

**HUALAPAI TRIBAL COUNCIL
OF THE GOVERNING BODY OF THE
HUALAPAI TRIBE OF THE HUALAPAI RESERVATION
PEACH SPRINGS, ARIZONA**

RESOLUTION NO. 64-89

Possessory Interest Tax

WHEREAS, the Amended Constitution and By-Laws of the Hualapai Tribe, approved October 22, 1955, provides in Article IV, Section 1, that the governing body of the Hualapai Tribe is the Hualapai Tribal Council and sets forth in Article VI the powers of the Tribal Council exercised in this Resolution; and

WHEREAS, the Constitution of the Hualapai Tribe, Article VI, Section 1(m), authorizes the Tribal Council to exercise its governmental responsibilities through the enactment and imposition of revenue-raising taxes upon persons and businesses present within the Hualapai Reservation, including non-members of the Tribe.

WHEREAS, the Supreme Court of the United States has specifically upheld the sovereign authority of Indian tribes to levy and collect taxes upon persons and businesses within Reservation boundaries; and

WHEREAS, the budget of the Hualapai Tribe has increased substantially as a result of the need to provide essential governmental services to all persons, both members and non-members, working, residing, doing business or otherwise present within the exterior boundaries of the Hualapai Reservation; and

WHEREAS, the Tribal Council recognizes a need to raise revenues to continue providing tribal services within the exterior boundaries of the Hualapai Reservation, which benefit all individuals and businesses; and

WHEREAS, a possessory interest tax with revenues dedicated primarily to offset tribal governmental budgetary expenditures is an appropriate and equitable form of raising revenues to provide essential governmental services on the Hualapai Reservation; and

WHEREAS, a tax study commissioned by the Tribal Council indicates that a reasonable percentage tax on the assessed value of certain possessory interests would generate tax revenues needed by the Tribe and still not have substantial impact on the businesses owning the possessory interests.

NOW, THEREFORE, BE IT RESOLVED by the Tribal Council of the Hualapai Tribe hereby enacts a Tax Ordinance, attached hereto as Exhibit A, which imposes a possessory interest tax on all possessory interests within the Hualapai Reservation.

CERTIFICATION

I, the undersigned, as Chairperson of the Hualapai Tribal Council hereby certify that the Tribal Council of the Hualapai Tribe is composed of nine (9) members of whom seven (7) constituting a quorum were present at a regular meeting thereof held on this 26th day of December 1989, and that the foregoing resolution was duly adopted by the affirmative vote of seven (7) members, pursuant to authority of Article VI, Section 1(a) of the Revised Constitution and By-Laws of the Hualapai Tribe approved October 22, 1955.

Carrie Bender
Carrie Bender, Chairperson
HUALAPAI TRIBAL COUNCIL

ATTEST:

Louise Benson
Louise Benson, Secretary
HUALAPAI TRIBAL COUNCIL

DATE: 1-11-90

REVIEWED AND APPROVED:

Superintendent,
Bureau of Indian Affairs

ATTACHMENT A

HUALAPAI TRIBE POSSESSORY INTEREST TAX
ORDINANCE NO. 26

	(F) Burden of Proof	6
§ 15.	Collection Powers	6
§ 16.	No Waiver of Sovereign Immunity	7
§ 17.	Severability	7
§ 18.	Use of Tax Proceeds	7
§ 19.	Amendment	7
§ 20.	Effective Date	7

ORDINANCE NO. 26

POSSESSORY INTEREST TAX

§ 1. **Statement of Purpose.** It is the policy of the Hualapai Tribe to provide members and non-members residing, doing business, working or otherwise present within the Hualapai Reservation with essential governmental services. To finance this governmental policy, the Hualapai Tribe in this Ordinance adopts a possessory interest tax which will provide the Tribe with a portion of the revenues necessary to fund essential governmental services within the Reservation which will benefit all persons on the Reservation.

§ 2. **Tax Administration Division.** A Tax Administration Division of the Hualapai Tribe is hereby established to administer this Ordinance and to keep all records and accounts concerning this tax. The Tribal Council shall from time to time designate an individual to be Director of the Tax Administration Division. Any inquiries concerning the possessory interest tax shall be made through the Tax Administration Division.

§ 3. **Definitions.** Unless the context otherwise requires, in this Ordinance the following definitions shall apply:

(A) **Chairperson.** "Chairperson" shall mean the Chairperson of the Hualapai Tribe.

(B) **Commercial Business.** "Commercial Business" shall mean any business for profit which is not a utility or a retail business.

(C) **Constitution.** "Constitution" shall mean the Constitution and By-Laws of the Hualapai Tribe adopted October 22, 1955, and approved by the Secretary of the Interior on January 16, 1956.

(D) **Court of Appeals.** "Court of Appeals" shall mean the Hualapai Court of Appeals as described in the Hualapai Law and Order Code.

(E) **Full Cash Value.** "Full Cash Value" shall mean the estimate of value that is derived annually by the use of standard appraisal methods and techniques or as provided by law and is synonymous with market value.

(F) **Hualapai Reservation or Reservation.** "Hualapai Reservation" or "Reservation" shall mean all lands subject to the jurisdiction of the Hualapai Tribe and includes any and all lands within the exterior boundaries of the Hualapai Reservation, regardless of whether said land is owned in fee, whether said lands are Indian lands held in trust by the United States, or whether said lands are otherwise held.

(G) **Possessory Interest.** "Possessory Interest" shall mean any non-exempt interest in real property within the exterior boundaries of the Hualapai Reservation, including, but not limited to, (1) interests held in fee, (2) interests held under lease, and (3) interests held under an easement or right-of-way.

(H) **Retail Business.** "Retail Business" shall mean any business for profit whose business operations consist primarily of the retail sale or lease of consumer goods or the retail sale of consumer services on the Reservation. Retail Business as defined herein does not include a utility.

(I) **Secretary.** "Secretary" shall mean the Secretary of the United States Department of the Interior.

(J) **Superintendent.** "Superintendent" shall mean the Superintendent of the Truxton-Canon Agency, Bureau of Indian Affairs.

(K) **Taxpayer.** "Taxpayer" shall mean any taxable person or entity, including any individual, partnership, corporation or other legal entity, having ownership rights in any possessory interest within the Hualapai Reservation.

(L) **Treasurer.** "Treasurer" shall mean the Treasurer of the Hualapai Tribe.

(M) **Tribal Council.** "Tribal Council" shall mean the governing body of the Hualapai Tribe.

(N) **Tribal Court.** "Tribal Court" shall mean the Hualapai Tribal Court as described in the Hualapai Law and Order Code.

(O) **Tribe.** "Tribe" shall mean the Hualapai Tribe of the Hualapai Reservation.

(P) **Valuation.** "Valuation" shall mean the full cash value for use on the assessment and tax roll.

(Q) **Utility.** "Utility" shall mean any privately or publicly held entity primarily engaged in supplying, transmitting, transporting, or distributing electricity, oil, natural gas, natural gas products, water, carbon dioxide, liquid hydrocarbons, telephone, telegraph, or other communication services, or transportation services, including freight services.

§ 4. **Imposition and Rate of Tax.** The possessory interest tax set forth herein shall be imposed on the ownership of possessory interests on January 1 of each year and shall be assessed at the rate of seven percent (7%) of the full cash value of the possessory interest as determined and computed in accordance with this Ordinance. The rate of tax shall be and remain the same as herein established unless modified by resolution of the Tribal Council. Upon passage of any resolution changing the rate of tax, notice shall be given to all known taxpayers and shall be published in newspapers of general circulation within and surrounding the Reservation and posted or published at such places as the Tribal Council designates.

§ 5. **Computation of Value of Possessory Interest.** The valuation of a possessory interest shall be computed as provided in this section or by any other method adopted by the Tax Administration Division which accurately reflects the full cash value of the possessory interest which is subject to taxation.

(A) **Date of Valuation.** All property that is subject to taxation under this Ordinance shall be valued as of January 1 of the tax year.

(B) **Method of Valuation.** The full cash value of a possessory interest shall include the value of any improvements, equipment, or other tangible personal property held or used by the taxpayer in connection with the taxable use of the possessory interest. Value shall be computed in accordance with the method for determining full cash value for purposes of property taxation under the applicable law of the State of Arizona and regulations adopted pursuant thereto. This reference to state law is solely for purpose of establishing a method of valuation, and shall not be construed to be a concession by the Tribe that state law is otherwise applicable on the Reservation.

§ 6. **Tax Declaration and Designation of Natural Person.** Every taxpayer owning any non-exempt possessory interest within the Reservation shall designate a natural person as the individual empowered by that taxpayer to act on behalf of the taxpayer with respect to all matters involving the possessory interest tax. The designated natural person shall complete the forms distributed by the Tax Administration Division and shall provide the information required therein.

§ 7. **Reporting Requirements.** Each taxpayer shall comply with the following reporting requirements and such other requirements as are by rule or regulation adopted by the Tax Administration Division:

(A) **Forms.** The Tax Administration Division shall provide taxpayers with forms for the reporting of the value of all possessory interests to the Tribe. Information reported by the taxpayer on these forms shall be the basis for determination and assessment of tax due.

(B) **Reporting Date.** Each taxpayer shall report the value of its possessory interests by February 15 of the tax year.

(C) **Extension of Time.** Upon timely written request to the Tax Administration Division, a taxpayer may request an extension of time within which to report the value of its possessory interests; and for good cause shown, the Tax Administration Division may extend, for a period not to exceed thirty (30) days, the reporting date, but no further extension shall be allowed. Such a request for extension, to be timely, must be received by the Tax Administration Division prior to the reporting date. Requests for extension received by the Tax Administration Division after the reporting date shall not be considered. If the Tax Administration Division extends the date for filing valuation reports for a taxpayer, the date for mailing the notice of tax assessment to that taxpayer provided for in § 8 of this Ordinance shall automatically be extended by the amount of additional time granted the taxpayer for filing the valuation reports.

(D) **Failure to Report, Administrative Valuation.** If a taxpayer fails to file substantially complete possessory interest tax reporting forms, or to otherwise provide requested information or documents within its possession or control which are relevant to a determination of the extent or value of its possessory interests, the Tax Administration Division may proceed to determine the full cash value of that taxpayer's possessory interests and to assess taxes accordingly. This assessment will be binding on the taxpayer unless it shows that the valuation, on the basis of the best information available to the Tax Administration Division, was clearly erroneous or unless the Tax Administration Division for other good cause shown relieves the taxpayer from the operation of this subsection.

(E) **Reporting Value of Exempt Interests.** No taxpayer shall be required to file property valuation forms for any possessory interest which is exempt under § 12, provided that the Tax Administration Division may require any taxpayer to file the information necessary to establish the claimed tax exemption.

(F) **Authority of the Tax Administration Division.** The Tax Administration Division may by form or regulation require any taxpayer to file the information or documents deemed necessary for the proper and efficient administration of the tax.

(G) **Administrative Reports.** The Tax Administration Division shall report all possessory interest tax activities and collections to the Tribal Council at least annually.

§ 8. **Notice of Assessment and Payment of Taxes Due.** Notice of tax assessment and of the amount of tax due shall be mailed by the Tax Administration Division by March

1 of the tax year, unless that date has been extended pursuant to § 7(C) of this Ordinance. The assessment shall be effective as of March 1 of the tax year without regard to the date of mailing of the notice. The assessed tax shall be paid within sixty (60) days. Any taxes assessed shall be paid by check or money order made payable to the Treasurer. Payment is timely made if it is postmarked before midnight on the date on which the tax is due or if it is delivered to the Office of the Treasurer by certified mail or in person and a receipt is given before midnight on the due date.

§ 9. Extension of Time for Paying Tax. Upon the filing with the Tax Administration Division of a timely request for an extension of time within which to pay assessed taxes, and upon a showing of good cause, the Tax Administration Division may extend, for a period or periods not to exceed sixty (60) days in total, the due date for payment of taxes assessed, but no further extension shall be allowed. Such a request for extension, to be timely, must be filed on or before the date the assessed taxes are due. The penalty for late payment as provided for in § 10(A) of this Ordinance shall not apply to any payment for which an extension has been granted.

§ 10. Penalty.

(A) Penalty for Late Payment. Any taxpayer failing to pay the amount of tax assessed by the due date, except in cases where extensions have been granted, shall pay a penalty on the outstanding balance in the amount of one percent (1%) per month of delay in making payment, prorated to the actual date of receipt by the Tax Administration Division.

(B) Penalty for Failure to File Reports. Any taxpayer failing to file any report or other information required by this Ordinance when due shall be assessed a penalty of five percent (5%) of the amount of tax due, but in no event less than \$50.00.

§ 11. Lien for Taxes.

(A) Lien Against Possessory Interest. The possessory interest tax shall be a lien against the possessory interest of the taxpayer in favor of the Tribe to secure payment of the tax and any penalty and interest that become due. The lien under this subsection shall arise as of March 1 of the tax year, without notice or demand, and shall be a first lien and superior to any interest in the property.

(B) Lien Against Other Property. If a taxpayer fails to timely pay the possessory interest tax after assessment, the amount of the unpaid tax, including any penalty and interest that becomes due, shall be a lien in favor of the Tribe upon all property and rights to property of the taxpayer. The lien imposed by this subsection shall arise at the time of the assessment, but shall be effective against any mortgagee, pledgee, purchaser, judgment creditor, lienor or other encumbrancer for value when notice of the lien has been filed as provided in subsection (C).

(C) Notice of Lien. A notice of the lien provided for in subsection (B) of this section shall be filed with the Secretary of the Tribe and with the Superintendent. The notice of lien shall identify the taxpayer whose tax liability is sought to be enforced and the date the tax was due, and shall state that the Tribe claims a lien for the entire amount of tax claimed to be due, including applicable interest and penalty.

(D) Release or Reduction of Lien. The liens provided for in this section shall continue until the liability for payment of the full amount demanded in the lien is released by the Tribe. Partial payment of the amount due shall reduce the amount of the

lien by the amount paid. The Tribe may release the lien when the payment of the tax, plus any penalty and interest, is adequately guaranteed by other security or by a surety bond.

(E) **Foreclosure.** The Tribe may foreclose upon the property subject to a lien by filing a civil action in tribal, state, or federal court for that purpose. In the event of such a foreclosure, the property shall be sold in a commercially reasonable manner and the proceeds applied to the expenses of the foreclosure and then to the liability for costs, penalties, interest and tax. Any remaining balance shall be remitted to the taxpayer. Provided, that the Tax Administration Division may by regulation prescribe the circumstances in which property subject to a lien may be retained to offset the amount due, rather than being converted into money.

§ 12. Exemptions.

(A) **Utility Service Lines.** To the extent used for purposes exempt under this subsection, a possessory interest used to operate a utility service line, utility delivery facility or utility distribution facility shall be exempt from this tax. Possessory interests used to operate utility transmission lines shall be subject to this tax. The Tax Administration Division is authorized to establish regulations defining service, delivery, distribution and transmission lines and facilities, subject to approval by the Tribal Council.

(B) **Governmental Entities.** No possessory interest held and used by the United States, the Tribe, the State of Arizona, or a subdivision thereof, or by municipalities within the State of Arizona, shall be subject to this tax.

(C) **Retail Business.** No possessory interest which is used primarily to conduct a retail business shall be subject to this tax.

(D) **Ranches and Homesites.** No possessory interest which is used primarily to conduct a ranch or to provide a homesite shall be subject to this tax.

§ 13. **Method of Claiming Exemption.** Any taxpayer owning both taxable and exempt possessory interests shall file with the Tax Administration Division a claim for any exemption under § 12 of this Ordinance. The claims for exemption shall be filed on the form provided by the Tax Administration Division and at the time of filing the valuation reports required by § 7, and shall be accompanied by a map clearly indicating the specific property for which exemption is claimed. Any taxpayer owning only exempt possessory interests shall be required to claim such exemptions only at the written request of the Tax Administration Division.

§ 14. **Appeal Procedures for Protested Taxes.** Any protest to an assessment, a denial of a claim for exemption, a determination of value, or any other matter relating to the possessory interest tax may be raised only in conformity with this section. A protesting taxpayer shall timely pay its tax under protest and request a refund of all or part thereof by filing a Notice of Protest with the Tax Administration Division at the time of timely payment. Delinquent taxes may not be paid under protest. All protests accompanying timely payment of the tax shall be handled as follows:

(A) **Protests to Tax Protest Panel.** The protest shall be referred to a three-member Tax Protest Panel to be appointed by the Tribal Council. The Tax Protest Panel shall determine whether the protested tax shall be refunded in whole or in part and shall report its decision in writing to the protesting party or his representative, the Chairperson, the Treasurer, and the Director of the Tax Administration Division within five (5) working days of the date of determination of said protest. The Panel may request any additional information or hold such hearings or meetings as it determines are necessary in such a

manner (either formal or informal) as it determines is necessary. The Panel may issue rules and regulations for the conduct of Panel meetings and tax protest hearings. The decision of the Panel shall be final unless appealed to the Tribal Court in accordance with the provisions of this Ordinance.

(B) Appeals to Tribal Court. Appeal from a determination of the Tax Protest Panel may be made to the Tribal Court, by filing a Notice of Appeal with the Clerk of the Tribal Court with copies to the Treasurer, the Director of the Tax Administration Division, the taxpayer, and the Chairperson of the Tax Protest Panel within fifteen (15) days of the date of the decision of the Panel. The appeal may challenge the decision of the Tax Protest Panel only to the same extent and upon the same theory as was asserted before the Tax Protest Panel. Upon receipt of an appeal from a decision of the Panel, the Court Clerk shall schedule a hearing before the Tribal Court. The protesting taxpayer and the Tax Administration Division may, at the hearing, present evidence and argument and be represented by counsel, at its own expense. The decision of the Tribal Court regarding the protest shall be made in writing and distributed to the protesting taxpayer or his counsel, the Director of the Tax Administration Division, the Chairperson of the Tax Protest Panel, the Treasurer, and the Chairperson within five (5) working days of the date of the decision. The decision of the Tribal Court shall be final unless appealed to the Court of Appeals in accordance with the provisions of this Ordinance.

(C) Appeals to Court of Appeals. Appeals from the determination of the Tribal Court may be made to the Court of Appeals by filing a Notice of Appeal with the Clerk of the Tribal Court, with copies to the Treasurer, the Chairperson, the Director of the Tax Administration Division, the taxpayer, and the Chairperson of the Tax Protest Panel within fifteen days (15) of the date of the decision of the Tribal Court. Upon the docketing of an appeal from the Tribal Court, an appellate briefing schedule and a time for oral argument shall be set pursuant to the appeals procedures of the Tribe's Law and Order Code. The written decision of the Court of Appeals shall be distributed to the protesting taxpayer or his counsel, the Director of the Tax Administration Division, the Chairperson of the Tax Protest Panel, the Treasurer, and the Chairperson within five (5) working days of the date of decision. The decision of the Court of Appeals shall be final.

(D) Payment and Segregation of Contested Amounts. No protest shall be heard unless the assessed taxes have first been timely paid by the taxpayer to the Treasurer. The Treasurer shall hold any contested amounts without expenditure in an interest bearing account until a final determination is made on the protest. The Treasurer shall refund any taxes paid on which protests have been sustained, with interest as allowed by this Ordinance, within thirty (30) days of the date of final decision.

(E) Interest on Erroneous or Illegally Collected Taxes. If any tax is found to be erroneous or illegally collected, interest at the rate of four percent (4%) per annum shall be allowed on the amount refunded.

(F) Burden of Proof. The assessment by the Tax Administration Division is presumed to be correct. The taxpayer has the burden of proof to establish that the protested tax was erroneous or illegally collected.

§ 15. Collection Powers. The Tax Administration Division, in the name of the Tribe, shall have full power to collect taxes and penalties assessed, including the power to file suit in Tribal Court or in any other court of competent jurisdiction, and to execute on any judgment by all appropriate legal remedies, including attachment and seizure of the assets of any delinquent taxpayer.

§ 16. **No Waiver of Sovereign Immunity.** Any challenge to the validity or application of this Ordinance may be brought only in the courts of the Tribe, and only in accordance with this ordinance and the laws of the Tribe. The Tribe does not waive its sovereign immunity from suit in the courts of any other jurisdiction for any claim arising from this Ordinance or its application. The determination to refund all or part of a protested tax payment shall be made in accordance with the terms of this Ordinance. Any decision of the Tribal Court or the Court of Appeals made in accordance with § 14 hereof shall be final.

§ 17. **Severability.** If any part or application of this Ordinance is held invalid, the remainder of the Ordinance or its application to other situations or persons shall not be affected.

§ 18. **Use of Tax Proceeds.** Tax proceeds shall be deposited by the Treasurer in a facility to be authorized by the Tribal Council for expenditure to defray the costs of providing essential governmental services on the Reservation and for other purposes as determined by the Tribal Council. The Treasurer may execute vouchers against this fund to make refund adjustments, payments of interest or payments for any purpose for which this Ordinance may require.

§ 19. **Amendment.** This Ordinance may be amended by resolution passed by the Tribal Council in accordance with the Constitution of the Tribe. The Tax Administration Division shall notify taxpayers of any amendment in the manner considered appropriate by the Tax Administration Division under tribal law.

§ 20. **Effective Date.** This Ordinance shall be effective on the date determined by the Tribal Council, subject to review by the Secretary pursuant to Article VII of the Constitution of the Tribe. If delay in obtaining the review of the Secretary causes the effective date of this Ordinance to be on or after January 1, 1990, this Ordinance shall be amended as follows:

(A) The date of imposition of the tax under § 4 and the date on which the lien under § 11(A) shall arise shall be January 1, 1990;

(B) The date for reporting the value of possessory interests for the year 1990 under § 7(B) shall be forty-five (45) days after the date the Ordinance is reviewed by the Secretary;

(C) The date by which the Tax Administration Division shall mail the notice of tax assessment for 1990 shall be sixty (60) days after the date the Ordinance is reviewed by the Secretary; and

(D) The dates established by this section shall be subject to extension under § 7(C) and § 9 of this Ordinance.



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
TRUXTON CANON AGENCY
VALENTINE, ARIZONA 86437

IN REPLY REFER TO:

Self-Determination
(602) 769-2286

APR 09 1990



Ms. Carrie Bender, Chairperson
Hualapai Tribal Council
P. O. Box 179
Peach Springs, AZ 86434

Dear Carrie:

This is in reference to your letter dated March 29, 1990 regarding the Tribe's Ordinance No. 26. The ordinance is currently in our Solicitor's office for review prior to approval.

Furthermore, Ordinance No. 26 requires approval from the Secretary of the Interior, thus, the thirty (30) day rule is not in effect.

We will advise the Tribe of the Solicitor's comments upon receipt.

If you have any questions, please feel free to contact our office.

Sincerely,

Superintendent
Truxton Canon Agency