

Chapter 9
PER CAPITA ORDINANCE
Shakotiw\$ Stawih# Olihw@-ke
Issues concerning where they give the money

9.1-1 Purpose and Policy

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9.1-1. Purpose and Policy. The Purpose of this ordinance is:

- (a) To specify the procedure to be followed in the event that per capita payments are issued by the Tribe; and
- (b) To clearly state the responsibilities of the various entities in the distribution or maintenance of any such per capita payments.

9.1-2. *Policy.* It is the Policy of the Oneida Tribe of Indians of Wisconsin to have a consistent methodology for issuance of per capita payments, including payments derived from Gaming Revenues and regulated by the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et.seq.

9.2-1. Adoption, Amendment, Repeal. This law is adopted by the Oneida Business Committee by resolution BC# 7-12-00-B and amended by resolution BC# 6-16-04-C and BC #04-22-09-A.

9.2-2. This law may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Oneida Business Committee or the General Tribal Council.

9.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

9.2-4. In the event of a conflict between a provision of this ordinance and a provision of another law, the provisions of this ordinance shall control. Provided that, nothing in this ordinance is intended to repeal or modify any existing law, policy, regulation, rule, resolution, or motion.

9.3-1. Definitions. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

9.3-2. *Adult:* shall mean those tribal members who are at least eighteen (18) years old on or before September 1st of a given year.

9.3-3. *Arrears* shall mean the amount of money a person has not paid pursuant to the most recent child support court order against him or her.

9.3-4. *Day* shall mean calendar days, unless otherwise specifically stated.

9.3-5. *Elder:* shall mean those tribal members who are age 62 years or over, or 65 years or over, as of December 31st of a given year.

9.3-6. *Legally Incompetent Adult* shall mean a Tribal member at least eighteen (18) years old who has been declared incompetent by a court of competent jurisdiction because he or she is temporarily or permanently impaired to the extent that the person lacks sufficient understanding to make or communicate responsible personal decisions.

9.3-7. *Minor* shall mean a Tribal member who has not yet reached the age of eighteen (18) years by September 1st of a given year.

9.3-8. *Minors Trust:* That account or those accounts established by the Trust Committee for the benefit of tribal members who are minors.

9.3-9. *Tribal entity* shall mean a department, board, committee, or commission of the Tribe.

9.3-10. *Tribe or Tribal* shall mean the Oneida Tribe of Indians of Wisconsin.

9.3-11. *Trust account* shall mean that account or those accounts established by the Trust Committee for the benefit of Tribal members who are identified as needing trust accounts, for example, minors and legally incompetent adults.

9.3-12. *Trust Committee*: shall mean that body designated by the General Tribal Council to manage the trust funds for the Oneida Tribe of Indians of Wisconsin and their tribal membership, and which is also responsible for the enrollment records of the Oneida Tribe. This Committee is also known as the Oneida Trust/Enrollment Committee.

9.4-1. General. This Article shall set forth the responsibilities delegated under this law.

9.4-2. *Supersedes.* This ordinance shall supersede any contradictory language in any other per capita payment plan.

9.4-3. *Budgetary Limitations.* This ordinance shall not be construed as mandating a per capita payment. Per capita payments shall be issued only at the direction of the General Tribal Council through adoption of a resolution.

9.4-4. *Oneida Trust Committee.* The Trust Committee shall be delegated the following responsibilities in regards to per capita activities. Any responsibility not specifically identified, and reasonably related to the activities identified herein, shall be considered a Trust Committee responsibility.

(a) Fiduciary responsibility to manage trust accounts related to per capita payments.

(b) Maintenance of the membership rolls in such a manner as to accurately identify to whom per capita payments will be made.

(c) Holding administrative hearings regarding challenges to payment or non-payment of per capita payments.

(d) Development of Tribal Allocation Plans necessary to make per capita payments.

9.4-5. *Oneida Business Committee.* The Oneida Business Committee shall be identified as having the following responsibilities regarding per capita activities. Actions reasonably related to activities defined herein, shall be considered an Oneida Business Committee activity.

(a) Identification of funds for allocation for per capita payments.

(b) Approval of Tribal Allocation Plan and forwarding the Tribal Allocation Plan for approval by the Bureau of Indian Affairs.

(c) Transfer of funds for the trust account to the Trust Committee in a timely manner and within a reasonable time frame.

9.4-6. *Attachments.* Per capita payments are considered benefits offered by the Oneida Tribe to the membership.

(a) Per capita attachments may only be ordered by the Oneida Appeals Commission for the following purposes, and in the following order:

(1) Child support arrears ordered by a court of competent jurisdiction.

(2) Debt owed to a Tribal entity that is past due.

(A) "Debt owed to a Tribal entity" includes any money owed to a Tribal entity and any fines that have been issued by a Tribal entity.

(b) After child support arrears are fully satisfied, any remaining per capita shall be used for the payment of debt owed to a Tribal entity.

(1) If a Tribal member owes arrears in more than one (1) child support order, the per

capita shall be equally divided based on the number of children to which arrears are owed.

(2) If a Tribal member owes debt to more than one (1) Tribal entity, the per capita shall be equally divided based on the number of entities that are owed debt.

(c) All requests for attachments shall be submitted by the claimant to the Oneida Appeals Commission before July 1st of the year in which the payment is scheduled to be made. Determinations by the Oneida Appeals Commission shall be forwarded before August 1st to the Enrollment Department for action in the next processed per capita payment. Attachment determination shall be for a specific dollar amount.

(d) All payments, except for prior payments and payments to or from trust accounts are subject to attachment.

(e) The Oneida Appeals Commission may order attachments against per capita payments of Tribal members who do not return a notarized membership payment form as required under 9.5-3(b). If the amount of the per capita payment exceeds the amount of the attachment, the remaining unclaimed balance shall remain available as identified in 9.5-3(d).

9.4-7. Federal Income Tax Withholding.

(a) *Voluntary.* If a voluntary federal income tax withholding request form has been received by the Enrollment Department by the required deadline, federal income tax shall be withheld from per capita payments.

(b) *Mandatory.* A member who meets all of the requirements of this law, but refuses to provide the Enrollment Department with his or her social security number shall have mandatory federal income tax withheld from his or her per capita payment, as required by federal law.

(c) Federal income tax withholding, whether voluntary or mandatory, shall be applied to the per capita amount before any attachments are applied.

(d) *IRS Publication 15a.* In instances where federal income tax is withheld from a per capita payment, the most recent edition of IRS Publication 15a shall be complied with.

9.5-1. Trust Committee. General. This section shall set forth the responsibilities of the Trust Committee.

9.5-2. Trust Committee. The Trust Committee is responsible for the protection and preservation of per capita payment funds for minors. As part of that responsibility, the Trust Committee is responsible for the completion and issuance of any necessary reports to the minors. The Trust Committee shall develop standard reporting procedures which establish valuation dates, frequency of reports and identify data critical to the completion of reports. Such reporting responsibilities may be delegated to duly selected vendors.

9.5-3. Deadlines. The following deadlines shall apply in regards to the payment of all per capita payments. Where the dates fall on a Saturday, Sunday, or holiday the deadline shall be construed to be the close of business on the following business day.

(a) *Eligibility.* Eligibility falls into two categories, both of which must be met:

(1) *Filing Deadlines.* An individual must file an application for enrollment no later than the close of business on January 31st.

(2) *Enrollment Deadlines.* An individual is considered enrolled for the purposes of a per capita payment if the individual has been approved for enrollment by a vote of the Oneida Business Committee by March 31st.

(b) *Membership Payment Form.* The Enrollment Department shall mail membership payment forms no later than July 1st. Each adult Tribal member shall return a notarized membership payment form by close of business on September 1st in order to be eligible for a per capita payment.

(c) *Payments Sent.* Per capita payments shall be mailed on September 30th.

(1) After September 30th, and through December 31st, first time elder per capita payments shall be sent in the month following birth date.

(d) *Request for Prior Payment.* A request for a prior payment, for which a member was eligible, but did not receive, must be filed by September 1st of the next year. For example, if a payment is sent in 2000, then the cut off date is September 1, 2001, for a missed payment.

9.5-4. *Deceased Members.* The following rules shall apply when a deceased Tribal member is to receive a per capita payment.

(a) *Eligibility.* A Tribal member shall be considered ineligible to receive a per capita payment if the date of death falls on or before the deadline set in sec. 9.5-3(b) and after the payment date set in sec. 9.5-3(c).

(b) *Payment to Deceased Tribal Member.* When the date of death occurs between the date set in sec. 9.5-3(b) and the date of the per capita payment mailing set in sec. 9.5-3(c) the deceased Tribal member shall be issued a per capita payment in either the name of the deceased member or the estate of the individual.

(c) *Prior Payments.* No estate of a deceased Tribal member shall be eligible to claim a prior per capita payment, when the per capita payment was erroneously withheld or when the per capita payment was not claimed, where the eligible tribal member failed to file a claim for a prior per capita payment while living.

9.5-5. *Pooled Account.* Upon failure to file a request for a prior payment within the time provided under 9.5-3(d), the member's eligibility for the missed payment shall expire. Any unclaimed funds held in reserve for such claims shall be deposited in a pooled account to be used for a purpose designated by the General Tribal Council. Management of the pooled account shall be the responsibility of the Trust Committee.

9.6-1. Minors and Legally Incompetent Adults. *General.* This section shall set forth a consistent method to protect and preserve the interests of minors and legally incompetent adults in any per capita payment to which they may be entitled. If a per capita payment includes minors and/or legally incompetent adults as eligible recipients, those per capita payments shall be deposited into a trust account.

(a) The Trust Committee shall establish a standard operating procedure which shall identify the set-up and monitoring of the trust accounts. The Trust Committee may choose to maintain pooled or individual accounts, separate accounts for each payment or series of payments, or any other combination which is in the interests of the recipients and which is consistent with the terms of the Minor's Trust Agreement and the Trust Committee's Investment Policy.

(b) *Costs of Account.* The administrative costs related to a trust account shall be allocated to the account. Administrative costs shall be defined as those costs related to third party fees and expenses resulting from managing the accounts. Administrative costs shall not include any costs related to the expenses of the Trust Department, Trust Committee, or Enrollment Department. No member who has funds in a trust account shall be guaranteed the specific

amount of the per capita payment.

(c) **Deceased Member.** The value of a member's trust account shall be inheritable on the date of death of the member. The Trust Committee shall establish a standard operating procedure which shall identify the processes by which an application for payment shall be made. The payment shall be issued either in the name of the deceased member or the estate of the individual.

- (1) If the trust account funds are not claimed by the estate of the deceased within one (1) year after the date of the member's death, the funds shall be deposited in accordance with 9.5-5.

9.6-2. *Minors.*

(a) *Disbursement of a Minor's Trust.* A Tribal member shall be eligible to receive any funds in the trust account established in his or her name when the member is eighteen (18) years old or older and provides the Enrollment Department with proof that he or she has obtained a High School Diploma, a High School Equivalency Diploma or a General Equivalency Diploma. The funds shall be disbursed in accordance with an established payment schedule developed and approved by the Trust Department and Trust Committee.

(1) Tribal members who are at least eighteen (18) years old, but do not provide proof of having obtained a High School Diploma, a High School Equivalency Diploma or a General Equivalency Diploma shall not be eligible to receive any trust funds established in their name until their twenty-first (21st) birthday.

(2) *Exceptions.* The following Tribal members may receive any trust funds established in his or her name at the age of eighteen (18) without providing the Enrollment Department with proof that he or she has obtained a High School Diploma, a High School Equivalency Diploma or a General Equivalency Diploma:

(A) Those who are in the graduating class of 2009.

(B) Those who are declared legally incompetent adults, provided that, the requirements of 9.6-3 are met. Any funds in the minor's trust account for a Tribal member who is declared a legally incompetent adult shall be put into a trust account for the legally incompetent adult.

(C) Those who have a learning disability or other disability, provided he or she presents a certificate of attendance showing that he or she has attended twelve (12) years of school. That certificate shall be treated as a High School Diploma.

(b) *Unclaimed Minors Trust.* Except as provided for in 9.6-2(b)(1), any funds in a minor's trust account that are not claimed within one (1) year after the beneficiary's twenty-first (21st) birthday shall be deposited in a pooled account in accordance with 9.5-5.

(1) *Exception.* An individual who is at least eighteen (18) but not yet twenty-six (26) years old when 9.6-2(b) goes into effect shall have until his or her twenty-sixth (26th) birthday to file a claim for any funds in the minors trust account in his or her name.

(c) *Relinquishment.* Upon a minor's relinquishment of Tribal membership, any funds in a trust account for the minor shall be deposited in a joint savings account in the name of the Trust Committee and the former Tribal member, to be held until one (1) year after the former Tribal member turns twenty-one (21) years old. Any fees necessary for the establishment and maintenance of such an account shall be allocated to the account in accordance with the

procedures established by the Trust Committee.

(1) Any funds in a joint savings account that remain unclaimed by the former Tribal member one (1) year after his or her twenty-first (21st) birthday shall be deposited in accordance with 9.5-5.

(d) Tribal members who do not claim their trust fund monies after reaching the age of eighteen (18) shall receive regular per capita payments, if they meet the requirements for an adult Tribal member to receive a per capita payment as set out in this law.

9.6-3. *Legally Incompetent Adults.*

(a) When an adult is declared legally incompetent, any per capita payments that are claimed on his or her behalf shall be placed in a trust account for health, welfare and/or education expenses. The Trust Committee shall develop guidelines to determine if an expense qualifies for reimbursement through a trust account fund payment.

(1) The guardian of a legally incompetent adult shall file a petition with the Trust Department when requesting distributions from such person's trust account. The guardian shall provide the Trust Department with either or both of the following:

(A) an account, including receipts, of all expenditures made on behalf of the legally incompetent adult that have not been reimbursed from the trust account.

(B) a written request, including sufficient, current information about a specific need for which the advance distribution will be used. Any advance distributions may be disbursed jointly to the guardian and the provider or institution providing the specific services or the amount disbursed may be paid directly to the provider or institution.

(2) The Trust Director or his/her designee shall either grant or deny the request within ten (10) business days.

(A) If the Trust Director approves a distribution request, the funds shall be disbursed within thirty (30) days after the approval. The Trust Director may, with the approval of the Trust Committee, authorize a regular distribution from the trust account for a legally incompetent adult's benefit.

(B) If the Trust Director denies a distribution request, he or she shall send, by registered mail (return receipt requested), the denial and the reasons for the denial to the guardian within ten (10) business days after the decision is made.

(3) *Appeals.* A guardian whose petition for distributions is denied may file an appeal with the Trust Committee within ten (10) business days of the receipt of the denial.

(b) If a court of competent jurisdiction determines that an adult Tribal member is no longer legally incompetent, the Tribal member shall provide the Trust Department with a certified copy of the order. Any funds in the trust account in the member's name shall be disbursed to the Tribal member, provided that the Tribal member is otherwise eligible for the payment under this law.

9.7-1. *Payments. General.* This section shall set forth the responsibilities of the various departments and committees when a per capita payment is issued.

9.7-2. *Enrollment Department.* The Enrollment Department is responsible for the following

activities when a per capita payment is approved:

- (a) The Enrollment Department shall develop and finalize a list of the eligible tribal members broken down into the following categories: minors, incompetent adults, adults and elderly.
- (b) The Enrollment Department shall provide the finalized list of the number of eligible tribal members to the Trust Department and the Accounting Division.
- (c) Membership payment forms are sent out and upon return are entered into the Enrollment data base.
- (d) After the membership payment form return deadline date, the checks are processed for mailing. All checks are to go out on the same day.

9.7-3. *Trust Department.* The Trust Department is responsible for the following activities when a per capita payment is approved:

- (a) Upon receipt of the number of eligible members to receive a per capita payment, the Trust Department ensures the availability and liquidity of funds for a funds transfer of the trust funds under the authorization/jurisdiction of the Trust Committee.
- (b) The Trust Department provides funds transfer instructions to the relevant initiating institution: the custodial bank or the Oneida Accounting Division.
- (e) The Trust Department shall work with the Trust Committee in the establishment of any necessary trust accounts.
- (f) The Trust Department is responsible for monitoring all accounts for the purposes of necessary reports, claims and payment verification.

9.7-4. *Accounting Division.* The Accounting Division is responsible for the following activities when a per capita payment is approved:

- (a) Upon receipt of funds transfer instructions from the authorizing entity, initiate and complete the funds transfer. The physical movement of funds must happen no later than one business day prior to the issue date of the checks.
- (b) Record issued, voided and stale dated checks on the General Ledger.
- (c) Complete bank account reconciliations.

9.7-5. *Tribal Treasurer.* The office of the Tribal Treasurer shall be responsible for the identification of funds and the timely transfer of the necessary amount of relevant funds to the Trust Committee and the Accounting Division. The relevant funds shall be segregated and obligated for the per capita payments and are those necessary to:

- (a) Make a payment to those tribal members responding to the membership payment form deadline who are not minors or incompetent adults.
- (b) Cover unverified member payments for those members who are unresponsive to the membership payment form deadline.

End.

Adopted - BC-7-12-00-B

Emergency Amendments - BC-2-28-01-E (Expired)

Amendments - BC-11-06-02-A (Re: Elder Per Capita)

Emergency Amendments - BC-6-25-03-G (Child support priority for garnishment)(Expired)

Amendments - BC-6-16-04-C (Child support priority for garnishment)

Emergency Amendments - BC-9-12-07-A (Expired)

Amendments – BC-04-22-09-A (High School Diploma for minor’s trust, legally incompetent adults)