



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

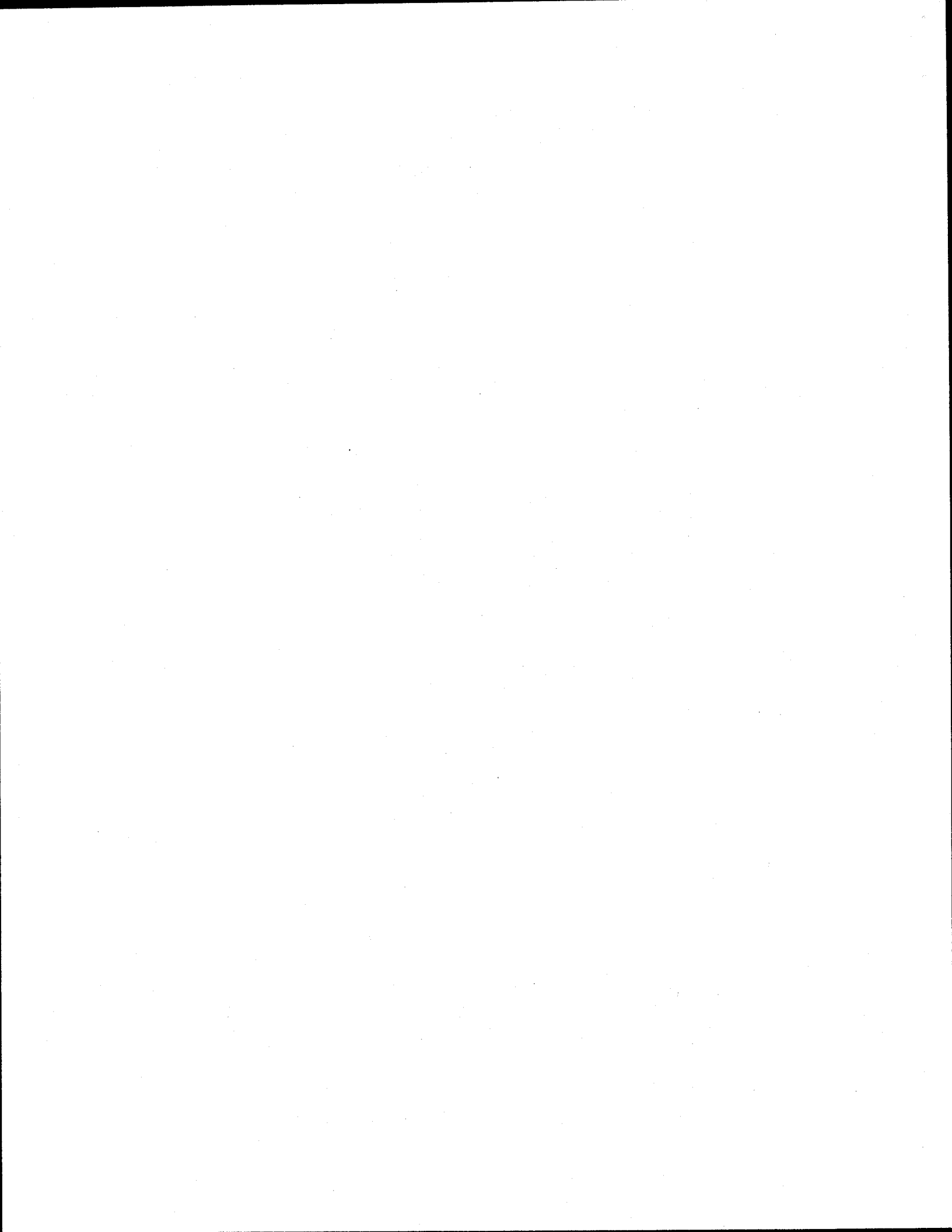
Pursuant to authority contained in Article XV, Section 1, (a), (7), (9), (16), and Section 4 of the amended Constitution and Bylaws of the Gila River Indian Community, ratified by the Tribe January 22, 1960 and approved by the Secretary of the Interior on March 17, 1960, the foregoing Resolution was adopted this 15th 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 2-15-05

ATTEST:

Janice 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.