

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Authorizing Use of FY 2011 Surplus Funds for Outstanding FICA and Medicare Payments
Pending Reimbursement by the Internal Revenue Service)

RESOLUTION NO. 11-032

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"**
20 **and is therefore subject to payment of federal income taxes, Revenue Ruling 59-354**
21 **also held that withholding of federal income tax from the compensation of Elected**
22 **Officials 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 has acknowledged the application of Revenue Ruling 59-354 to the**
26 **Nation's Elected Officials (Resolution No. 10-270); and**

27 **WHEREAS, in past fiscal years, the Nation had unnecessarily withheld FICA and Medicare taxes**
28 **from Elected Officials' paychecks and paid those taxes to the Internal Revenue**
29 **Service ("IRS"); and**

30 **WHEREAS, by Resolution No. 10-270, the Tohono O'odham Legislative Council authorized and**
31 **directed "the Nation's Controller to submit claims to the Internal Revenue Service for**
32 **reimbursement of FICA and Medicare taxes paid by the Nation on behalf of Elected**

RESOLUTION NO. 11-032

(Authorizing Use of FY 2011 Surplus Funds for Outstanding FICA and Medicare Payments Pending Reimbursement by the Internal Revenue Service)

Page 2 of 3

1 **Officials and the Nation for calendar years 2006 to 2010 and to repay individual**
2 **Elected Officials the amounts due to them” subject to various conditions.**

3 **WHEREAS, the Nation’s Elected Officials have received partial reimbursement of previously paid**
4 **FICA and Medicare taxes for Elected Officials who served during the 2006-2010**
5 **calendar years, but additional reimbursements from the IRS are being processed and**
6 **remain pending.**

7 **WHEREAS, the total amount of outstanding reimbursements due to Elected Officials from the IRS**
8 **is \$266,444.37 in accordance with the Schedule of FICA and Medicare Reimbursement**
9 **as dated for reference January 24, 2011, which is incorporated by this reference.**

10 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O’odham Legislative Council hereby**
11 **authorizes the use the FY 2011 surplus funds in a total amount not to exceed**
12 **\$266,444.37 in accordance with the Schedule of FICA and Medicare Reimbursement**
13 **for reimbursements of outstanding repayments to Elected Officials pending**
14 **reimbursement by the Internal Revenue Service, provided that**

- 15 **1. An Elected Official shall not be reimbursed from surplus funds unless the official**
16 **first executes an enforceable reimbursement agreement assigning to the Nation**
17 **his or her portion of any reimbursement subsequently received from the IRS.**
18 **2. If an Elected Official is reimbursed with surplus funds in accordance with this**
19 **resolution, any subsequent IRS FICA and Medicare reimbursement payments**
20 **received by the Nation will be deposited into the Nation’s general fund.**

21 **The foregoing Resolution was passed by the Tohono O’odham Legislative Council on the 24TH Day**
22 **of JANUARY, 2011 at a meeting at which a quorum was present with a vote of 1,418.6 FOR; 970.6**
23 **AGAINST; 206.3[02] NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council**
24 **by Article VI, Section 1 (d)(2) of the Constitution of the Tohono O’odham Nation, adopted by the**
25 **Tohono O’odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant**
26 **Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June**
27 **18, 1934 (48 Stat. 984).**

28
29
30
31
32
33
34
35
36
37
38
39

TOHONO O’ODHAM LEGISLATIVE COUNCIL



Verlon M. Jose, Legislative Chairman

31 day of January, 2011

RESOLUTION NO. 11-032

(Authorizing Use of FY 2011 Surplus Funds for Outstanding FICA and Medicare Payments Pending Reimbursement by the Internal Revenue Service)

Page 3 of 3

1 ATTEST:

2 *Evonne Wilson*

3
4 Evonne Wilson, Legislative Secretary

5
6 31 day of January, 2011.

7
8 Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham
9 Nation on the 31 day of January, 2011 at 10:21 o'clock, A.M.,
10 pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective
11 upon his approval or upon his failure to either approve or disapprove it within 48 hours of
12 submittal.

13
14 TOHONO O'ODHAM LEGISLATIVE COUNCIL

15
16 *Verlon Jose*
17
18 Verlon M. Jose, Legislative Chairman

19
20
21
22
23
24 APPROVED

on the 31st day of January, 2011

25
26 DISAPPROVED

at 11:26 o'clock, A.M.

27
28
29 *Ned Norris, Jr.*
30 NED NORRIS, JR., CHAIRMAN
31 TOHONO O'ODHAM NATION

32
33
34
35
36
37 Returned to the Legislative Secretary on the 31 day of

38 January, 2011, at 11:48 o'clock, A.M.

39
40
41 *Evonne Wilson*
42
43 Evonne Wilson, Legislative Secretary

44
45
46
47
48
49

ACTION: AUTHORIZING USE OF FY 2011 SURPLUS FUNDS FOR OUTSTANDING FICA AND MEDICARE PAYMENTS PENDING REIMBURSEMENT BY THE INTERNAL REVENUE SERVICE

Moved: COUNCILWOMAN FRANCES MIGUEL

SECOND: COUNCILWOMAN GLORIA RAMIREZ

DATE: JANUARY 24, 2011

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF Oidak 198.7	1. WAVALENE ROMERO (Nicholas Jose)	99.35	X			
	2. MARY LOPEZ ()	99.35	X			
SELLS 449.6	1. KIMBERLY MULL ()	224.80		X		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			
	2. OLIVIA VILLEGAS-LISTON (Eugene Enis)	102.35	X		X	
SAN LUCY 187.1	1. LORRAINE EILER ()	93.55	X			
	2. GLORIA RAMIREZ ()	93.55	X			
PISINEMO 184.5	1. CHESTER ANTONE <i>(Absent)</i> <i>(Tony Murrietta)(Present)</i>	92.25		X	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 (Louis J. Johnson)	115.05	X			
CHUKUT KUK 277.0	1. ETHEL GARCIA (Sara Mae Williams)	138.50	X			
	2. VERLON M. JOSE ()	138.50	X			X
BABOQUIVARI 324.0	1. FRANCES MIGUEL (Roberta Harvey)	162.0	X			
	2. FRANCES G. ANTONE (Vernon Smith)	162.0		X		
TOTAL		2,595.50	1,418.6	970.6	206.3 [02]	[02]