



# GILA RIVER INDIAN COMMUNITY

SACATON, AZ 85247

ORDINANCE GR-06-05

## AN ORDINANCE ENACTED AS TITLE 13, TO BE CODIFIED AT TITLE 13 OF THE GILA RIVER INDIAN COMMUNITY LAW AND ORDER CODE

**WHEREAS,** the Gila River Indian Community ("Community"), pursuant to its sovereign powers, is committed to protecting the lives, health, safety, property, welfare, and environment of its residents and the welfare and environment of the Reservation in general; and

**WHEREAS,** the Community, pursuant to its inherent sovereign powers, may tax members and non-members residing within the Community and who do business upon Community land; and

**WHEREAS,** the Gila River Indian Community Council ("Community Council"), pursuant to Article XV, Section 1(a)(16) of the Gila River Indian Community Constitution and Bylaws (March 17, 1960) may levy dues, fees and taxes; and

**WHEREAS,** the Community wishes to maximize its revenues for the benefit of the Community and its members; and

**WHEREAS,** the Community Council wishes to rescind the current Title 13 of the Gila River Indian Community Law and Order Code ("Code") and replace it with the revised Title 13, attached to this document.

**NOW, THEREFORE BE IT ENACTED,** that the Community Council now rescinds the existing Title 13 and codifies a new Title 13 to the Gila River Indian Community Law and Order Code.

### CERTIFICATION

Pursuant to authority contained in Article XV, Section 1, (a), (7), (9), (16), and Section 4 of the amended Constitution and Bylaws of the Gila River Indian Community, ratified by the Tribe January 22, 1960 and approved by the Secretary of the Interior on March 17, 1960, the foregoing Resolution was adopted this 15<sup>th</sup> day of June, 2005, at a Regular Community Council Meeting held in District 3, Sacaton, AZ, at which a quorum of 11 Members were present by a vote of: 11 FOR; 0 OPPOSE; 0 ABSTAIN; 6 ABSENT; 0 VACANCY.

GILA RIVER INDIAN COMMUNITY

Mary V. Thomas  
GOVERNOR 6-15-05

ATTEST:

Janine J. Stewart  
COMMUNITY COUNCIL SECRETARY



## TITLE 13

### BUSINESS LICENSES AND TAXATION

#### CHAPTER 1 DEFINITIONS

- 13.101 "Business" includes all activities or acts engaged in or caused to be engaged in with the object of gain, benefit or advantage, either direct or indirect, but not casual activities or sales. A casual activity or sale occurs when a person engages in an isolated transaction that is not conducted with such frequency or is not one of a series of activities as to be sufficient to consider the person as regularly conducting the activity. "Business" shall include, but not be limited to:
- a. A manufacturing or industrial concern.
  - b. Wholesale merchants.
  - c. Retail merchants.
  - d. Automobile service stations or garages.
  - e. A cotton gin or dairy enterprise.
  - f. A farming or agricultural operation making use of more than two hundred acres of land within the Gila River Indian Community.
  - g. A concern providing crop dusting, harvesting, planting or similar services to farming or agricultural operations.
  - h. Retailers, wholesalers, manufacturers or any other business not located or having a place of business on the Reservation, but making sales and deliveries on the Reservation.
  - i. Any enterprise or amusement park, sports arena or center which is open to the public.
  - j. A motel, hotel, rooming house, trailer court or park, or mobile home park.
  - k. A bar, cocktail lounge, restaurant, cafeteria, dining room, lunch counter, lunchroom, snack bar, soda fountain, catering service or similar establishment where articles of food or drink are sold for consumption on or off the premises.
  - l. Traveling merchants, food sellers, peddlers, itinerant vendors or any retail business not having an established place of business.

- m. Construction companies, contractors, repair services, or installation services.
  - n. Livestock operations.
  - o. An airport.
- 13.102 "Community" means the Gila River Indian Community, a federally recognized Indian tribe organized under the Indian Reorganization Act, 48 Stat. 984, 25 U.S.C. § 461 et seq.
- 13.103 "Construction contracting" means engaging in business as a construction contractor.
- 13.104 "Construction contractor" means any person who undertakes to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, irrigation system, 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, specialty contractors and developers. For all purposes of taxation or deductions, this definition shall govern without regard to whether or not the contractor is acting in fulfillment of a contract.
- 13.105 "Council" means the Gila River Indian Community Council.
- 13.106 "Engaging" when used with reference to engaging or continuing in business includes the exercise of corporate or franchise powers.
- 13.107 "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.
- 13.108 "Gross proceeds of sale" 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 sale shall not be included as gross income.
- 13.109 "Gross income" or "gross proceeds of sale" 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 "gross income" or the "gross proceeds of sale."

- 13.110 "Member of the Gila River Indian Community" means an enrolled member of the Community.
- 13.111 "Owner-builder" means a person who acts as a contractor in constructing any improvement upon real property, such property being held by such person for his own use or for rental purposes.
- 13.112 "Person" includes an individual, officer, agent, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust or any other entity, group or combination acting as a unit, including any government entity, and the plural as well as the singular number.
- 13.113 "Prime contractor" is a contractor which the owner or lessee of the property being improved treats as being responsible for administration, construction and completion of the improvement. For purposes of this definition, a person who, for either a fixed sum, price, fee, percentage bonus or other compensation other than actual wages, 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, supervise the construction of the improvement, or coordinate the construction of the improvement, or both, is a "prime contractor," unless such supervisor or coordinator demonstrates, to the Community's satisfaction, that another contractor is, in fact, the "prime contractor" for the improvement.
- 13.114 "Reservation" means any land within the exterior boundaries of the Gila River Indian Reservation, any land outside such boundaries held in trust for the Community or any of its members by the United States, and any other land constituting "Indian country" within the meaning of 18 U.S.C. § 1151 or any successor provision.
- 13.115 "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 consideration, and includes:
- a. Any transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.
  - b. The fabrication of tangible personal property for consumers who furnish either directly or indirectly the materials used in the fabrication work, and the furnishing, preparing or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing or serving such tangible personal property.
- 13.116 "Sale at retail" or "retail sale" means a sale for any purpose other than resale in the form of tangible personal property.

- 13.117 "Tangible personal property" means personal property which may be seen, weighed, measured, felt, touched or is in any other manner perceptible to the senses. Stocks, bonds and other securities are intangible property, not tangible property.
- 13.118 "Taxpayer" means any person liable for any tax imposed by this title.
- 13.119 "Treasurer" means the Treasurer of the Gila River Indian Community or such person as the Council designates to carry out the duties of the Treasurer, and may include such subordinate official(s) as the Treasurer designates to carry out any provisions of this title.

## CHAPTER 2 BUSINESS LICENSES

### 13.201 BUSINESS LICENSES

- A. Any person conducting or engaged in any business or trade on the Reservation must obtain a license from the Gila River Indian Community and pay the license fee provided in Section 13.207. In addition, any person conducting or engaged in any business or trade from a location outside the Reservation with the Gila River Indian Community, any department, agency, entity or enterprise wholly-owned by the Community, any of the seven Districts of the Community, or any members of the Community must obtain a license from the Gila River Indian Community and pay the license fee provided in Section 13.207. The following examples illustrate some situations in which a license must be obtained even if the licensee does not maintain a business location on the Reservation:
1. A door-to-door salesman.
  2. Any contractor doing business with the Gila River Indian Community, any department, agency, entity or enterprise wholly-owned by the Community, any of the seven Districts of the Community, or any members of the Community whether or not the contractor has visited the Reservation during the course of performance of the contract.
  3. Any lawyer or other consultant without a contract who visits the Reservation during the course of performing services for the Gila River Indian Community, any department, agency, entity or enterprise wholly-owned by the Community, any of the seven Districts of the Community, or any members of the Community.
- B. The license shall authorize the licensee to transact the business or trade described in the license in the locality designated by the applicant for the license. If the licensee engages in business or trade at more than one location on the Reservation, separate licenses shall be obtained for each location at which business or trade is conducted. Licenses shall not be transferable.

13.202 APPLICATION AND ISSUANCE

- A. An application for a business license shall be submitted in writing to the Treasurer on a form approved by the Treasurer. The application shall include:
1. A description of the business or trade.
  2. The name and address of the owner or owners of the business or trade.
  3. The trade name if any to be used by the business or trade.
  4. The physical location of the business or trade.
  5. Acknowledgment of receipt of a copy of this Title 13 and consent to liability for and payment of all applicable taxes imposed under such Title 13, as it may be amended by the Council from time to time.
- B. A check, money order or cash, payable to the Gila River Indian Community, shall accompany each application in full payment of the business license fee provided for under Section 13.207.
- C. Upon approval of the application by the Treasurer and payment of the fee, a business license shall be issued to the applicant on a form approved by the Treasurer. The business license shall bear the signature of the Treasurer or his authorized representative. The license shall specifically describe the business or trade to be conducted, the name of the owner or owners of the business or trade, and the location at which the business or trade will be conducted.
- D. Upon receipt of each application the Treasurer shall conduct such investigation of the applicant's or its owner or owners' business and moral character as he deems necessary for the protection of the public good. If as a result of such investigation, the applicant's (or owner's or owners') character or business responsibility is found to be unsatisfactory, the Treasurer shall notify the applicant that his application is disapproved, that no license will be issued, and that a refund of the license fee will be made. If the character and business responsibility of the applicant (or owner or owners) are found to be satisfactory, the Treasurer shall endorse and deliver to the applicant his license.

13.203 ESTIMATE OF BUSINESS RECEIPTS AS BASIS FOR TAX

All applicants for a business license or renewal of a business license shall submit an estimate of the probable amount of taxable business which he or the person whom he represents will transact during each of the next succeeding three months, and during the term of the license. The statement shall be based on the amount of business transacted by such person in the preceding months, if any.

13.204 TERM OF LICENSE

- A. Annual Business License: An annual business license or renewal thereof shall be valid for a period of one year from the date of approval; or
- B. Special Event Business License: A special event business license shall be valid for a period of five (5) days from the date of approval. A person may apply for a special event business license only once per twelve (12) month period.

13.205 TRANACTING BUSINESS WITHOUT LICENSE

- A. A person conducting or engaging in any business on the Reservation without a valid business license shall be notified of their liability for the business license fee and all applicable taxes and shall be sent a notice of assessment for the amount due. The notice shall inform the party that no further business may be conducted on the Reservation unless the party obtains a business license.
- B. In addition to A, if the person continues to conduct or engage in a business or trade without a business license, a penalty of \$500 will be assessed.
  - (1) In addition to the monetary penalty, the person conducting or engaging in any business or trade without a valid business license will be prohibited from obtaining a business license for a period of one (1) year from the date of notification.
- C. If a person conducting business without a license is on land leased to a business required to have a license pursuant to this ordinance, a penalty of \$500.00 will be imposed on the leasee, for each person conducting or engaging in a business or trade without a business license, for each occurrence.

13.206 COMPLYING WITH LAWS AND REGULATIONS

Any person conducting or engaging in any business on the Reservation shall comply with all laws and regulations of the Gila River Indian Community.

13.207 LICENSE FEES

Every person or business issued or reissued a business license shall pay a license fee as follows:

1. Annual Business License:..... \$150.00 annually.



- a. The annual business license fee for Enrolled Members of the Gila River Indian Community and for businesses owned and operated by Enrolled Members of the Gila River Indian Community shall be \$5.00 annually.

2. Special Event Business License: \$30.00

13.208 REGULATORY LICENSE

If any other ordinance or law of the Gila River Indian Community requires a business licensed under this chapter to obtain a license or permit for regulatory purposes, no license under this chapter shall be issued until the business has obtained the required license or permit.

13.209 REVOCATION OF LICENSE

- A. Licenses issued under the provisions of this chapter may be revoked by the Treasurer after notice and hearing, for any of the following causes:
  1. Fraud, misrepresentation or incorrect statement contained in the application for license.
  2. Fraud, misrepresentation or incorrect statement made in the course of carrying on his business.
  3. Any violation of this ordinance or any other law or ordinance of the Gila River Indian Community.
  4. Conviction of any crime.
  5. Conducting business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.
  6. Unconscionable and other unfair business practices.
  7. Abandonment of the business for which the license was issued.
- B. Notice of the hearing for revocation of a license shall be given by the Treasurer in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such Notice shall be mailed to the licensee at his last known address at least forty-eight hours prior to the date set for hearing, or shall be delivered by a police officer in the same manner as a summons at least forty-eight hours prior to the date set for hearing.

## CHAPTER 3 IMPOSITION OF PRIVILEGE TAXES

There is levied and there shall be collected a privilege tax measured by the amount or volume of business transacted by persons on account of their activities on the Reservation, and to be measured by the gross proceeds of sales, gross income, or gross receipts of persons on such account, and all of said gross proceeds of sale, gross income, or gross receipts shall be used to measure the tax in accordance with the provisions in this Chapter 3. For purposes of this Chapter, the total amount of gross proceeds of sale, gross income, or gross receipts shall be deemed to be the amount received, exclusive of the taxes imposed by this Chapter. A person who imposes an added charge to cover the tax being levied by this Chapter or which is identified as being imposed to cover the privilege tax shall not remit less than the amount so collected to the Treasurer.

### 13.301 GENERAL RETAIL SALES

- A. The tax rate shall be an amount equal to six percent (6%) of the gross proceeds of sale or gross income of the business of selling, leasing, renting or licensing any tangible personal property whatever at retail.
- B. The following sales are exempt from this general retail sales levy:
  - 1. Sales of food for human consumption at home and from the sales of tobacco; provided, however, that this exemption does not include sales of prepared food, which are taxable.
  - 2. Gross proceeds or gross income of activities specifically subject to tax under other sections in this Chapter unless otherwise stated.
  - 3. Sales of tangible personal property to a person holding a valid business license for engaging in or continuing in the business of contracting when the property so sold is incorporated or fabricated by the contractor into any structure, project, development or improvement.
  - 4. Sales of tangible personal property made directly to the United States Government, its departments or agencies.
  - 5. Sales of tangible personal property for resale and not at retail or not to an ultimate consumer.
  - 6. Sales of tangible personal property to manufacturers, modifiers or assemblers where such property directly enters into and becomes an ingredient or component part of any manufactured, fabricated or processed article, substance or commodity for sale in the regular course of business.

7. Services provided in connection with retail sales, if invoices to the customer, sales tickets, cash register tapes, and all other business records show separate charges for such services, but this exemption shall apply only where such service is not customarily included in the retail sale itself and where such service is not an essential element in the retail sale itself, and no deduction shall be allowed for fabrication labor of retail items sold.
8. Sales of tangible personal property made directly to the Gila River Indian Community, any department, agency, entity or enterprise wholly-owned by the Community, or any of the seven Districts of the Community.
9. Sales of articles used by human beings for food, drink or condiment, or articles of jewelry, craftwork or art, where such articles are sold by persons acting as traveling merchants, food sellers, peddlers or otherwise without an established place of business.
10. The sale of drugs on the prescription of a member of the medical, dental or veterinary profession who is licensed by law to administer such drugs.
11. Sales of motor fuel or use fuel upon which a tax is paid to the State of Arizona under the provisions of A.R.S. § 28-1501 et seq. or A.R.S. § 28-1551 et seq.
12. Sales of machinery or equipment used directly in manufacturing, processing fabricating, job printing, refining or metallurgical operations.
13. Sales of machinery or equipment used directly in the process of extracting ores or minerals from the earth for commercial purposes, including equipment required to prepare the materials for extraction and the handling, loading or transportation of such extracted materials to the surface. "Mining" includes underground, surface and open-pit operations for the extraction of ores and minerals.
14. Sales of tangible personal property consisting of machinery, equipment or transmission lines used directly in the production or transmission of electrical power, but not including distribution and, in addition, transformers and control equipment used at transmission substation sites.
15. Sales of tangible personal property by a church or by a charitable organization recognized as tax exempt under section 501(c)(3) of the federal Internal Revenue Code and any successor provision.
16. Professional services, instruction and other services not connected with the making of retail sales.
17. Sales of livestock, cotton, cottonseed, wheat, barley, and hay.

18. Charges for actual freight costs incurred on the shipment of tangible personal property to the purchaser.
19. Sales of a motor vehicle to an Enrolled Community Member residing on the Reservation and exclusively for non-business related purposes.
20. Sales of mobile and/or manufactured home to an Enrolled Community Member for use on the Reservation as a personal residence.

13.302 ALCOHOL

- A. There is levied and there shall be collected a privilege tax upon every person engaging or continuing on the Reservation in the business of selling alcoholic beverages at retail, such tax being levied on the sale of alcoholic beverages in an amount equal to eight percent (8%) of the gross proceeds of sale or gross income of the business from such sales.
- B. An Alcohol Tax and Drug and Alcohol Abuse Prevention Fund is established in the Community Budget. The Treasurer shall deposit 50% of the revenues received under this Section 13.302 into this Fund. Monies deposited into this Fund shall be used for education and health care programs and projects related to drug and alcohol abuse prevention and treatment and for other social projects of the Community.

13.303 TOBACCO PRODUCTS

- A. There is levied and there shall be collected a privilege tax upon every person engaging or continuing on the Reservation in the business of selling tobacco products at retail, 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, horticultural or religious 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 above, made of tobacco or any substitute thereof, if manufactured to retail at not more than 5 cents each, 11 cents on each three cigars, but if manufactured to retail at more than 5 cents each, 11 cents on each cigars.
- B. A Tobacco Tax and Health Care Fund is established in the Community Budget. The Treasurer shall deposit all monies received under this Section 13.303 into this Fund. Monies deposited into this Fund shall be used for health promotion, prevention, wellness, and health care programs and projects, including educational programs for the Community showing the harmful effects of smoking. These Community based programs and projects should include components designed to discourage tobacco use among minors in particular as well as among the general Community membership. Monies in the Fund may also be used to support programs and projects that will assist adults and children who suffer from health problems caused by smoking.

Allocation of monies from the Tobacco Tax and Health Care Fund shall be approved by the Community Council under a program adopted by the Community Council.

#### 13.304 TELECOMMUNICATION SERVICES

The tax rate shall be in the amount of one-and-a-half percent (1.5%) of the gross proceeds of producing, providing, or furnishing telecommunication services to consumers on the Reservation.

- A. "Telecommunication services" means transmitting signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio waves, light waves or other electromagnetic means.
- B. "Gross proceeds" from the business activity of providing telecommunication services to consumers on the Reservation shall include:
  1. all fees for connection to a telecommunication system.
  2. toll charges, charges for transmissions, and charges for other telecommunications services; provided that such charges relate to transmissions originating on the Reservation and terminating in this State.
  3. fees charged for access to or subscription to or membership in a telecommunication system or network.
  4. charges for monitoring services relating to a security or burglar alarm system located on the Reservation where such system transmits or receives signals or data over a communications channel.

- C. Resale telecommunication services. Gross income from sales of telecommunication services to another provider of telecommunication services for resale to the purchaser's customers with such service shall be exempt from the tax imposed by this Section; provided, however, that such purchaser is properly licensed to engage in such business.
- D. Interstate transmissions. Charges by a provider of telecommunication services for transmissions originating on the Reservation and terminating outside the State of Arizona are exempt from the tax imposed by this Section.
- E. The tax imposed by this Section shall not apply to sales of telecommunication services to permanent residents of the Reservation for residential use.

### 13.305        ADVERTISING

The tax rate shall be an amount equal to six percent (6%) of the gross proceeds from the business activity of any person engaged in advertising by billboards, direct mail, radio, television, and any other means on the Reservation calculated to appeal to prospective purchasers.

### 13.306        AMUSEMENTS, EXHIBITIONS AND SIMILAR ACTIVITIES

The tax rate shall be an amount equal to six percent (6%) of the gross receipts from every person engaging or continuing on the Reservation the business of operating amusements, exhibitions, and similar activities. The tax shall apply to the gross receipts from such activities, including: theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, billiard or pool parlors, bowling alleys, skating rinks, tennis courts, golf courses, sports events, jukeboxes, driving ranges, animal rides, dance halls, boxing matches, health clubs, spas or any other business charging admission for exhibition, amusement, or entertainment.

### 13.307        HOTEL/MOTEL SERVICES

The tax rate shall be an amount equal to ten percent (10%) on the gross proceeds of sales or gross income derived from the business on the Reservation of operating, for occupancy by transients, a hotel or motel, including an inn, tourist home or house, dude ranch, resort, campground, lodging house, rooming house, public or private club, mobile home or house trailer at a fixed location or other similar structure, and also including a space, lot or slab which is occupied or intended or designed for occupancy by transients in a mobile home or house trailer furnished by them for such occupancy. For purpose of this Section 13.307, "transient" means

any person who either at the person's own expense or at the expense of another obtains lodging space or the use of lodging space on a daily or weekly basis, or on any other basis for fewer than 30 consecutive days. The tax base does not include gross proceeds of sales or gross income derived from business activity that is properly classified under the retail, restaurant and bar, amusement, telecommunications or other classifications.

#### 13.308 PARKING

The tax rate shall be an amount equal to six percent (6%) of the gross receipts from the business of parking automobiles, trucks, aircraft, watercraft or other motor vehicles upon every person engaging or continuing on the Reservation in the business of parking motor vehicles. For this purpose, "parking" shall be for a period of less than seven consecutive days.

#### 13.309 GARAGING OR STORAGE

The tax rate shall be an amount equal to six percent (6%) of the gross receipts from the business of garaging or storing automobiles, trucks, aircraft, watercraft or other motor vehicles upon every person engaging or continuing on the Reservation in the business of garaging or storing motor vehicles. For this purpose, "garaging" or "storing" shall be for a period of seven or more consecutive days.

#### 13.310 NONRESIDENTIAL AND TRANSIENT RESIDENTIAL RENTALS

- A. The tax rate shall be an amount equal to six percent (6%) of the gross proceeds from the business activity of any person engaged in leasing, rental or licensing of nonresidential property and transient residential property on the Reservation, other than allotted land or land used for farming or agricultural purposes. "Transient residential property" is property leased, rented or licensed for residential purposes, including a space, lot or slab which is occupied or intended or designed for occupancy by transients in a mobile home or house trailer, for a period of less than six consecutive months. For this purpose, property leased on a month-to-month basis to permanent residents of the Reservation is not considered transient residential property. The tax base shall not include the cost of property taxes, insurance, and utility services to the extent such costs are not separately paid for by the renter, nor shall it include gross proceeds derived from business activity taxed under Section 13.307.
- B. Gross proceeds derived from the leasing, rental or licensing of property in the Blackwater Industrial Park, the Lone Butte Industrial Park, and the San Tan Industrial Park are exempt from the tax on nonresidential rentals; provided, however, that this exemption does not include any leasing, rental or licensing of such property by any sublessee or by

any person who, directly or indirectly, leases, rents or licenses the property from any sublessee.

### 13.311 CONSTRUCTION CONTRACTING

- A. The tax rate shall be an amount equal to six percent (6%) of the gross proceeds from the construction contracts for construction on the Reservation of any person engaged in business as a construction contractor as defined in Sections 13.103 and 13.104, but an amount equal to thirty-five percent (35%) of such gross proceeds shall not be subject to tax.
- B. Gross proceeds derived from the following construction contracts are exempt from the tax on construction contracting:
  - 1. Gross income derived from acting as a subcontractor. A "subcontractor" is a construction contractor performing work for a construction contractor who has provided the subcontractor with a written declaration that the construction contractor is liable for the tax for the project.
  - 2. Gross income derived from construction contracts for nontransient residential property, which is single and multifamily residences occupied by permanent residents of the Reservation and other residential property that would not be subject to either of the taxes imposed under Sections 13.307 and 13.310 if the property were leased, rented or licensed to persons other than the owner of the property.
- C. In any case where the gross proceeds from an activity taxable under Section 3 of this title are also taxed under the provisions of Arizona Revised Statutes, Title 42, Chapter 8 or any successor provisions, a deduction equal to seventy-five percent (75%) of the gross proceeds or gross income from such activities may be taken when computing the tax liability under this title, provided that such Arizona tax is validly imposed on such activities as a matter of federal law. The Community has designated the following areas for the promotion of economic development, therefore this deduction applies only to construction activities that take place on the Blackwater, Lone Butte and San Tan Industrial Parks, Memorial Airfield and the property under the control of the Wildhorse Pass Development Authority, Sun Valley Marina Corporation, where the contract is between the contractor and a tenant.

### 13.312 UTILITIES



- A. The tax rate shall be an amount equal to six percent (6%) of the gross proceeds upon every person engaging in or continuing on the Reservation the business of producing, providing, or furnishing utility services, including electricity, electric lights, current, power, gas (natural or artificial), or water to consumers or ratepayers who reside on the Reservation.
- B. Sales of utility services to another provider of the same utility services for the purpose of providing such utility services either to another properly licensed utility provider or directly to such purchaser's customers or ratepayers shall be exempt and deductible from the gross income subject to the tax imposed by this Section, provided that the purchaser is properly licensed by all applicable taxing jurisdictions to engage or continue in the business of providing utility services, and further provided that the seller maintains proper documentation, in a manner similar to that for sales for resale, of such transactions.
- C. The tax imposed by this Section shall not apply to:
  - 1. sales of utility services to permanent residents of the Reservation for residential use;
  - 2. sales of utility services to a hospital or other health care organization, provided that the hospital or other health care organization is either operated by a nonprofit organization exclusively for charitable purposes or operated by a governmental entity; and
  - 3. revenues received by any person or persons owning a utility system in the form of reimbursement or contribution compensation for property and equipment installed to provide utility access to, on or across the land of an actual utility consumer if the property and equipment become the property of the utility. This exclusion shall not exceed the value of such property and equipment.

### 13.313 RESTAURANTS AND BARS

The tax rate shall be an amount equal to six percent (6%) of the gross receipts from the business activity of preparing or serving food or nonalcoholic beverages for consumption on or off the premises, including also the activity of catering, upon every person engaging or continuing in the business of preparing or serving food or beverages in a bar, cocktail lounge, restaurant, cafeteria, dining room, lunch counter, snack bar, soda fountain, catering service or similar establishment where articles of food or drink are sold for consumption on or off the premises. Cover charges and minimum charges must be included in the gross income of this business activity. Gross receipts from the business activity of preparing or serving alcoholic beverages for consumption on or off the premises shall be subject to tax under Section 13.302 rather than under this Section. The tax shall not apply to any gross receipts from preparing or

serving food or nonalcoholic beverages at schools, hospitals, daycare facilities, or jails or correctional facilities.

#### 13.314 AVIATION AND JET FUEL SALES

The tax rate shall be an amount equal to three cents (3¢) per gallon upon every person engaging in or continuing on the Reservation the business of selling aviation or jet fuel. The tax shall apply to the sale of all aviation or jet fuel on the Reservation.

#### 13.315 BASIS FOR TAXATION UNDER CERTAIN CONDITIONS

- A. In determining value as applied to sales from one person to another person, or other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the Treasurer shall determine the value upon which the tax shall be based, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by others where no common interest exists between the buyer and seller, but otherwise under similar circumstances and conditions.
- B. For the purpose of computing the taxes imposed by this chapter, "conditional or time sales," shall be treated as credit sales and the tax shall be based only upon the amounts received under such security agreement, but if the seller transfers his interest in such agreement to a third person, he shall pay an amount based upon the full sale price of the commodity, unless a record is kept of payments thereafter made on the contract in such a manner that the Treasurer may at all times ascertain from the records of the seller the amount paid thereon by the purchaser. If at any time, the Treasurer cannot so ascertain the amount paid thereon, the tax shall be computed to include any amounts not shown to be paid by the records of the seller to the satisfaction of the Treasurer.

#### 13.316 GENERAL EXEMPTIONS

The following activities are exempted from taxation under Chapter 3:

- A. Sales or activities in interstate or foreign commerce or otherwise when prohibited from being so taxed by the Constitution or general laws of the United States.
- B. The purchase by the Gila River Indian Community, any department, agency, entity or enterprise wholly-owned by the Community, and the seven Districts of the Community of any goods or services otherwise subject to taxation under Chapter 3.

- C, The purchase of any goods or services otherwise subject to Taxation under Chapter 3 by any corporation, community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

### 13.317 DEDUCTIONS

- A. Accrual basis taxpayers may claim a deduction against gross receipts for bad debts if and after all of the following conditions apply: (i) the taxpayer reported as taxable the gross receipts from the transaction on which the bad debt deduction is taken, (ii) the debt arose from a debtor-creditor relationship and was based on a valid obligation to pay a fixed or determinable sum of money, and (3) all or part of the debt is worthless. A debt is worthless if the surrounding circumstances indicate that the debt is uncollectible and that legal action to enforce payment of the debt has been, or would be, futile. Amounts received on the debt for carrying charges, interest, and repossession expenses are not allowed as a bad debt deduction if those amounts have not been reported as taxable. If a taxpayer recovers all or part of the bad debt after taking a bad debt deduction, he must report the amount as taxable gross receipts when received.
- B. In any case where the gross proceeds from an activity taxable under Section 3 of this title are also taxed under the provisions of Arizona Revised Statutes, Title 42, Chapter 8 or any successor provisions, a deduction equal to seventy-five percent (75%) of the gross proceeds or gross income from such activities may be taken when computing the tax liability under this title, provided that such Arizona tax is validly imposed on such activities as a matter of federal law. This deduction does not apply to section 13.302, 13.303 and 13.311.

### 13.318 NO WAIVER OF ANY TAX

Except for compromises otherwise permitted under this title, no waiver of any tax or interest provided for and described in this Title shall be granted to any person.

## CHAPTER 4 ADMINISTRATION

### 13.401 ADMINISTRATION AND ENFORCEMENT

The administration and enforcement of this title is vested in and shall be exercised by the Treasurer. In performing its duties pursuant to this title, the Treasurer may require the attendance of the taxpayer or of any other person having knowledge and for such purposes may take testimony, require material proof, administer oaths, and issue subpoenas and subpoenas duces tecum signed by the Treasurer or his designee, to be served on any person.

### 13.402 PRESUMPTION THAT ALL GROSS RECEIPTS ARE TAXABLE

- A. For the purpose of the proper administration of this title and to prevent evasion of the tax, it shall be presumed that all gross receipts are subject to the tax until the contrary is established by the person seeking the exemption from taxation.
- B. 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 shall have taken from the purchaser a certificate to the effect that the property was purchased for resale.

### 13.403 OTHER PRESUMPTIONS

- A. For purposes of this title the total amount of gross income, gross receipts or gross proceeds of sales shall be deemed to be the amount received, exclusive of the taxes imposed by Chapter 3 of this title, if the person upon whom the tax is imposed establishes to the satisfaction of the Treasurer that the tax has been added to the sales price and not absorbed by him, but in no event shall the person upon whom the tax is imposed, when an added charge is made to cover the taxes levied by this ordinance, remit less than the amount so collected to the Treasurer.
- B. Where the taxpayer fails to show "tax collected," deductible "repair labor" and other deductible service on invoices to customers, sales slips or cash register slips, on all applicable books and records, he shall be liable for taxation on his full gross receipts without allowance for such items.
- C. A certificate by the Treasurer of the mailing of any notice specified in this title shall be prima facie evidence of the giving of the notice.
- D. The burden of proof for all deductions by any taxpayer shall be on the taxpayer, who must prove to the satisfaction of the Treasurer that such deductions shall have been legal and proper under this title. A person taking deductions for "resale" or for "payments to

subcontractors" shall not take such deductions unless the persons for whom deductions are taken have obtained any required business licenses or permits.

#### 13.404 MONTHLY PAYMENT AND RETURNS

The taxes provided for in this title shall be paid monthly unless otherwise expressly provided, or the taxpayer elects to pay them more frequently. The taxpayer shall, on or before the thirtieth (30<sup>th</sup>) day following the end of each calendar month, make out a return showing the gross amount, any authorized deductions, taxable amount and amount of the tax due for the preceding month. The taxpayer shall be required to use the form of return authorized by the Treasurer and on or before the due date shall mail or hand deliver the same, together with remittance for the amount of tax due, payable to the "Gila River Indian Community," to the Treasurer or, if hand delivered, to the Treasurer, the Treasurer's designee, or any employee at the Cashier's Office. The return shall be signed by the taxpayer or his authorized agent, and such signature shall be evidence that the person signing the return verifies the accuracy of the information supplied in the return under penalty of perjury. A remittance mailed in an envelope containing adequate postage and postmarked on or before the due date shall be considered to be timely even if not received until after the due date. If payment is made in any other form than the money which is legal tender of the United States of America, the tax obligation shall not be ended until the check, bank draft or money order has been honored by the person on whom drawn.

#### 13.405 CASH RECEIPTS OR ACCRUAL BASIS

The taxpayer may elect to file returns and pay his tax either on a cash receipts or accrual basis, but the taxpayer shall not change from one basis to the other without the prior written approval of the Treasurer. As a condition of granting such approval, the Treasurer may require an audit of the taxpayer's financial statements or other books and records.

#### 13.406 CONSOLIDATED RETURNS

Any person engaging in two or more forms of business of like classification taxable under this title may file a consolidated return covering all business activities of like classification engaged in on the Reservation.

The Treasurer may for good cause extend the date of making any return required by this title, but the date for filing such return shall not extend more than thirty (30) days beyond the regular due date.

- A. If a taxpayer fails to make and mail or hand deliver the monthly privilege tax return by the date due, there shall be imposed a penalty of five percent (5%) of the tax due for each month or portion thereof for which the filing of the return remains delinquent, up to a maximum of fifteen percent (15%), unless it is shown that the failure is due to reasonable cause and not due to willful neglect.
- B. If a taxpayer fails to pay any tax shown or required to be shown on a return from the date upon which such payment shall have become due, there shall be imposed a penalty of ten percent (10%) of the tax due, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.
- C. If a taxpayer fails or refuses to file a return on notice and demand by the Treasurer, the Treasurer may assess a penalty of twenty-five percent (25%) of the tax, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. Such penalty shall be due and payable on notice and demand by the Treasurer.
- D. If a taxpayer fails or refuses to furnish any information requested in writing by the Treasurer, the Treasurer may assess a penalty of twenty-five percent (25%) of the amount of any assessed tax deficiency with respect to which the information was requested, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.
- E. If any part of a deficiency assessed by the Treasurer is due to negligence but without intent to defraud, the Treasurer may assess a penalty of ten percent (10%) of the amount of the deficiency which is due to negligence.
- F. If any part of a deficiency assessed by the Treasurer is due to fraud with intent to evade tax, the Treasurer may assess a penalty of fifty percent (50%) of the amount of the deficiency which is due to fraud.
- G. The penalties provided for in this section are due on notice and demand by the Treasurer, are cumulative, and shall accrue interest from the date of assessment.

#### 13.409 ABATEMENT OF PENALTIES

- A. If a taxpayer has been assessed a penalty pursuant to Section 13.408, the Treasurer, on written application of the taxpayer, shall abate the penalty if he determines that the conduct, or lack of conduct, that caused the penalty to be imposed was due to reasonable cause and not due to willful neglect.
- B. If, before an assessment is issued, a taxpayer applies in writing requesting waiver of any penalty that may be assessed pursuant to Section 13.408, the Treasurer shall not assess the any penalty with respect to which he determines that the conduct, or lack of conduct, that would cause the imposition of the penalty, was due to reasonable cause and not due to willful neglect.

#### 13.410 INTEREST

Interest at the rate of one and one-half percent (1-1/2%) per month or fraction of a month shall be assessed on any unpaid tax. Interest shall be compounded monthly and shall continue to accrue on all outstanding amounts until paid.

#### 13.411 EXAMINATION OF BOOKS AND RECORDS

The Treasurer or his authorized agents may make examination of any books, papers, records or other data bearing upon the correctness of any return, claim for refund, or protest, or for the purpose of making a return where none has been made.

#### 13.412 RECORDS OF TAXPAYER

It is the duty of every person engaging or continuing in business activities on the Reservation for which a tax is imposed by this title to keep and preserve for a minimum of three (3) years suitable records of the gross income, gross receipts of sales, invoices, for merchandise purchased and sold, resale certificates, job labor records, and all other such books of accounts relating to the taxes for which such person is liable under the provisions of this title. In addition, once an examination involving any person has commenced pursuant to this title, such person must continue to keep and preserve the foregoing records until the conclusion of the examination, even if the three-year period described in the preceding sentence has expired.

#### 13.413 INADEQUATE RECORDS

In the event the records of the gross income, or of the gross receipts of sales of the business, kept by the taxpayer, are deemed by the Treasurer to be unsuitable, or the taxpayer

does not keep such other books or records as may be necessary to determine the amount of the tax for which he is liable under the provisions of this title, the Treasurer may prescribe the form and manner of keeping such books and records.

#### 13.414 CORRECTION OF ERRORS, ETC.

If the taxpayer makes an error in computing the tax assessable against him on his monthly return, the Treasurer shall correct the error and notify the taxpayer promptly by ordinary mail that the correction has been made. Any additional tax for which the taxpayer becomes liable, plus penalty and interest, shall be payable within ten (10) days after the letter or form showing the correction is mailed to the taxpayer. If the taxpayer believes he has made any overpayment of tax, the taxpayer may file a claim for refund in accordance with Section 13.415.

#### 13.415 CLAIMS FOR REFUNDS

Claims for refund shall be filed in writing with the Treasurer within three years after filing of the return or two years after payment of the tax, whichever period expires later, and shall identify the taxpayer by name, address, and tax identification number. Each claim shall set forth the amount of refund requested, the specific tax period involved, and the specific grounds upon which the claim is founded. In the case of any refund claim allowed by the Treasurer, such refund may be allowed in the form of a credit against tax due on future returns or cash, as the Treasurer determines in his discretion.

#### 13.416 ERRONEOUS REFUNDS

The Treasurer may bring an action in tribal court to recover any refund, plus interest computed at the rate and in the manner applicable to federal tax deficiencies under section 6621 of the federal Internal Revenue Code and any successor provision, made in error. The action must begin within three (3) years after the refund was made.

#### 13.417 LIMITATIONS PERIOD FOR LIABILITY FOR TAX DEFICIENCIES

- A. Except as otherwise provided in Section 13.417(B), for taxpayers who have filed a return for a tax period, the amount of any tax imposed by this Chapter for such period shall be assessed within three years after the return was filed. For purposes of this Section, a return filed before the last day prescribed for filing a return shall be considered as filed on such last day. Where before the expiration of the time period prescribed in this Section



for the assessment of tax with respect to a tax period the Treasurer and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the time period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

- B. For taxpayers who have not filed a return for a tax period or in cases of a false or fraudulent return with intent to evade tax or other willful attempt in any manner to defeat or evade tax, the amount of any tax imposed by this Chapter for such period may be assessed at any time.

#### 13.418 DEFICIENCY ASSESSMENT PROCEDURE

- A. If any person who is required to file a return under the provisions of this title fails or refuses to make a return, or fails to pay the full amount of tax due, or if the Treasurer is not satisfied with the return or payment of tax and additional taxes are determined by the Treasurer to be due, the Treasurer shall deliver written notice of his determination of a tax deficiency to the taxpayer, and such deficiency, plus any applicable penalties and interest, shall become final thirty (30) days after such notice has been mailed and served.
- B. When a return is filed. If the Treasurer is not satisfied with a return or payment of tax, he may examine the return or examine the records of the taxpayer, and redetermine the amount of tax, penalties, and interest required to be paid, for any periods available to the Treasurer under Section 13.416, based upon any information within his possession or which comes into his possession.
- C. When no return is filed. If any person fails to make a return, the Treasurer may make an estimate of the amount of tax due and compute any applicable penalties and interest due based upon any information within his possession or which comes into his possession. Any estimate made by the Treasurer is to be made on a reasonable basis. The existence of another reasonable basis of estimate does not invalidate the Treasurer's estimate. It is the responsibility of the taxpayer to prove that the Treasurer's estimate is not reasonable and correct, by providing sufficient documentation of the type and form required by this title or satisfactory to the Treasurer.

#### 13.419 EXAMINATIONS

When determining a deficiency or evaluating a claim for refund, the Treasurer may make examination of the books, records, and papers of the taxpayer or any other person who he may believe to be in possession of facts or information pertinent to the subject of inquiry, and may administer oaths as he deems necessary or appropriate in the course of such examination. If no other information is readily available, the Treasurer may make a reasonable estimate of the

amount of tax due on the basis of past reports by the taxpayer or by any predecessor, or by any other means deemed reasonable and appropriate by the Treasurer.

#### 13.420 LIMITS ON EXAMINATIONS, ETC.

A. When the Treasurer completes an examination relating to a particular tax classification and a deficiency has been determined for such classification under Section 13.417 of this title, the taxpayer's liability for the particular tax for the period subjected to the examination is fixed and determined, and no additional examination may be conducted relating to the particular tax classification except under the following circumstances:

1. If a taxpayer files a claim for refund under Section 13.415.
2. If the taxpayer failed to disclose material information during the examination, made a material misrepresentation of fact, falsified books or records or otherwise engaged in an action that prevented the Treasurer from conducting an accurate examination.

B. If the Treasurer issues a notice of proposed assessment of taxes imposed by this title the Treasurer may not increase the amount of the proposed assessment except in situations in which an additional examination occurs as permitted in Section 13.418(A) or in one or more of the following circumstances:

1. The taxpayer has made a material misrepresentation of fact.
2. The taxpayer has failed to disclose a material fact to the auditor.
3. The Treasurer has requested information and the taxpayer fails to provide that information to the Treasurer.
4. After issuing the notice of proposed assessment but before the assessment becomes final, a decision is rendered in an administrative appeal or judicial proceeding which causes the tax initially proposed to increase.

#### 13.421 PAYMENT UNDER PROTEST

A. If any person feels aggrieved by a tax assessment or believes that any or all of his activities are not subject to a tax imposed by this title, he shall pay the amount of such assessment claimed due before the delinquent date associated with such assessment, as applicable, and shall at that time give notice, in writing, to the Treasurer that all or part of such payment is made under protest, and shall in the notice give the grounds and reasons

for such protest and that a certain part thereof, or that the total sum, is protested. Within ten (10) days of filing the protest notice the taxpayer may appeal the assessment and request an administrative hearing before the Treasurer pursuant to Section 13.421.A.

- B. If action has been taken by the taxpayer under protest all subsequent payments due shall be paid on or before the due date. However, if each tax form is plainly marked "Paid Under Protest," such subsequent payments shall be treated as part of the original protest until such time as remedies have been exhausted or the action withdrawn by the taxpayer.

#### 13.422 ADMINISTRATIVE HEARING; COURT ACTION

##### A. Administrative Hearing

When a taxpayer files a protest notice, appeals the assessment and requests a hearing before the Treasurer under Section 13.421A, such hearing shall normally be held in some suitable room in the principal office of the Gila River Indian Community or other suitable place. The Treasurer or his designee shall conduct the hearing and it shall be closed to all except the Treasurer or his designee and his authorized representatives and the taxpayer and his authorized representatives, unless the taxpayer agrees, in writing, to waive restrictions or release of information. The Treasurer or his designee shall provide the taxpayer with not less than ten (10) days notice of the date, time, and place of the hearing. During the hearing the taxpayer or his authorized representative may present any evidence he deems appropriate to the issues or questions under consideration. In addition, either before or after the hearing, the taxpayer may file a written submission in support of the protest. Within fifteen (15) days after the conclusion of the hearing, the Treasurer or his designee shall affirm, modify or vacate any assessment or any decision made with respect to the issues or questions discussed in the course of the hearing. Notice of said decision shall be provided to the taxpayer by the Treasurer or his designee, and said decision shall be effective ten (10) days after service of notice.

##### B. Court Action

If following a hearing pursuant to Section 13.421(a) the taxpayer is then dissatisfied, he may file an action in the Gila River Indian Community Court to recover payments made under protest, following appropriate procedures set forth in the Gila River Indian Community Law and Order Code. The filing of a court action shall be made within sixty (60) days after the service of notice of the Treasurer's decision. Failure to file a court action within the required sixty-day period shall make the filing null and void and any further protests shall be barred. The court shall conduct de novo review of the Treasurer's decision.

#### 13.423 TAX LIABILITY OF PARTNERS

All taxes assessed upon the business activities or property of a partnership shall be a liability and charged against each and all of the individual partners.

- A. The taxes imposed by this title, if not reported and paid by the due date specified by this chapter, shall constitute a lien on the property of any person liable for the tax.
- B. The Treasurer shall give written notice to the taxpayer at his last known mailing address or at the address at which the business is conducted by certified or registered mail. The written notice shall indicate that the Community will enforce a lien on the taxpayer's property unless the taxpayer reports and pays all tax, penalties, and interest past due under this chapter, or provides satisfactory evidence to the Treasurer that no such amounts are due, within a period of thirty (30) days from service or receipt of said written notice.
- C. If the taxpayer does not pay amounts due or provide evidence that such amounts are not due within thirty (30) days after service or receipt of said written notice, or if the Treasurer considers it necessary to take immediate action in order to protect the value of the lien, the Treasurer shall file a "Notice and Claim of Lien" to perfect a lien. Such Notice and Claim of Lien shall be filed with the Community Court or such other office designated by the Community Council to perfect a lien against property located on the Reservation and in such other appropriate filing office to perfect a lien against property located outside the Reservation. The Treasurer shall promptly send by certified or registered mail a copy of such Notice and Claim of Lien to the taxpayer at his last known mailing address or at the address at which the business is conducted. The "Notice and Claim of Lien" shall contain the following:
  - 1. A description of the property subject to the lien which is sufficient for identification.
  - 2. The name of the taxpayer as owner or reputed owner of the property.
  - 3. The amount of the delinquent tax, including penalties and interest, or if this amount cannot be determined precisely because suitable records and books were not made available by the taxpayer, the amount assessed, including penalties and interest, by the Treasurer as authorized by this title when such books and records are not available or are unsuitable.
- D. The Community shall have the right to bring an action to enforce the lien in the Gila River Indian Community Court or in any other court having jurisdiction over the property, but failure to enforce the lien by such action shall not affect its validity.

- A. If any tax imposed by this title, or any portion thereof, is not paid within thirty days after the same becomes delinquent, the Treasurer shall be empowered to commence action in

the Gila River Indian Community Court or any other court of competent jurisdiction to collect tax, penalties and interest due, and to utilize any and all appropriate remedies.

- B. Every tax imposed by this title, and all increases, interest and penalties thereon, shall become, from the time the same is due and payable, a personal debt from the person liable to the Community and it shall be payable to and recoverable by the Treasurer.
- C. If a person liable to pay any tax neglects or refuses to pay the tax, the Treasurer may collect such tax, and such other sums as are sufficient to cover the expenses of the levy, by levy upon all property and rights to property belonging to the person, on which there is a lien as provided in this title, for the payment of the tax, as provided for in more detail in Sections 13.426 to 13.429.

#### 13.426 LEVY

- A. If a person liable to pay any liability hereunder neglects or refuses to pay such liability, the Treasurer may collect the liability, and such other sums as are sufficient to cover the expenses of the levy, by levy upon all property and rights to property, except property exempt under Section 13.427, belonging to the person or on which there is a lien for the payment of the liability.
- B. The levy shall not be made more than six years after the amount of the liability becomes final. The taxpayer and the Treasurer may extend the six year limitation prescribed by this subsection for any length of time by executing a written agreement before the expiration of the six year limitation. If enforced collection has been stayed by operation of law, the period of limitations shall be extended by the period of time of the stay.
- C. As used in this chapter, "levy" includes the power of distraint and seizure by any means. Except as otherwise provided in subsection E or F of this section, a levy extends only to property possessed and obligations existing at the time of the levy or within twenty-one days after the date of the levy. In any case in which the Treasurer may levy upon property or rights to property, it may seize and sell the property or rights to the property, whether real or personal, tangible or intangible.
- D. If any property or right to property upon which a levy has been made under subsection A of this section is not sufficient to satisfy the claim of the Treasurer for which the levy is made, the Treasurer may as often as may be necessary proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due, together with all expenses, is fully paid.
- E. The effect of a levy on salary or wages payable to or received by a taxpayer is continuous from the date the levy is first made until the liability out of which the levy arose is satisfied or becomes unenforceable.

- F. With respect to a levy described in subsection E of this section, the Treasurer shall promptly release the levy when the liability out of which the levy arose is satisfied or becomes unenforceable and shall promptly notify the person upon whom the levy was made that the levy has been released.
- G. If a levy has been made or is about to be made on any property, or right to property, any person having custody or control of any books or records containing evidence or statements relating to the property or right to property subject to levy shall, upon demand of the Treasurer, exhibit such books or records to the Treasurer.

13.427      PROPERTY EXEMPT FROM LEVY

- A. The following property is exempt from levy:
1. The personal residence of the taxpayer.
  2. Wearing apparel and school books as are necessary for the taxpayer or members of his family.
  3. So much of the fuel, provisions, furniture, personal effects, arms for personal use, livestock and poultry as does not exceed the aggregate value provided for in section 6334 of the federal Internal Revenue Code and any successor provision.
  4. So many of the books and tools necessary for the trade, business or profession of the taxpayer as do not exceed in the aggregate the value provided for in section 6334 of the federal Internal Revenue Code and any successor provision.
  5. Mail, addressed to any person, which has not been delivered to the addressee.
  6. If the taxpayer is required by judgment of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of his minor children, so much of his salary, wages or other income as is necessary to comply with such judgment.
  7. Any amount payable to or received by an individual as wages or salary for personal services, or as income derived from other sources, during any period, to the extent that the total of such amounts payable to or received by him during such period does not exceed the applicable exempt amount determined under subsection D of this section.
- B. The official seizing property of the type described in subsection A of this section shall appraise and set aside to the owner the amount of such property declared to be exempt. If the taxpayer objects at the time of the seizure to the valuation fixed by the official making

the seizure, the Treasurer shall summon three disinterested individuals who shall make the valuation.

- C. No property or rights to property shall be exempt from the levy provided in this article other than the property specifically made exempt by subsection A of this section.
- D. The following wages, salary and other income payable to or received by an individual are exempt from levy under subsection A, paragraph 6 of this section:
  - 1. In the case of an individual who is paid or receives all wages, salary and other income on a weekly basis, the amount of such compensation received during any week which is exempt from levy is the amount determined pursuant to section 6634(d) of the federal Internal Revenue Code and any successor provision and which is verified in such manner as set forth in section 6334 or such successor provision.
  - 2. In the case of any individual not described in paragraph 1 of this subsection, the amount of the wages, salary and other income payable to or received during any applicable pay period or other fiscal period, as determined under rules prescribed by the Treasurer, which is exempt from levy under subsection a, paragraph 6 of this section is an amount, determined under such rules, which as nearly as possible will result in the same total exemption from levy for such individual over a period of time as the individual would have under paragraph 1 of this subsection if, during such period of time, the individual were paid or received such wages, salary and other income on a regular weekly basis.

#### 13.428 SURRENDER OF PROPERTY SUBJECT TO LEVY

- A. Any person in possession of, or obligated with respect to, property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Treasurer, surrender such property or rights to property or discharge such obligation to the Treasurer, except such part of the property or rights to property as is, at the time of such demand, subject to an attachment or execution under any judicial process.
- B. A person who fails or refuses to surrender any property or rights to property, subject to levy, upon demand by the Treasurer, is liable in a sum equal to the value of the property or rights to property not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, with costs and interest computed at the rate and in the manner provided under Section 13.410 from the date of such levy, or, in the case of a levy described in Section 13.426, subsection E or F, from the date such person would otherwise have been obligated to pay such amounts to the taxpayer. Any amount, other than costs, recovered under this subsection shall be credited against the tax liability for the collection of which the levy was made.

- C. A person in possession of or obligated with respect to property or rights to property subject to levy upon which a levy has been made who, upon demand by the Treasurer, surrenders the property or rights to property, or discharges the obligation, to the Treasurer or who pays a liability under subsection B of this section is discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from the surrender or payment.
- D. As used in this section, "person" includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to surrender the property or rights to property, or to discharge the obligation.

#### 13.429 NOTICE AND SALE OF SEIZED PROPERTY

The notice of sale and sale of property seized by the Treasurer under this article shall be conducted in the manner and the time and with the legal effect provided for in section 6335 of the federal Internal Revenue Code and any successor provision relating to the sale of seized property by federal tax levy.

#### 13.430 INJUNCTIONS

No injunction shall be awarded by any court or judge to restrain the collection of the taxes imposed by this title or to restrain the enforcement of this title.

#### 13.431 UNLAWFUL ACTS

- A. It is unlawful for any person or for any officer or agent of any company or corporation to fail or refuse to make the returns and to pay the tax provided to be made by the provisions of this title, or to make or permit to be made any false or fraudulent return or false statement in any return required by this title or for any reason to aid or abet another in any attempt to evade the payment of the tax, or any part thereof, imposed by this title or for any person or officer or agent of a company to fail or refuse to permit the examination of any book, paper, account, record, or other data by the Treasurer as required by this title or to violate any of the other provisions of this title and any such person, officer or agent of a company, corporation or association is guilty of an offense and shall be fined in an amount not to exceed five hundred dollars or be imprisoned for a period not exceeding ninety days, or both, for each offense; and the Community may institute such civil action and impose such civil penalties as is necessary to enforce the provisions of this title.



- B. In addition to the foregoing penalties, any violation of this title shall be grounds for the revocation or cancellation of any business license, permit, lease or contract issued to the violator by the Community; and shall also be grounds for excluding the person, company or corporation from the Reservation.

#### 13.432 SUCCESSOR LIABILITY

Transferees of property of a taxpayer, including but not limited to donees, heirs, legatees, devisees, and distributees, shall be liable for the taxpayer's tax liabilities hereunder in situations in which assets are transferred to the transferee for less than fair market value, such as in a liquidation, gratuitous transfer, bargain sale to a related party, or fraudulent conveyance, or in which the transferee succeeds to the taxpayer's liabilities as a matter of law, such as in a merger. Such liabilities may be either as to the amount of tax shown on a return or as to any deficiency or underpayment of any tax. Such liabilities shall be assessed, paid, and collected in the same manner and subject to the same provisions as in the case of the taxes with respect to which the liabilities were incurred. The period of limitations for assessment of the liabilities of a transferee shall be within one year after the expiration of the period of limitations for assessment against the transferor. The burden of proof is on the Treasurer to show that a person is a transferee liable for the taxpayer's tax liabilities and is on the transferee to show that the taxpayer has no tax liabilities.

#### 13.433 COMPROMISES

The Treasurer shall have appropriate authority to settle disputes in examinations, administrative appeals, and court cases. A settlement agreement must be in writing and based on a thorough assessment of the merits of the dispute, as well as on the taxpayer's ability to pay and other collection risks if applicable. Subordinates of the Treasurer may enter into a settlement agreement only with the approval of the Treasurer, after presenting a written report of the basis and reasons for the proposed settlement. A settlement agreement may address the effect of the settlement on future tax periods if the Treasurer deems it appropriate in the interests of tax administration. The Treasurer shall provide a quarterly report regarding settled cases to the Community Council.

#### 13.434 INSTALLMENT AGREEMENTS

The Treasurer shall have discretion to enter into installment agreements with taxpayers in cases in which the Treasurer believes such an agreement will promote the Gila River Indian Community's interests in tax collection. In order to qualify for such an agreement, a taxpayer must make full disclosure of his financial condition, such disclosure must show that the taxpayer cannot pay the entire deficiency or assessment in a lump sum but can pay such amount over time

under the terms of the agreement, interest computed at the rate and in the manner applicable to federal tax deficiencies under section 6621 of the federal Internal Revenue Code and any successor provision must be provided for, and the Treasurer must have the ability to terminate the agreement in the event of default or in other appropriate circumstances in the interest of tax administration. The Treasurer shall provide a quarterly report regarding installment agreements to the Community Council.

#### 13.435 SEVERANCE CLAUSE

The provisions of this title are declared to be severable and if any Section, sentence, clause or phrase of this title shall for any reason be held to be invalid or unlawful, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this title, but they shall remain in effect, it being the legislative intent that this title shall stand notwithstanding the invalidity of any part.

#### 13.436 RULES AND REGULATIONS

The Treasurer is authorized to formulate rules and regulations and procedures necessary to the efficient enforcement of this title, and when approved by the Gila River Indian Community Council such rules, regulations, and procedures shall be binding upon and obeyed by all persons subject to this title. A copy of all rules and regulations shall be furnished to any person subject to this title upon request.

#### 13.437 EFFECTIVE DATE

This ordinance shall become effect sixty (60) days after Community Council approval.