax should be reduced.
- B. The Treasurer shall promptly consider the petition and shall grant a hearing, if requested.
- C. If a petition for hearing, correction or redetermination is not filed within such thirty day period, or within such additional time allowed by the Treasurer, the amount determined to be due shall become final at the expiration thereof, and such person shall be deemed to have waived and abandoned the right to question the amount determined to be due.
- D. The orders or decisions made upon filing a petition for a hearing, correction or redetermination shall become final thirty days after notice thereof has been received by the petitioner.

Section 12. Payment of Tax Under Protest; Taxpayer's Action; Payment of Judgment in Favor of Taxpayer

- A. No injunction, writ or mandamus or other legal or equitable process shall issue in an action in any court against an officer of the Tohono O'odham Nation to prevent or enjoin the collection of any tax, penalty or interest due under this ordinance.
- B. After payment of any tax, penalty or interest under protest verified by oath and setting forth the grounds of objection to the legality of the tax, a taxpayer may bring action against the Treasurer in the Tohono O'odham Judicial Court for the recovery of the tax, interest or penalty so paid under protest. The action shall not be commenced more than thirty days after the order or decision of the Treasurer becomes final, as provided in Section 11, and failure to bring the action within such thirty days shall constitute a waiver of the protest and a waiver of all claims against the Tohono O'odham Nation arising from the illegality in the tax, penalties and interest so paid. No grounds of illegality of the tax shall be considered by the court other than those set forth in the protest filed at the time payment is made, but payments of taxes made under protest subsequent to the original protested item and prior to filing the action within the thirty days may be included or incorporated in the same action. Either party to such action may appeal to the court's judgment as provided by law.
- C. If a final judgment is rendered in favor of the taxpayer in the action, the amount of the judgment or such portion thereof as may be necessary shall first be credited on any taxes, penalties and interest due from the plaintiff taxpayer under this ordinance, and the amount of the balance remaining due the taxpayer shall be paid by the Treasurer from the tax protest fund as provided in Section 13.

Section 13. Tax Protest Fund

- A. If a taxpayer, at the time of paying any tax imposed by this ordinance, protests payment of all or any part of the tax, the amount protested shall be deposited by the Treasurer to the credit of the tax protest fund, which shall be held and invested in an interest-bearing account insured by an agency of the United States. Such amount shall remain in the fund until:
  - 1. A final judgment has been rendered and the time for appeal has expired.
  - 2. A dismissal of the action brought by the taxpayer has been entered.
  - 3. Thirty days have elapsed after the order of the Treasurer became final and during which time the taxpayer did not commence an action.
- B. If a final judgment has been rendered providing that the whole or any part of the amount was due and lawfully payable on the date when paid, the amount found lawfully payable shall be disposed of in the manner provided by this ordinance for other collections made

under this ordinance, and shall be deemed a collection as of the date of such final determination.

Section 14. Tax Administration and Enforcement

The administration of this ordinance is vested and shall be exercised by the Treasurer in accordance with Tohono O'odham Code Title 22, Chapter 4 and other applicable laws of the Tohono O'odham Nation.

Section 15. Jurisdiction of Tohono O'odham Judicial Court

The Tohono O'odham Judicial Court is vested with jurisdiction:

- A. Over every person engaging or continuing within the Tohono O'odham Nation in any business for which a tax is imposed by this ordinance.
- B. To hear and determine any challenge to the validity of this ordinance, either generally, or as applied to any person.

Section 16. Burden of Proving Sale not at Retail

The burden of proving that a sale of tangible personal property was not a sale at retail shall be upon the person who made it, unless such person has taken from the purchaser a certificate signed by and bearing the name and address of the purchaser that the property was purchased for resale in the ordinary course of business.

Section 17. Presumption Gross Receipts Taxable

For the purpose of proper administration of this ordinance and to prevent evasion of the tax imposed by this ordinance it shall be presumed that all gross receipts are subject to the tax until the contrary is established.

Section 18. Taxpayer's Records

- A. Every person engaging or continuing within the Tohono O'odham Nation in any business for which a tax is imposed by this ordinance shall keep and preserve appropriate records of the gross income, gross receipts and gross proceeds of sales of the business, and such other books or accounts necessary to determine the tax for which the taxpayer is liable, and shall keep and preserve for a period of three years all invoices of goods and merchandise purchased for resale.
- B. Such books, invoices and other records shall be open for examination at any time by the Treasurer, or his duly authorized agent.

Section 19. Personal Liability for Tax; Remedies for Collection

Every tax imposed by this ordinance and all increases, interest and penalties thereon shall become, from the time they are due and payable, a personal debt of the taxpayer to the Tohono O'odham Nation, and may be collected by action in the Tohono O'odham Judicial Court, or in any other courts of competent jurisdiction instituted in the name of the Tohono O'odham Nation.

Section 20. Jeopardy Assessment

- A. If the Treasurer believes that the collection of any tax imposed by this ordinance will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for making a return and paying such tax has expired and notwithstanding other provisions of this ordinance, immediately assess such tax, with interest, additional amounts and additions to the tax as provided by law. The tax, additions to the tax and interest are thereupon immediately due and payable, and immediate notice and demand shall be made for its payments. The belief of the Treasurer is for all purposes presumptive evidence that the assessment or collection was in jeopardy. A certificate of mailing notice is presumptive evidence that notice was issued.
- B. The taxpayer may stay collection and prevent such assessment from becoming final by filing, within ten days after the date of assessment, a protest to the assessment, accompanied by a bond or other security in such amounts as the Treasurer may deem necessary. Upon filing of protest and posting bond as required, the assessment shall be reviewed as provided for other assessments made under this article. Failure to protest or post the required bond shall result in the assessment becoming final.

Section 21. Transaction and Privilege Taxes

Taxes imposed by this ordinance shall be in addition to all other licenses and taxes levied by law, whether as a condition precedent to engaging in any business taxable under this ordinance or for any other purpose.

Section 22. Notices

- A. Notices required or authorized by this ordinance to be given by mail to a taxpayer shall be addressed to him at his last known address, or to such addresses as may appear in the records of the Treasurer, and shall be sent by certified or registered first class mail with return receipt requested.
- B. For the purposes of this ordinance notice shall be presumed received upon the date shown by an executed return receipt, or, if such receipt is not executed, then upon the date such notice was attempted to be delivered.

Section 23. Failure to Make Return; False Return; Preventing Examination; Perjury; Classification

- A. It is unlawful for any person to knowingly:
1. Fail or refuse to make any return required by this ordinance, or engage in business without the required license.
  2. Fail to remit the full amount of any additional charge made to cover the tax.
  3. Fail or refuse to furnish any supplemental return or other pertinent and available data required by the Treasurer.
  4. Make or cause to be made a false or fraudulent return or intentionally fail or refuse to make any return required by this ordinance.
  5. Fail or refuse to permit any lawful examination of any book, paper, account, record or other memoranda by the Treasurer or any of his authorized agents or employees.
- B. Any person violating any provision of subsection A may have his license revoked and have all rights to engage in business on the Tohono O'odham Nation suspended or terminated by the Treasurer, and may be enjoined by an action brought in the Tohono O'odham Judicial Court, in the name of the Tohono O'odham Nation and at the request of the Treasurer, from engaging or continuing in any business for which a tax is imposed by this ordinance until the taxes have been paid, or until such person has complied with this ordinance.

Section 24. Severability

If any provision of this ordinance, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

Section 25. Effective Date

This ordinance shall take effect upon enactment by the Papago Council and approved by the Superintendent of the Papago Agency. The taxes imposed by this ordinance shall become due and payable by every person who received gross proceeds of sales or gross income after October 1, 1981, upon which a privilege tax is levied under this ordinance.

Section 26. Repeals

All laws or parts of laws (or attachments thereto) which are inconsistent with the provisions of this ordinance are hereby repealed, including, without limitation, any inconsistent provisions contained in Ordinances No. 3, 4, 8, 10, 14, 23, 41, 43, and 44, and in Section 1, Chapter 2 of the Law and Order Code of the Papago Tribe.