

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS
KANSAS CITY DIVISION

IN RE:)
)
ALEN RAY HOWLEY and) Case No. 10-20713-7-DLS
JEANNIE MARIE HOWLEY)
)
Debtors.)

**TRUSTEE'S BRIEF IN SUPPORT OF OBJECTION TO
EXEMPTION OF DEBTORS' PER CAPITA PAYMENTS**

Comes now the Trustee, Carl R. Clark, of Lentz Clark Deines PA, and submits his
Brief in Support of Objection to Exemption of Debtor's Per Capita Payments ("Brief").

The Trustee offers the following in support of his objection:

I. Nature of the Matter Before the Court.

The question before the Court is whether a tribal-code exemption in per capita
tribal payments operates to make those per capita payments exempt under federal
bankruptcy law. Debtor Jeannie Marie Howley has asserted an exemption in her Per
Capita Income accruing from gaming revenues of the Prairie Band of Pottawatomi
Indians ("Prairie Band") in the amount of approximately \$400 per month ("Per Capita
Payments") under Pottawatomi Nation Tribal Code § 4-10-16(H). The Trustee objects to
this exemption because the Per Capita Payments are part of the Bankruptcy estate, the
Tribal Code exemption is not operative under the federal Bankruptcy Code, and no
applicable law exempts the right to receive the Per Capita Payments from becoming part
of the bankruptcy estate.

II. Statement of Facts

Debtors filed their Chapter 7 bankruptcy proceeding on March 14, 2010 (Dkt. No. 1). According to Debtors' Schedules, Debtor Jeannie Marie Howley has resided at 98 US Highway 40, Lecompton, KS since the year 2007 and currently resides there (Dkt. No. 1: 1, 14). Debtor Jeannie Marie Howley resided at 2419 SE Michigan, Topeka, Kansas during and between the years 2002 to 2007 (Dkt. No. 1: 14). Upon information and belief, Debtor Jeannie Marie Howley does not currently reside on the Prairie Band reservation located near Mayetta, Kansas.

In Schedule C of Debtors' petition, Debtor Jeannie Marie Howley claimed as exempt her Per Capita Payments under Pottawatomie Nation Tribal Code § 4-10-16(H) (Dkt No. 1: 19). Pottawatomie Nation Tribal Code § 4-10-16(H) is attached to this Brief as Exhibit 1. The Per Capita Payments are administered under the Per Capita Ordinance of the Prairie Band, which is attached to this Brief as Exhibit 2. Carl R. Clark was appointed as Trustee on the above-captioned case, has qualified, and is now acting as such Trustee (Dkt. No. 5). The Trustee objected to the claimed exemption on April 28, 2010 (Dkt. No. 10).

III. Legal Argument

The Per Capita Payments are part of the bankruptcy estate because they are property of Debtor Jeannie Howley and nothing in the Bankruptcy Code precludes them from coming into the bankruptcy estate. The Per Capita Payments are the product of Class III gaming, which includes casino-type games under 25 U.S.C. § 2703(6)-(8). As such, an ordinance outlining the distribution of the Per Capita Payments based on the Class III gaming revenues must be approved by the Chairman of the Indian Gaming

Commission. 25 U.S.C. § 2710(d)(2). The Chairman has approved the Prairie Band's Per Capita Ordinance.

A. The Per Capita Payments are Part of the Bankruptcy Estate and Not Subject to the § 541(c)(2) Exclusion.

Most bankruptcy courts, including the United States Bankruptcy Court for the District of Kansas, have held that per capita payments are part of the bankruptcy estate. In a Kansas case dealing with the same tribal ordinance and code as the case at bar, Judge Karlin rejected a debtor's claim that per capita payments were spendthrift trust property excluded from the bankruptcy estate under 11 U.S.C. § 541(c)(2). *In re McDonald*, 353 B.R. 287, 293-94 (Bankr. D. Kan. 2006). The debtor in *McDonald* had argued that payments should be excluded from the estate because they comprise the beneficial interest of a spendthrift trust because the per capita payments must be paid to tribe members under the Per Capita Ordinance passed by the Prairie Band. *Id.* The *McDonald* court had assumed that the right to payments come into the bankruptcy estate under § 541(a)(1). *Id.* at 291. The *McDonald* court concluded that, because the Per Capita Ordinance contains no language stating or implying that the per capita payments are held in trust, the payments are not part of a spendthrift trust and are therefore part of the bankruptcy estate. *Id.* at 294. Judges in two other jurisdictions have found that Per Capita Payments are part of the Bankruptcy estate. *See In re Kedrowski*, 284 B.R. 439, 447, 451-52 (Bankr. W.D. Wis. 2002) (noting that "tribal per capita distributions are far more conceptually akin to an interest in a business enterprise than they are a gift, a license, or some form of public assistance" and are part of the bankruptcy estate); *Johnson v. Cottonport Bank*, 259 B.R. 125, 130-31 (W.D. La. 2000) (holding that right to receive per capita payments from Indian tribe were property of the bankruptcy estate and

subject to no exemptions). Similarly, the payments to Debtor Jeannie Howley are made under a Per Capita Ordinance that does not create a trust entity, and therefore the Per Capita Payments are part of the bankruptcy estate and are not excluded by § 541(c)(2).

One court has found that per capita payments are not part of the bankruptcy estate. *In re Fess*, 408 B.R. 793, 794 (Bankr. W.D. Wis. 2009). The *Fess* court's analysis is flawed because § 541(a)(1) encompasses contingent interests in property. *See In re Edmonds*, 263 B.R. 828, 830-31 (E.D. Mich. 2001) (noting that contingent interests are part of the estate and holding that a debtor's right to a profit sharing plan was "sufficiently rooted in the prebankruptcy past so as to be included as property of the bankruptcy estate under § 541(a)"). Additionally, the *Fess* court based its conclusion on specific language in the tribal code of the debtor's tribe that is not found in the Pottawatomini Nation Tribal Code. The Tribal Code § 12-2-2(C) states that no money from the Tribal gaming revenue account "shall be released or expended from the Tribal Gaming Commission Account except upon written resolution of the Council appropriating a specific amount of the monies contained therein for the use of a particular department, agency, or program of the Tribe." This language implies that per capita payments might be reduced or eliminated in the future, but the right to per capita payment is guaranteed to all members of the tribe until a written resolution is passed. The right to the payments, although contingent, is so rooted in the prebankruptcy past of the Debtors as to pass into the bankruptcy estate.

Even if there were transfer restrictions on the Per Capita Payments, the transfer restrictions are voided by operation of § 541(c)(1), which allows for property of the debtor to come into the bankruptcy estate "notwithstanding any provision in an

agreement, transfer instrument, or applicable nonbankruptcy law . . . that restricts or conditions transfer of such interest by the debtor.” Assuming there is an implied restriction on transfer in the per capita ordinance, because payment of the per capita money is restricted to members of the Prairie Band, this transfer restriction is negated by § 541(c)(1). The provision of § 541(c)(2), which allows the debtor to retain certain interests if they are restricted under a trust, is not applicable to the per capita payments because they are not part of a trust under Kansas state law. Furthermore, even if Potawatomi tribal law constituted “applicable nonbankruptcy law” under § 541(c)(2), the tribal law does not create a trust either, because there is no language in the per capita ordinance creating a trust. In fact, the per capita ordinance’s Article V explicitly notes that payments to a tribe member who is a minor shall be placed in a trust and distributed when the minor turns eighteen. This use of the explicit trust language, by implication, shows that no trust is in existence for payments made to Prairie Band members who are over eighteen years of age. *In re McDonald*, 353 B.R. 287 (Bankr. D. Kan. 2006).

B. The Per Capita Payments Are Not Exempt because the Tribal Code Is not Applicable Law.

Potawatomi Nation Tribal Code § 4-10-16 states that:

The following property shall be exempt, from garnishment, attachment, execution, sale, and other process for the payment of principal and interest, costs, and attorney fees upon any judgment of the Tribal Court:

...

(H) Gaming revenue per capita payments to Prairie Band Potawatomi Nation tribal members, provided that this exemption shall not apply to Potawatomi Nation Tribal Court actions to enforce or satisfy child support obligations of a tribal member of the Nation

At first glance, this provision seems similar to Kansas exemptions that are usable by debtors residing in Kansas to exempt assets from the bankruptcy estate.

However, this provision does not provide an exemption for the Per Capita Payments in bankruptcy because (1) it is not Kansas state law, and (2) it only applies to a “judgment of the Tribal Court.” In the Kansas bankruptcy-court case decided by Judge Karlin, the trustee sought turnover of all per capita distributions from gaming revenue from a debtor who was a member of the Prairie Band. *In re McDonald*, 353 B.R. 287, 288-89 (Bankr. D. Kan. 2006). The court held that there is no exemption under Potawatomi Code § 4-10-16 because under K.S.A. 60-2312 Kansas only allows a debtor residing in the state to choose Kansas state exemptions; this debtor lived within Kansas, not on tribal territory. *Id.* at 292. The Bankruptcy Code § 522(b) does not allow a debtor to choose exemptions of a tribal entity. *Id.* In addition, the Tribal Code § 4-10-16 only applies to restrict process against per capita gaming revenue payments from process “upon any judgment of the Tribal Court,” not from creditors outside the Tribal Court system. *Id.* The *McDonald* court approach applies in this context because the Debtors do not reside on Potawatomi tribal grounds and because Debtors do not seek relief from the Tribal Court. In addition, Judge Karlin dealt with the same exemption provision at issue here.

Bankruptcy Code § 522(b)(3) does not envision exemptions provided by Tribal Code because it only mentions federal law other than the federal bankruptcy exemptions or “State or local law” as a source for exemptions. Kansas has opted out of the federal exemptions. Kan. Stat. Ann. § 60-2312. “Local law” most logically refers to the law of a subset of state government, such as municipality, because the word local implies that the law is derived from a sovereign that is a part or a unit of a greater sovereign. If “local law” were defined otherwise, the term “local law” would be too broad and could refer to

local custom or private law such as that of an association. Because the Prairie Band is neither a state nor a local government, the Bankruptcy Code does not allow for use of Tribal exemptions. When a debtor seeks to discharge debts that did not arise from activities occurring within the tribal territory, and seeks the benefit of federal law, it seems reasonable that only the exemptions that Congress has authorized (state and local law) can be available to a debtor.

III. Conclusion

The Per Capita Payments are part of the bankruptcy estate because they are akin to distributions from a business enterprise, and they are not excluded by the action of § 541(c)(2) because the Per Capita Ordinance does not create a spendthrift trust. Likewise, the Per Capita Payments are not exempt under Potawatomi Nation Tribal Code § 4-10-16. That section specifically limits effects to judgments of the Tribal Court. Furthermore, the federal Bankruptcy Code does not allow tribal law to govern exemptions, only state or local law. Even assuming tribal law did govern exemptions under federal bankruptcy law, the state of Kansas only allows Kansas residents such as Debtors to employ Kansas state exemptions, and there is no Kansas exemption for Per Capita Payments. Therefore, the Debtor's claimed exemption in the Per Capita Payments is not valid.

Respectfully Submitted:

LENTZ CLARK DEINES PA

s/ Carl R. Clark
Carl R. Clark, KS #11411
9260 Glenwood
Overland Park, KS 66212
(913) 648-0600
(913) 648-0664 Telecopier

cclark@lcdlaw.com
Chapter 7 Trustee

CERTIFICATE OF SERVICE

I hereby certify that on the date entered on the court's docket, a true and correct copy of the above and foregoing Brief was electronically filed with the court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system, including the Acting United States Trustee.

s/ Carl R. Clark
Carl R. Clark

(I) Sale of Property before Judgment. If any property attached be perishable or in danger of serious of immediate waste, the Tribal Police shall sell the same in the manner proscribed in Section 4-10-11. All monies received by the Tribal Police under this Subsection shall be paid to the clerk of the District Court to be held to be applied to any judgment that may be recovered in the action.

(J) Subjection of Property to Judgment. If judgment is recovered by plaintiff, it shall be paid out of any proceeds held by the District Court and out of the property retained by the Tribal Police. The Tribal Police shall, in accordance with the provisions of Section 4-10-11, sell so much of the personal or real property as may be necessary to satisfy the balance. Whenever the judgment has been paid, the Tribal Police, upon reasonable demand, shall deliver to the defendant any remaining proceeds of the property attached as is necessary to satisfy the judgment.

(K) Procedure When Judgment for Defendant. If the defendant recovers judgment, all the proceeds of the sales and the monies collected by the Tribal Police and deposited with the District Court together with all attached property shall be delivered to the defendant.

(L) Action on Bond for Wrongful Attachment. In an action on the bond, if it is shown that the attachment was wrongfully sued out, the defendant may recover the actual damages sustained and reasonable attorney's fees to be fixed by the District Court; provided, that this Section shall not constitute a waiver of sovereign immunity of the Tribe, its officers, employees, agents, or political subdivisions.

(Amended by PBP TC No. 92-64, November 18, 1992)

Section 4-10-16. Exempt Property.

The following property shall be exempt, from garnishment, attachment, execution, sale, and other process for the payment of principal and interest, costs, and attorney fees upon any judgment of the Tribal Court:

(A) Three-fourths (3/4) of the net wages earned per week by the person or an amount equivalent to forty (40) times the federal minimum hourly wages per week, whichever is greater, except as may be specifically provided by law for child support payments.

(B) One automobile of fair market value not exceeding one thousand dollars (\$1,000.00).

(C) Tools, equipment, utensils, or books necessary to the conduct of the person's business but not including stock or inventory.

(D) Actual trust or restricted title to any lands held in trust by the United States, or subject to restrictions against alienation imposed by the United States but not including leasehold and other possessory interests in such property.

(E) Any dwelling used as the actual residence of the judgment debtor, including up the five (5) acres of land upon which such dwelling is located.

(F) Household goods, furniture, wearing apparel, personal effects, but not including recreational or luxury items.

(G) All ceremonial or religious items.

(H) Gaming revenue per capita payments to Prairie Band Potawatomi Nation tribal members, provided that this exemption shall not apply to Potawatomi Nation Tribal Court actions to enforce or satisfy child support obligations of a tribal member of the Nation

Section 4-10-17. Taxable Costs.

The Court by rule may set the fees and costs of any service performed by the Court Clerk on behalf of the parties when such fees and costs are not provided for by tribal statute. Such fees and costs shall be maintained at a minimum level. Costs include, but not limited to, fees required for the filing of any paper in an action, expense for service of process, costs of transcripts, service of papers and mileage, costs of publication of any notice required to be published, printing of briefs or other documents required by the Court to be printed, and any other items made recoverable as costs by court rule. The prevailing party shall be allowed a reasonable attorney fee to be set by the Court, to be taxed and collected as costs.

Section 4-10-18. Awarding Costs.

The Clerk of the Court shall tax the costs in each case, and insert the same in their respective judgments, subject to re-taxation by the Court, costs shall be allowed as a matter of course to the prevailing party. In actions for the recovery of money or for specific real or personal property, unless the Court otherwise directs, however, costs against the Tribe shall be imposed only to the extent specifically permitted by tribal law.

Section 4-10-19. Foreign Judgments.

Recognition, implementation and enforcement of orders, judgments and/or decrees from courts other than the District Court of the Prairie Band Potawatomi Nation, hereinafter the "District Court", shall be allowed in accordance with this Code if it has been registered with the district court by filing a certified copy of the order, judgment and/or decree with the District Court clerk, paying any necessary filing fee and obtaining service on the judgment debtor in accordance with the provisions of this Code.

PER CAPITA ORDINANCE



ARTICLE I DECLARATION OF PUBLIC POLICY AND PURPOSE

Section 1. The Prairie Band of Potawatomi Indians of Kansas own and operate the Harrah's Prairie Band Casino on a eleven square mile reservation located near the small town of Mayetta, Kansas. The purpose of this Casino is to employ tribal members and help generate revenues to fund Tribal Government operations and programs, to promote Tribal economic development, and provide for the general health, education, and welfare of the Potawatomi Tribe and its members.

Section 2. Federal Law currently governs how net revenues from a Gaming Enterprise may be expended for Per-Capita payments to its Tribal membership. (25 U.S.C. Section 2710) (b) (2) and (3). The Prairie Band of Potawatomi Indians hereby formalizes its plan for the allocation of such net gaming revenues for Tribal purposes and for Per-Capita distributions to the General Membership of the Potawatomi Indians.

ARTICLE II DEFINITIONS

Section 1. As used in this ordinance, the following words shall have the following meanings unless the context clearly states or requires otherwise.

- (a) Tribal Member: means any Prairie Band Potawatomi individual who is currently enrolled on the Prairie Band Potawatomi Tribal roll.
- (b) Tribal Council: means the seven member elected governing body of the Prairie Band of Potawatomi Indians. This seven member body consists of the Tribal Chairperson, Tribal Vice Chairperson, Treasurer, Secretary, and three Tribal Council Members, who exercise the executive powers of the Tribal Constitution.
- (c) General Council: means all enrolled members of the Prairie Band of Potawatomi Indians who are eighteen years of age or older meeting in a General Council Meeting.
- (d) Prairie Band of Potawatomi Indians: means the Prairie Band of Potawatomi Indians located in Kansas, who are a Federally recognized Indian tribe exercising jurisdiction over the Potawatomi reservation and other Indian lands, which are held in trust by the Federal Government for the tribes use and benefit.

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(e) Gaming Casino/Enterprise: means the Prairie Band of Potawatomi Tribal Casino or location where gaming activities such as; roulette, dice, blackjack, slot machine, bingo or any other game of chance take place.

(f) Net Gaming Revenues: means that revenue generated from a gaming enterprise that is given to the Potawatomi Indians after all expenses and dues are paid to operate and run the casino, including but not limited to loan payments, player winnings, equipment costs, and fees, etc.

(g) Per-Capita: means the payments made or distributed to all enrolled members of the Potawatomi Tribe, which are paid directly from the Prairie Band of Potawatomi Indians Casino's Net Gaming Revenues.

(h) Per-Capita Pay Period: means the quarterly period of time established by the Tribal Council that is used to calculate Net-Gaming Revenues actual and projected available for the Per-Capita Payment in the period. The four quarterly periods end on March 31st, June 30th, September 30th and December 31st of each year.

(i) Minor: Is an enrolled individual beneficiary who is eligible to participate in a Per Capita Payment and who has not reached the age of eighteen (18) years on the date set for distribution.

(j) Eligible Tribal Member: means any living member of the Potawatomi tribe, who has not relinquished or waived his rights to be on the tribal roll.

(k) Legal Incompetent: is an enrolled individual beneficiary eligible to participate in a Per Capita Payment, and who has been declared to be under a legal disability, other than being a minor, by a court of competent jurisdiction, including a tribal justice system.

(l) Appropriate Bureau Official: means the Bureau Official with delegated authority to approve a Tribal Revenue Allocation Plan.

(m) Secretary: means the Secretary of the Interior or his authorized representative.

(n) Superintendent: means the official or other designated representative of the Bureau of Indian Affairs in charge of the field office which has immediate administrative responsibility for the affairs of the tribe, band, or group for which a tribal Revenue Allocation Plan is prepared.

(o) IGRA: means the Indian Gaming Regulatory Act of 1988 (public law 100-497) 102 Stat. 2467 dated October 17, 1988 (codified at 25 U.S.C. 2701-21 1988) and any amendments.

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(p) **Resolution:** means the formal document in which the Tribal Council expresses its legislative will in accordance with its Tribal Constitution.

(q) **Tribal Revenue Allocation Plan:** means the document submitted by the Prairie Band of Potawatomi Indians for distributing net gaming revenues.

(r) **Distribution Date/s:** means those dates set by the Tribal Council for the distribution of a Per-Capita Payment. Those dates set by the Tribal Council are March 15th, June 15th, September 15th and December 15th, of each year.

(s) **Eligibility Date:** means the day a person's application is approved for Tribal Membership by the Enrollment Committee. The eligibility determination dates for distributions are February 15th, May 15th, August 15th, and November 15th of each year.

ARTICLE III ALLOCATION PLAN

Section 1. The Prairie Band of Potawatomi Indians intend to dedicate the Net Gaming Revenues to the following purposes or programs as set forth in the percentages shown in this article III.

(a) 30% percent of the Net Gaming Revenues shall be used to fund or supplement Tribal Government Operations and Programs.

(b) 30% percent of the Net Gaming Revenues shall be used for Per-Capita distributions to all eligible enrolled tribal members.

(c) 37% percent of the Net Gaming Revenues shall be used to fund tribal economic development, including but not limited to, developing tribal business enterprises, business opportunities, goods and services that may provide employment to its members, and financial returns to the tribe and its members.

(d) 1% percent of the Net Gaming Revenues shall be used to donate for Tribal and or non-Tribal charitable organizations or local government organizations providing services to the Potawatomi Indians.

(e) 2% percent of the Net Gaming Revenues will be used to provide for the general welfare of the Tribe and its members.

Section 2. The Tribal Council shall have the authority to designate and move a percentage of funding in a category (Section 1 (a) - (e)) to any other category in the fourth (4th) quarter of that fiscal year, if the funding in the

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category from which the money is being taken is not necessary for the stated purposes and the funding is required for the category into which the money is being transferred. Otherwise, the purposes and proportions for the expenditure of Net Gaming Revenues may be changed by a majority vote of the General Council, except as provided in Article VI herein relating to amendments required to obtain Secretarial approval of this ordinance pursuant to the (IGRA) Indian Gaming Regulatory Act. The percentage in Article III Section 1 (b) shall in no event exceed 10%.

Section 3. The Tribal Council shall ensure that documentation of needs or lack of needs in any category during the first three quarters of the fiscal year is established. Thereafter, the Tribal Council shall have clearly established needs or excess of needs and may make appropriate adjustments by the transfer of funds to those categories in which needs have been established.

ARTICLE IV ELIGIBILITY FOR PER CAPITA PAYMENTS

Section 1. Every living person who is an enrolled member of the Prairie Band of Potawatomi Indians on the eligibility determination date is eligible to receive a Per Capita Payment.

(a) If a Potawatomi tribal member becomes disenrolled or withdraws from the tribal roll on a date, prior to a eligibility determination date for the distribution of a Per Capita Payment, then that individual becomes ineligible for a Per Capita Payment.

(b) If a Potawatomi Tribal Member dies on or after the eligibility determination date then that member's final Per-Capita Payment shall be made to his estate or heir's account as determined by the Department of Interior Administrative Law Judge's Order, or court of competent jurisdiction, the payment will be held by the Potawatomi Indians until the order is issued and the legal documentation is presented to the Per-Capita Department of the Prairie Band of Potawatomi Indians for disbursement of that deceased Per-Capita Payment.

Section 2. Distribution shall be based on the latest membership list as of the eligibility determination date and as approved by the Tribal Council and certified by the Prairie Band of Potawatomi Tribal Enrollment Office. Any person excluded from eligibility by the terms of this ordinance shall have the right of appeal to the Tribal Council and will have the right to due process of the law, according to the tribe's governing document, whereas the tribal court will have the final decision to a person's eligibility for a Per Capita Payment.

(a) Persons who have filed a completed membership application and all required documents and whose applications are approved for membership by the Enrollment Committee on or previous to the eligibility determination date (Article II, Section 1, (s) Eligibility Date) set by Tribal Council, and who otherwise meet all requirements for tribal membership (See PBP Tribal Constitution, Article III, Membership) shall be eligible for a Per-Capita Payment.

ARTICLE V CALCULATION AND DISBURSEMENT OF PER CAPITA PAYMENTS

Section 1. This ordinance is set out so that all Net Gaming Revenue set in the percentages as shown in Article III, provides that every eligible Potawatomi tribal member receives an equal share.

Section 2. Each Per Capita Payment shall be disbursed within thirty days after the Per Capita Pay Period. See (Article III, Section 1. (b) Definitions).

Section 3. Each Per Capita Payment shall be made by tribal check, made payable to the eligible tribal member, except in the case of incompetents or minors. See (Article V, Section 4 & 5).

Section 4. Per Capita Payments made to legally incompetent tribal members shall be made payable to the legal guardian, provided that the legal guardian provide a full explanation of the circumstances which justify the disbursement of the incompetent's payment. This ordinance requires that, upon the request of the Nation's per capita office, a legal guardian provide a certified accounting of all expenditures of the incompetent's payment, and provide supporting documentation of all expenditures.

Section 5. Per capita distributions for minors shall be placed in trust and will be distributed to the minor with accumulated trust income on and after the 18th birthday.

(a) The trust assets will be distributed to the tribal member according to the following schedule:

At age 18 – 10% of the trust balance
At age 19 – 20% of the trust balance
At age 20 – 30% of the trust balance
At age 21 – all remaining trust assets.

Valuing education is of utmost concern to the General Council. Notwithstanding this schedule, except as provided below, no trust distributions will be made to a

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member who does not have a high school diploma or a G.E.D until this requirement is met or the member is 21. At the age this requirement is met or at the age of 21, all distributions will be made to the extent of the age of the member. In any event, all trust assets will be distributed by the age of 21. After age 18, current per capita distributions will be made to the adult member.

(b) Additional distributions from the trust may be made before, on or after the 18th birthday for the minor's health, education, or welfare upon request of a parent, legal guardian or the minor in amounts as from time to time may be deemed necessary by the trustee.

(c) The trust will be irrevocable and will be administered by an independent institutional trustee. The trustee will deliver regular statements of trust assets and income to the tribal member. The per capita payments in trust will be invested in accord with prudent investment practices.

(d) The trust may have such additional provisions as the Tribal Council may determine to be reasonable or necessary to carry out the operations and functions of the trust, provided that the minor's interests shall be preserved and protected as required by 25 U.S.C. § 2710(a)(3)(C).

(e) This ordinance requires that, upon the request of the Nation's per capita office, the parents or guardian provide a certified accounting of all expenditures of the minor's payment and provide supporting documentation of all expenditures.

Section 6. Any dispute regarding this ordinance, implementation thereof, or action taken thereunder shall be first presented to the Tribal Council whose decision may then be appealed to the Potawatomi Tribal Court, whose decision shall be final.

Section 7. The Potawatomi Indians will include with each Per Capita Payment a statement reading: Federal law requires the Potawatomi Indians to inform you that this Per Capita Payment is subject to Federal Taxation. (25 U.S.C. Section 2710 (b) (3) (D)). The Potawatomi Indians shall withhold Federal Income Tax from each Per Capita Payment as may be required under Internal Revenue Service regulations (26 CFR part 31) and pay such tax to the Internal Revenue Service. The Potawatomi Indians will provide the appropriate annual tax statements to the eligible member by the end of January following the tax year.

ARTICLE VI ADOPTION AND AMENDMENT

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Section 1. This ordinance will become effective upon its approval by a majority vote of the General Council of the Prairie Band of Potawatomi Indians and this ordinance will become effective when approved by the Secretary of Interior or his representatives as long as required by law.

Section 2. This ordinance may only be amended by a majority vote of the General Council of the Potawatomi Indians; provided that the Tribal Council shall be authorized and hereby is directed to make any amendments to this ordinance as required by the Secretary of Interior for compliance with 25 U.S.C. Section 2710 et seq. These amendments will become effective when approved by the Secretary of Interior or his representative.

(Amended by PBP TC No. 2000-82, May 16, 2000; amendments by Referendum on February 25, 2004 approved by the Interior Department on September 2, 2004)

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