

ORDINANCE NO. 1 OF 1990

ORDINANCE OF THE TRIBAL COUNCIL
OF THE BISHOP PAIUTE INDIAN TRIBE
ADOPTING A TRIBAL SALES TAX

The Tribal Council of the Bishop Paiute Indian Reservation (hereinafter "Tribal Council") hereby ordains as follows:

SECTION 1. SALES TAX

Any business (other than the Tribe, its political subdivisions or joint powers agencies which it has joined or authorized by Ordinance) doing business on the reservation shall pay a sales tax to the tribal taxing authority equal to 6% of the sales price of any tangible personal property subject to this Ordinance (hereinafter "property") sold to any consumer.

For purposes of this section a business is doing business on the reservation when it is physically located on the reservation either temporarily or permanently, or when located outside the boundaries of the reservation, it negotiates a sale to a consumer at its place of business, but agrees to deliver the purchased item to the reservation.

SECTION 2. DEFINITIONS

1. "Business" means any person engaged in an activity with the object or result of gain, benefit or advantage for the person so engaged, either direct or indirect, and where appropriate to the context in which the term is used, the activity itself.

2. "Consumer" means any person who purchases any property from any business doing business on the reservation where the purchase occurs on the reservation.

For purposes of this section a purchase occurs on the reservation, when property is purchased from a business physically located outside the boundaries of the reservation, but delivered to the consumer on the reservation by the business directly or through a third party such as a common carrier.

3. "**Person**" includes but is not limited to any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, the State of California, any county, city and county, municipality, district, or other political subdivision of the State of California, another state, or its political subdivisions, the Tribe, or any of its political subdivisions or joint powers agencies of which it is a member, any other tribe or combination acting as a unit.

4. "**Purchase**" means and includes:

(a) Any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of property for a consideration. "Transfer of possession" includes only transactions found by the taxing authority to be in lieu of a transfer of title, exchange, or barter.

(b) A transaction whereby the possession of property is transferred by the seller retains the title as security for the payment of the price.

(c) A transfer for a consideration of property which has been produced, fabricated, or printed to the special order of the customer, or of any publication.

(d) Any lease of property in any manner or by any means whatsoever, for consideration.

5. "**Reservation**" means the Bishop Paiute Indian Reservation.

6. "**Sale**" or "**Sold**" means and includes:

(a) Any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of property for a consideration. "Transfer of possession" includes only transactions found by the taxing authority to be in lieu of a transfer of title, exchange, or barter.

(b) The producing, fabricating, processing, printing, or imprinting of property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting.

(c) The furnishing and distributing of property for a consideration by social clubs and fraternal organizations to their members or others.

(d) The furnishing, preparing, or serving for a consideration of food, meals, or drinks.

(e) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the prices.

(f) A transfer for a consideration of the title or possession of property which has been produced, fabricated, or printed to the special order of the customer, or of any publication.

(g) Any lease of property in any manner or by any means whatsoever, for a consideration.

7. **Sales Price**" means the total amount valued in money paid or agreed to be paid or charged to the consumer for any item of property in a sale between the transferor and transferee, excluding any separately itemized charges for installing or servicing the property.

8. **Sales Tax**" means the tax imposed by Section 1 of this Ordinance.

9. **"Tangible Personal Property Subject to this Ordinance"** or **"Property"** means construction materials and components, and other tangible personal property incorporated into,

attached to, or affixed to, real property by licensed construction contractors in the performance of a construction contract and which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of the real property. It also means and includes fixtures sold in connection with the performance of a construction contractor by a licensed construction contractor, which includes items accessory to a building or other structure that do not lose their identity as accessories when installed. "Tangible Personal Property" as used in this paragraph means personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses.

10. **"Tribal Taxing Authority"** means the Bishop Indian Tribal Council, when the construction contractor is performing a contract to which the Tribal Council is a party, or the Owens Valley Indian Housing Authority (hereinafter OVIHA), is a party to the construction contract with respect to which taxes are imposed by this Ordinance. The OVIHA may act as tribal taxing authority representative for purposes of collecting sales taxes so authorized by Tribal Council Resolution. Copies of any such resolution shall be given to the OVIHA and any taxpayers affected thereby within ten (10) days after its adoption.

11. **"Tribe"** means the Bishop Paiute Indian Reservation.

SECTION 3. RETURNS

1. Any business subject to sales tax shall report all sales subject to the tax to the tribal taxing authority as provide for in this section.

2. Any business subject to sales tax shall report all sales subject to the tax to the tribal taxing authority on such forms and at such times as the taxing authority shall prescribe by regulation, as authorized by Section 5 of this Ordinance.

SECTION 4. PAYMENT

Each business shall pay sales tax to the tribal taxing authority upon demand of the taxing authority. Failure to

pay the tax within ten (10) days of demand shall render such business liable to the authority as on any other debt. Moreover, the authority shall have the right to set off the amount owing as sales tax against any monies the authority of the Tribe may otherwise owe the taxpayer. This remedy shall be in addition to any other remedy the authority may have to collect or enforce the payment of sales taxes due and unpaid under this Ordinance. Nothing contained in this Ordinance shall be construed as waiving the sovereign immunity of the Tribe, its tribal government or the tribal taxing authority.

SECTION 5. TRIBAL TAXING AUTHORITY

1. Authority: The Tribal Council in accordance with Section 2, subsection 10, is to act as the Tribal Taxing Authority to administer and enforce the provisions of this Ordinance pursuant to this Section 5. The Tribal Taxing Authority shall act as a branch of the tribal government for this purpose and shall exercise all of the powers of the tribal government necessary or convenient to the administration and enforcement of this Ordinance.

2. Powers: In order to administer and enforce the provisions of this Ordinance, the tribal taxing authority shall have the power to:

(a) Appoint one or more officials to act as tax officials and to specify that said officials shall have the right to assess and collect sales taxes according to regulations adopted by the taxing authority governing board and approved by the Tribal Council.

(b) To adopt regulations governing taxpayer reporting responsibilities, procedures for enforcing compliance with reporting responsibilities, procedures for assessing tax liability, procedures for collecting taxes that are due but unpaid, and procedures for remitting collected taxes to the Tribe. Said regulations shall only become effective fifteen (15) days after the taxing authority provides a copy of the proposed regulations to the Tribal Council and said governing body either fails to make any comment during that period or approves the regulations. If said governing body disapproves any portion of the

proposed regulations, it shall specify its objections and how the regulation can be changed to meet its approval. If the taxing authority makes the requested changes, the regulations shall become effective immediately without further notice to the Tribal Council, except that a copy of the adopted regulations shall be promptly provided to the Tribe. Any unresolved disputes regarding regulations shall be resolved pursuant to Subsection 5.3.(b) The regulations shall, at a minimum:

(1) provide the taxpayer with prior notice of assessed tax liability and an opportunity for a hearing before a hearing officer or panel established by the taxing authority. All decisions of the hearing officer or panel shall be final for the Tribe;

(2) protect the taxpayer from paying both a state sales tax and a tribal sales tax with respect to the same sale by providing a procedure whereby the taxpayer can establish, to the satisfaction of the taxing authority, that it has done everything legally required under state law to exempt the sale from state sales tax and that the State Board of Equalization nevertheless has assessed and demands payment of the state sales tax with respect to the sale. If the taxpayer makes such a showing within reasonable time limits established by taxing authority regulations, the taxing authority at its option shall waive the tribal sales tax, refund the tax if already collected or enter an agreement with the taxpayer under which the taxpayer assigns its rights to the taxing authority and the taxing authority agrees to indemnify and hold the taxpayer harmless from any costs associated with opposing the state sales tax and any state sales tax liability in order that the taxing authority can legally challenge the state's authority or jurisdiction to impose its tax with respect to the sale; and

(3) provide that all sales taxes collected by the authority shall be deposited in a separate interest bearing account to the credit of the Tribe until remitted to the Tribe and that the Tribe's share of all taxes collected with respect to a sale shall be remitted to the tribal general fund within three (3) months after the time to appeal any decisions of the taxing authority with respect to the sale has expired or final decisions of the taxing authority have been rendered after appeal or any challenge to a state sales tax is finally resolved. In the case of sales tax imposed in connection with a contractor's performance of a construction contract on the reservation, said taxes shall be remitted to the tribal general fund within three (3) months after final payment has been made to the contractor, unless the taxing authority has exercised its option to challenge the state sales tax in which case the funds shall be remitted to the tribal general fund three (3) months after challenge is finally resolved in favor of the taxing authority.

(c) As one means of collecting taxes that are due but unpaid, is to set off the uncollected taxes against any debts owed by the taxing authority or the Tribe or any other branch of the Tribal government to the taxpayer. For purposes of collecting such taxes only, and only to the extent necessary for that purpose, the Tribe hereby assigns to the taxing authority any debts that it now owes or may incur in the future to any taxpayer; and

(d) Where the Tribal Council acts as the tribal taxing authority as provided in Section 2, Subsection 10, it shall have the authority to levy tax liens on funds in the possession of any agency or subdivision of the tribal government, including, but not limited to, the OVIHA, which are due or to become due to the taxpayer. Such liens may only be imposed after completion of the procedures required by Subsection 2.b. (1) of this Section 5. Any tribal agency or subdivision upon which such a lien is levied shall within

five (5) working days of its receipt, remit the amount of the levy to the Tribal Council. Said agency or subdivision shall send notice of the levy to the taxpayer within five (5) working days of its receipt.

(e) To take any other action necessary to administer or enforce this Ordinance, including filing in its own name or the Tribe's name in any court of competent jurisdiction to collect sales taxes that are due but unpaid; provided that this power does not expressly or impliedly waive the Tribe's or the taxing authority's sovereign immunity from suit or subject the taxing authority or the Tribe to any cross-claim, counter-claim, third party claim or other counter-suit.

3. Special Provisions Only Applicable to OVIHA

(a) Administrative Fee: To reimburse the OVIHA for the cost of administering this Ordinance in the collection of taxes, including but not limited to staff time, supply and postage cost, legal fees and expenses and related overhead expenses, the OVIHA shall retain not to exceed one half percent (1/2%) of all sales taxes collected by it under this Ordinance and shall pursuant to Subsection b. (3), remit to the Tribe as its share the balance of all such taxes collected.

(b) Resolving Disputes: Should the Taxing Authority dispute or object to any action of the OVIHA, it shall notify the OVIHA in writing of its complaint within fifteen (15) days of the action to which it objects, unless through the exercise of reasonable diligence it could not, within that time period, have discovered that the action occurred, in which case written notice shall be given within fifteen (15) days of the date the Taxing Authority first learns of the action. The notice shall specify the action, the Authority's complaint and actions that the OVIHA can take to correct the problem. If within fifteen (15) days from the date of notice, the OVIHA has not corrected the problem to the Authority's satisfaction, the Authority may request the convening of an arbitration panel, which shall be governed by the following rules and procedures provided that OVIHA adopts these provisions by resolution prior to any dispute with the Taxing Authority.

(1) the panel shall consist of three (3) members: One appointed by the Tribal Council, one appointed by the OVIHA and the third selected by mutual agreement of the Tribal Council and OVIHA panel members.

(2) the panel shall make all decisions or rulings by majority vote on the basis of the evidence and argument submitted by the parties.

(3) it shall conduct such hearings on such notice and according to such rules of procedure as it deems appropriate, including rules governing discovery; provided that the parties shall be entitled to be represented at any such hearing or hearings by any person of their choosing including legal counsel and provided further that the technical rules of evidence shall not apply to the conduct of the hearings.

(4) the panel shall render a final written decision which shall be binding and conclusive between the parties. Neither party shall have a right to appeal the final panel decision to any other forum, including any tribal, state or federal court; except that for purposes of enforcement, the final arbitration order can be submitted to any court of competent jurisdiction for confirmation as a judgment of that court, the Tribal Council and the OVIHA waiving their sovereign immunity for this purpose only.

(4) Notice; Whenever notice is required under this Ordinance, it shall be deemed given when personally delivered or deposited in the u.s. Mail with proper postage affixed thereto and addressed to the party to whom the notice is given as provided in an official statement of the party's address on file with the Tribe and the taxing authority. A taxpayer shall file its official statement of address with the taxing authority.

SECTION 6. EFFECTIVE DATE AND REPEALER

This ordinance shall become immediately effective upon approval of the Tribe, and shall remain in effect for a period of three (3) years from its effective date, and shall cease to operate after that time unless reenacted by the Tribe.

The foregoing Ordinance No. 1 of 1990, passed and adopted this 8th day of February, 1990, by the following vote:

YES: 3

NO: 0

ABSENT: 1

/s/ Jess Paco, Tribal Chairman

/s/ L. Yandell, Tribal Secretary

BISHOP TRIBAL COUNCIL



ORINANCE NO. 93-01

AN ORDINANCE OF THE BISHOP INDIAN TRIBAL COUNCIL
AMENDING TRIBAL SALES TAX ORDINANCE NO.1 OF 1990

The Bishop Indian Tribal Council on February 8, 1990 enacted Ordinance No. 1 of 1990 which established a Tribal Sales Tax applicable to all businesses (as defined therein) selling tangible personal property on the Bishop Indian Reservation.

The purpose of the present Ordinance is to amend Section 6 of Ordinance No. 1 of 1990 to read as follows:

SECTION 6. EFFECTIVE DATE AND REPEALER

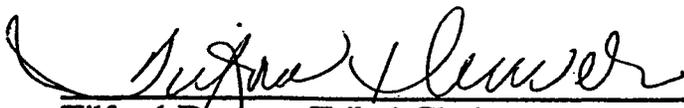
This Ordinance shall become immediately effective upon approval of the Tribal Council and shall remain in effect indefinitely until either amended and/or rescinded by the Tribal Council.

The foregoing Ordinance No. 93-01, passed and adopted this 8th day of July, 1993 by the following vote:

YES: 4

NO: 0

ABSENT: 1



Tilford Denver, Tribal Chairman

ATTEST;

/s/ Lucinda Yandell
Tribal Secretary