



**HO-CHUNK NATION CODE (HCC)
TITLE 2 – GOVERNMENT CODE
SECTION 12 – PER CAPITA DISTRIBUTION ORDINANCE**

ENACTED BY LEGISLATURE: JULY 3, 2001

LAST AMENDED AND RESTATED: FEBRUARY 22, 2006

CITE AS: 2 HCC § 12

APPROVED BY BIA: (TPB)

This Ordinance supersedes the Ho-Chunk Nation Amended and Restated Per Capita Distribution Ordinance enacted October 17, 1995 and last amended February 29, 2000. It further includes the rules of construction enacted by Legislative Resolution 10-10-00C.

Last Amended and Restated by Ho-Chunk Nation Legislative Resolution 9/09/03A.

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1. Authority.

a. Article V, Section 2(a) of the Constitution grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(l) of the Constitution grants the Legislature the power to enact laws to manage, lease, permit, or otherwise deal with the Nation’s lands, interests in lands or other assets.

c. Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.

d. Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation.

e. The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2710(b)(3), authorizes Indian tribes to make per capita payments to members to provide for their general welfare in accordance with a revenue allocation plan approved by the Secretary of the Interior.

2. Purpose. This Ordinance establishes both the per capita plan and the revenue allocation plan of the Nation as required under IGRA.

3. Declaration of Policy. The Ho-Chunk Nation declares that a fair and equitable per capita distribution of revenues appropriated by the Nation's Legislature from gaming activities conducted by and on behalf of the Nation is necessary in promoting the general welfare of the Nation and its members, and to protect the per capita interests of minors and incompetents.

4. Definitions.

a. "Children's Trust Fund" or "CTFs" shall mean the trust funds established under paragraph 8 for all minor Members and legally incompetent adult Members eligible to receive per capita payments.

b. "Legislature" means the Ho-Chunk Nation Legislature.

c. "Members" mean those living individuals on the date set forth for per capita distribution and those deceased Tribal Members who have died during the period from the 15th day to the end of the month immediately preceding the date set forth for capita distribution, including otherwise eligible minor children and other legal incompetents, who are duly recognized as members of the Ho-Chunk Nation.

d. "Net Revenues" mean gross revenues of tribal gaming activities less amounts paid out as, or paid for, prizes and total operating expenses including debt service.

e. "Revenue Allocation Plan" means the revenue allocation plan included in paragraph 6a providing a percentage allocation of uses of funds derived from tribal gaming operations.

5. Appropriations and Application of Tribal Gaming Revenues. In order to provide for the general welfare of the Nation and its members, the Legislature shall review the income, expenses, and management of Tribal gaming operations not less than 15 nor more than 30 days prior to the per capita distribution date described in paragraph 9, and after due consideration of the need to fund Tribal government operations and programs, the

overall needs of the Nation and its members, and the need to promote tribal economic development, shall decide whether to make any changes to the Revenue Allocation Plan providing for appropriate percentage allocation of Tribal Gaming Revenues within the annual budget of the Nation. At that time, the Legislature shall also determine what amount, if any, of the revenues allocated to general welfare purposes shall be appropriated for distribution as per capita payments on the dates specified in paragraph 9. An affirmative vote of at least a majority of the members of the Legislature shall be required to approve any changes to the Revenue Allocation Plan or to authorize per capita appropriations.

6. Allocation of Tribal Gaming Revenues.

a. The allocation of Tribal Gaming Revenues shall be as follows:

(1) 13.68% (thirteen and 68/100ths percent) for Tribal Government Operations and Programs.

(2) 78.26% (seventy-eight and 26/100ths percent) to provide for the General Welfare of the Nation or its members.

(3) 7.48% (seven and 48/100ths percent) to promote Tribal Economic Development.

(4) 0.30% (zero and 30/100ths percent) for Charitable Contributions.

(5) 0.28% (zero and 28/100ths percent) to fund the Operation of Local Government Services.

b. The portion allocated to Tribal Government Operations and Programs shall fund: the Legislature, Executive Offices, Treasury Department, Computer System, Personnel Department, Property and Procurement, Newsletter, Department of Justice, Legal Fees, Investigation and Audits, Tribal Courts, Constitutional Projects, and other similar governmental executive and administrative services to which the Legislature may appropriate funds from time to time.

c. The portion allocated to the General Welfare of the Nation and its Members shall fund: Education Administration, Tribal Scholarships, Community Education Support, Head Start support and buildings, employee assistance, training, TERO Commission, Public Works Department, new homes and mobile homes, repairs and maintenance, Health Department, Tribal Aging Unit, other similar governmental operating services to which the Legislature may appropriate funds from time to time, and per capita payments.

d. The portion allocated to Economic Development shall fund: the Planning Department, Development Department, Business Loans, land acquisitions, purchase of businesses, Enterprise Management, Casino Department Service, casino expansion, and

other similar business and proprietary services to which the Legislature may appropriate funds from time to time.

e. The charitable donations will be decided by the Ho-Chunk Nation Legislature or designee based on requests.

f. Funding for the operation of local government services will be coordinated by the Legislature or its designee.

7. Applications, Written Determination of Eligibility.

a. All members of the Ho-Chunk Nation that are on the Tribal rolls shall be eligible to receive per capita distributions. Such distributions shall be made in an equal amount of money to each Tribal member eligible to receive a per capita distribution pursuant to this Ordinance.

b. Membership in the Ho-Chunk Nation shall be determined in accordance with the Tribal Enrollment and Membership Act. The rights of a person to appeal an adverse determination on his or her membership application shall be determined under the Tribal Enrollment and Membership Act.

c. In order to provide for orderly review and consideration, applications approved within sixty (60) days or less of a scheduled distribution date shall not be found eligible for distribution until the next scheduled distribution. At least forty-five (45) days but no longer than fifty (50) days before the quarterly date of the distribution of per capita payments as provided in paragraph 9, the Enrollment Officer shall publish a list of those persons found eligible for such payments. Any applicant found not to be eligible shall be provided with a written determination of the basis for the denial.

d. Address Verification. Each member shall be required to submit an annual address verification form to the Enrollment Office in accordance with procedures and instructions promulgated by the Enrollment Office. Members shall be responsible for providing address changes to the Enrollment Office as they occur. The Nation is not responsible for sending a per capita check to the wrong address if the Tribal member has failed to provide a current and correct address.

e. Deceased Members. In the event that the eligible member has died on or after the fifteen day of the month prior to the date of per capita distribution, the per capita distribution of the decedent may be released to the family upon a written request.

8. Minors and Other Legal Incompetents.

a. The interests of minors and other legally incompetent Members, otherwise entitled to receive per capita payments, shall, in lieu of payments to such minor or incompetent Member, be disbursed to a Children's Trust Fund which shall establish a formal irrevocable legal structure for such CTFs approved by the Legislature as soon after

passage of this Ordinance as shall be practical, with any amounts currently held by the Nation for passage for the benefit of minor or legally incompetent Members, and all additions thereto pending approval and establishment of such formal irrevocable structure, to be held in an account for the benefit of each such Member-beneficiary under the supervision of the Trial Court of the Nation. Trust assets of such CTFs shall be invested in a reasonable and prudent manner, which protects the principal and seeks a reasonable return.

b. Education Criterion.

(1) The trust assets of each such account maintained for a minor shall be disbursed to the Member-beneficiary thereof upon the earlier of (i) said Member-beneficiary meeting the dual criteria if (a) reaching the age of eighteen (18) and (b) producing evidence of personal acquisition of a high school diploma to the Department of Enrollment (HSED, GED or any similar substitute shall not be acceptable), or (ii) the Member reaches the age of twenty-five (25); provided that this provision shall not operate to compel disbursement of funds to Members legally determined to be incompetent. In the event a Member, upon reaching the age of eighteen (18) does not produce proof of personal acquisition of a high school diploma, such Member's per capita funds shall be retained in the CTF account and any and all per capita distributions payable to said Member after reaching age 18 will be added to such fund and not be paid to the Member and the CTF account and shall be held on the same terms and conditions applied during the Member-beneficiary's minority until the earliest to occur: (1) the Member produces the required diploma; (2) the Member reaches the age of twenty-five (25); or (3) the Member is deceased.

(2) Transition Rule. The following rule pertains to Tribal Members who reached age eighteen (18) on or before November 1, 2000 and have not received their CTF account due to failure to meet the graduation requirement shall receive the quarterly or other periodic per capita distributable to them with respect to all per capita payments made on or before November 1, 2001; after which periodic payments shall be added to their CTF account until they qualify for the distribution of the CTF by virtue of the provisions of paragraph 8b, above.

(3) Exception Rule. This exception rule only provides for the early release of CTF accounts to a Tribal member who has completed all requirements for graduation from high school, but will not receive a diploma until a later date. The following conditions must be met:

(a) the member has attained the age of 18;

(b) the member has completed all high school requirements for a graduation diploma;

(c) the superintendent of the high school the member attended certifies in writing that the member has met all conditions and requirements for the award of the

diploma and confirms the date when the diploma will be presented/delivered to the member; and

(d) the member makes a written request for the disbursement of his or her CTF account and provides the above required supporting documentation.

c. Funds in the CTF of a minor or legally incompetent Member may be available for the benefit of a beneficiary's health, education, and welfare when the needs of such person are not being met from other Tribal funds or other state or federal public entitlement programs, and upon a finding of special need by the Ho-Chunk Trial Court. In order to request such funds, the following provisions apply:

(1) A written request must be submitted to the Trial Court by the beneficiary's parent or legal guardian detailing the purpose and needs for such funds.

(2) The parent or legal guardian shall maintain records and account to the Trial Court in sufficient detail to demonstrate that the funds disbursed were expended as required by this Ordinance and any other applicable federal law.

(3) Any other standards, procedures, and conditions that may be subsequently adopted by the Legislature consistent with any applicable federal law shall be met.

9. Payments.

a. Any per capita payments authorized by the Legislature pursuant to paragraph 7, shall be made quarterly on the first day of the months of November, February, May, and August and mailed on the last working day of the months of October, January, April, and July, to all Members eligible for the distribution in accordance with paragraph 7, and in proportionate shares to the CTFs on behalf of the beneficiaries thereof.

b. Payments shall be mailed to the Member's current address as annually verified or changed by the Member per policy stated in paragraph 7d.

10. Taxation. The per capita payments are subject to Federal taxation. Members receiving payments shall be informed that they are responsible for payment of applicable taxes. The Nation shall deduct and withhold tax from per capita payments to the extent and in the amounts required by 26 U.S.C. § 3402(r) or any successor statute. In addition, the Nation may, in its discretion, withhold such greater amount of tax from per capita payments to a Member as such Member may voluntarily request.

11. Enforcement and Dispute Resolution. The Trial Court and Supreme Court of the Ho-Chunk Nation shall have jurisdiction and authority to review the expenditure of net gaming revenues in accordance with this Ordinance, to enforce this Ordinance and appropriately remedy any instance of non-conformance and to resolve any disputes arising from the allocation of net gaming revenue and the distribution of per capita payment.

12. Amendments. This Ordinance may be amended by the action of the Legislature, in a meeting at which quorum is present, but only upon the affirmative vote of a majority of the members present. All amendments shall be subject to the final approval of the Secretary of the Interior before they become effective.

Legislative History:

- 10/17/95 Ordinance adopted by Legislature.
- 01/19/96 Election, Constitutional Law and Judiciary Committee adopts amendment affecting § 5 (now para 7)
- 01/20/96 Amendment affecting § 5 (now para 7) adopted. Approved by BIA on 7/26/96.
- 09/26/96 Administrative Rules/Election Committee referred amendment to Legislature.
- 10/04/96 Amendment adopted. Approved by BIA 10/25/96.
- 03/11/97 Amendment affecting § 4.01(a) (now para 6a) adopted. Approved by BIA 3/28/97.
- 07/17/97 Amendment affecting § 4.01(a) (now para 6a) adopted. Approved by BIA 7/18/97.
- 05/12/98 Amendment affecting § 6.01(a) (now paras 8a-b) adopted. Approved by BIA 5/29/98.
- 10/20/98 Amendment affective § 4.01(a) and 6.01(a) (now paras 6a and 8a-b) adopted.
- 09/28/99 Amendment affecting § 4.01(a) and 6.01(a) (now paras 6a and 8a-b) adopted.
- 02/29/00 Amendment affecting § 6.01(a) (now paras 8a-b) adopted. Approved by BIA 6/26/00.
- 10/10/00 Legislature adopts interpretive transition rule by Legislative Resolution 10-10-00C.
- 7/3/01 Restated and amended as by 2 HCC § 12 (Per Capita Distribution Ordinance) enacted by Legislative Resolution 7/3/01D.
- 1/11/02 BIA approval of 2 HCC § 12 (Per Capita Distribution Ordinance) enacted by Legislative Resolution 7/3/01D.
- 9/9/03 Amended and restated by Legislative Resolution 9/9/03A clarifying paragraphs 4c and 7e as to per capita distribution to deceased Tribal members and amending paragraph 6 for the allocation of tribal gaming revenues.
- 9/10/03 Amended and restated ordinance submitted to BIA for approval of the Allocation of Tribal Gaming Revenues.
- 2/6/04 BIA approval of amended and restated Ordinance.
- 2/22/06 Legislative Resolution 2-22-06A adds para 8b(3) as an exception rule for a minor to receive his or her CTF upon high school graduation went receipt of the diploma is delayed.