

Oneida Tribe of Indians of Wisconsin

BUSINESS COMMITTEE



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.



UGWA DEMOLUM YATEHE
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

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BC Resolution # 6-16-04-C *Amendments to the Per Capita Ordinance*

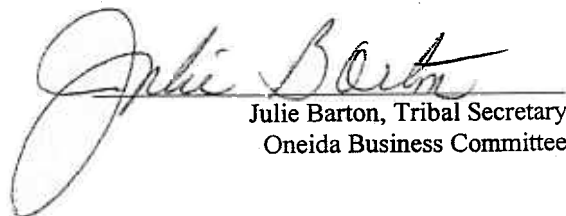
- WHEREAS,** the Oneida General Tribal Council is the duly recognized governing body of the Oneida Tribe of Indians of the Wisconsin; and
- WHEREAS,** the General Tribal Council has been delegated the authority of the Constitution of the Oneida Tribe of Indians of Wisconsin; and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- WHEREAS,** the Per Capita Ordinance was adopted by the Oneida Business Committee by passage of BC-7-12-00-B; and
- WHEREAS,** section 4-6(a) of the Per Capita Ordinance provides that per capita can be garnished for (1) Debts owed to the Tribe and (2) child support payments; and
- WHEREAS,** the Oneida Appeals Commission interprets section 4-6(a) of the Per Capita Ordinance as placing debts owed to the Tribe ahead of child support payments; and
- WHEREAS,** the Oneida Business Committee strongly believes that the well-being of children should be placed ahead of debt owed to the Tribe when garnishments to per capita are ordered; and
- WHEREAS,** the amendments received a public hearing in accordance with the Administrative Procedures Act (APA) on April 5, 2004.

NOW THEREFORE BE IT RESOLVED, that the Oneida Business Committee hereby adopts the attached amendments to the Per Capita Ordinance.

BE IT FINALLY RESOLVED, that the Legislative Operating Committee is hereby directed to immediately place a notice in the Kalihwisaks which notifies the public of the new garnishment priority order.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum. 8 members were present at a meeting duly called, noticed and held on the 16th day of June, 2004; that the foregoing resolution was duly adopted at such meeting by a vote of 7 members for; 0 members against, and 0 members not voting; and that said resolution has not been rescinded or amended in any way.


Julie Barton, Tribal Secretary
Oneida Business Committee

Oneida Tribe of Indians of Wisconsin

Legislative Reference Office

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Committee Members

Curtis Danforth

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Statement of Effect

Amendments to the Per Capita Ordinance

Summary

If adopted, this resolution would place child support payments ahead of debts owed to the Tribe when garnishment of per capita payments are ordered by the Oneida Appeals Commission.

Analysis

Currently, the Per Capita Ordinance (Ordinance) provides as follows:

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

(a) Per capita benefits can be garnished only for the following purposes:

(1) Debts owed to the Oneida Tribe; and

(2) Child support payments.

(b) All requests for garnishment must be submitted by the claimant to the Oneida Appeals Commission no later than June 30th. Determinations by the Oneida Appeals Commission received on or before August 30th shall be forwarded to the Oneida Trust Committee action in the next processed per capita payment. Garnishment determinations may be in the form of a percentage or for a specific dollar amount.

As the above passage enumerates, debts owed to the Tribe are in first position for garnishment and ahead of child support payments. Because the Oneida Appeals Commission interprets the Ordinance as placing garnishment priority as it is found in the Ordinance, amendments to the Ordinance would need to be enacted in order to alter the garnishment priority and remove any ambiguity.

Lastly, the Resolution directs that the Legislative Operating Committee place a notice in the Kalihwisaks which notifies the public of the new garnishment priority order and extended deadlines.

Conclusion

There are no legal bars to adopting the resolution and the attached amendments.

The document was marked with 35 Deletions, 29 Insertions, 0 Moves.

Chapter 9
PER CAPITA ORDINANCE

9.1-1	Purpose and Policy	9.5-1	Trust Committee
9.2-1	Adoption, Amendment, Repeal	9.6-1	Minors
9.3-1	Definitions	9.7-1	Payments
9.4-1	General		

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

(a) To specify the procedure to be followed in the event that a per capita payment ~~is~~ 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.

9.2-2. This law may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by 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. All other Oneida laws, policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this policy are hereby repealed unless specifically re-enacted after adoption of this policy.

9.3-1. Definitions. This section shall govern the definitions of words as 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 18 years old or older as of August 31st of a given year.

9.3-3. *Day:* All references to "day" or "days" shall mean calendar days, unless otherwise specifically stated.

9.3-4. *Elder:* shall mean those tribal members who are age 62 years or over as of January 1st of a given year.

9.3-5. *Minors Trust:* That account or those accounts established by the Trust Committee for the benefit of tribal members who are minors.

9.3-6. *Trust Committee:* shall mean that body designated by the General Tribal Council to manage

43 the trust funds for the Oneida Tribe of Indians of Wisconsin and their tribal membership, and which
44 is also responsible for the enrollment records of the Oneida Tribe. This Committee is also known
45 as the Oneida Trust/Enrollment Committee.

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47 **9.4-1. General.** This Article shall set forth the responsibilities delegated under this law.

48 9.4-2. *Supercedes.* This ordinance shall supercede any contradictory language in any other per
49 capita payment plan.

50 9.4-3. *Budgetary Limitations.* This ordinance shall not be construed as mandating a per capita
51 payment. Per capita payments shall be issued only at the direction of the General Tribal Council
52 through adoption of a resolution.

53 9.4-4. *Oneida Trust Committee.* The Trust Committee shall be delegated the following
54 responsibilities in regards to per capita activities. Any responsibility not specifically identified, and
55 reasonably related to the activities identified herein, shall be considered a Trust Committee
56 responsibility.

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

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

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

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

63 9.4-5. *Oneida Business Committee.* The Oneida Business Committee shall be identified as having
64 the following responsibilities regarding per capita activities. Actions reasonably related to activities
65 defined herein, shall be considered an Oneida Business Committee activity.

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

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

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

71 9.4-6. *Per Capita Payments.* Per capita payments are considered benefits offered by the Oneida
72 Tribe to the membership.

73 (a) Per capita benefits can be garnished only for the following purposes:

74 (1) Child support payments; and

75 (2) Debts owed to the Oneida Tribe; and

76 (2) Child support payments.

77 (b) All requests for garnishment must be submitted by the claimant to the Oneida Appeals
78 Commission no later than before June 30th 1991. Determinations by the Oneida Appeals
79 Commission received on or before August 30th shall be forwarded before August 31st to the
80 Oneida Trust Committee for action in the next processed per capita payment. Garnishment
81 determinations may be in the form of a percentage or for a specific dollar amount.

82 (c) Requests for garnishment of per capita for child support payments shall receive priority
83 over requests for garnishment of per capita for debts owed to the Oneida Tribe.

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9.5-1. Trust Committee. General. This section shall set forth the responsibilities of the Oneida 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 which 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 or Sunday the deadline shall be construed to be the close of business on the following Monday.

(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 February 28th.

(b) *Notice and Address Verification.* Notice and address verification forms shall be mailed by July 1st. Tribal members must return a notarized notice and address verification forms by close of business on September 1st to be eligible for a per capita payment.

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

(d) *Request for Prior Payment.* A request for a prior payment, for which a member was eligible, but did not receive, must be filed:

(1) for per capita payments made between January 1, 1990 and January 1, 2000, by December 31, 2000.

(2) for all future per capita payments, 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 the name of the deceased member.

(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

124 capita payment was not claimed, where the eligible tribal member failed to file a claim for
125 a prior per capita payment while living.

126 9.5-5. *Unlocated Members.* Tribal members who fail to file a notice and address verification form
127 by the deadline date, and have failed to correct an address for the previous seven years from the
128 deadline date set in sec. 9.5-3(b) are considered ineligible.

129 9.5-6. *Refusal of payment.* All funds which would have been dispersed in accordance with this
130 ordinance, but which have been refused by the individual tribal member, shall be deposited in a
131 pooled account. The funds in this account can only be designated for expenditure for a specific
132 purpose as determined by the General Tribal Council. Management of the pooled account shall be
133 the responsibility of the Trust Committee.

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135 **9.6-1. Minors. General.** This section shall set forth a consistent method to protect and preserve
136 the interests of minors in any per capita payment to which they might be entitled.

137 9.6-2. *Minor.* A minor under this law shall be considered a Tribal member age 18 or younger whose
138 date of birth falls on or before August 31st of the per capita payment year consistent with sec. 9.5-
139 3(c).

140 9.6-3. *Minor Trust Account.* In the event a per capita payment shall include minors as eligible
141 recipients, those per capita payments shall be made to the Minor Trust Account. The Trust
142 Committee shall establish a standard operating procedure which shall identify the set-up and
143 monitoring of the Minor Trust Account. The Trust Committee may choose to maintain pooled or
144 individual accounts, separate accounts for each payment or series of payments, or other combination
145 which is in the interests of the minor and which are consistent with the terms of the Minor's Trust
146 Agreement and the Trust Committee's Investment Policy and Fiduciary Policy.

147 9.6-4. *Costs of Account.* The administrative costs related to a Minor Trust Account shall be
148 allocated to the account. Administrative costs shall be defined as those costs related to third party
149 fees and expenses resulting from managing the accounts. Administrative cost shall not include any
150 costs related to the expenses of the Trust Department or Trust Committee, the Enrollment
151 Department or the Enrollment Committee. No member, who has funds in a minor trust account,
152 shall be guaranteed the specific amount of the per capita payment.

153 9.6-5. *Relinquishment.* Upon a minor's relinquishment of tribal membership any funds in the per
154 capita trust account fund, shall be deposited in a joint savings account in the name of the Oneida
155 Trust/Enrollment Committee and the former tribal member to be held until the age of 18 years. Any
156 fees necessary for the establishment and maintenance of such an account shall be allocated to the
157 account in accordance to procedures established by the Trust Committee.

158 9.6-6. *Inheritance.* The value of an individual minor's per capita in the Minor Trust Account shall
159 be inheritable on the date of death of the minor. The Trust Committee shall establish a standard
160 operating procedure which shall identify the processes by which an application for payment shall be
161 made. In all cases, the payment shall be made in the name of the minor to be paid to the estate of
162 the minor.

163 9.6-7. *Failure to File on behalf of decedent.* In the event that no claim is received by the Trust
164 Committee within 365 days of the date of death of a minor, all funds held in the Minor's Trust

165 Account for the decedent minor shall revert to a pooled fund for investment by the Trust Committee
166 and which benefits a specific purpose as identified in sec. 9.-5-6.

167 9.6-8. *Failure to file for funds within seven years of 19th birthday.* A tribal member who fails to
168 claim per capita funds from their trust account within seven years of their 19th birthday shall result
169 in the total amount of unclaimed funds reverting to an account which exists to fund a specific
170 purpose as identified in sec. 9.-5-6.
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173 **9.7-1. Payments.** *General.* This section shall set forth the responsibilities of the various
174 departments and committees when a per capita payment is issued.

175 9.7-2. *Enrollment Department.* The Enrollment Department is responsible for the following
176 activities when a per capita payment is approved:

177 (a) The Enrollment Department shall develop and finalize a list of the eligible tribal
178 members broken down into the following three categories: minors, adults and elderly.

179 (b) The Enrollment Department shall provide the finalized list of the number of eligible
180 tribal members to the Trust Department and the Accounting Division.

181 (c) Notice and address verification forms are sent out and upon return are entered into the
182 Enrollment data base.

183 (d) After the notice and address return deadline date, the checks are processed for mailing.
184 All checks are to go out on the same day.

185 (e) The Enrollment Department shall work with the Trust Committee in the establishment
186 of any necessary minors trust accounts.

187 (f) The Enrollment Department is responsible for monitoring all accounts for the
188 purposes of necessary reports, claims and payment verification.

189 9.7-3. *Trust Department.* The Trust Department is responsible for the following activities when a
190 per capita payment is approved:

191 (a) Upon receipt of the number of eligible members to receive a per capita payment, the
192 Trust Department ensures the availability and liquidity of funds for a funds transfer of the
193 trust funds under the authorization/jurisdiction of the Trust Committee.

194 (b) The Trust Department provides funds transfer instructions to the relevant initiating
195 institution: the custodial bank or the Oneida Accounting Division.

196 9.7-4. *Accounting Division.* The Accounting Division is responsible for the following activities
197 when a per capita payment is approved:

198 (a) Upon receipt of funds transfer instructions from the authorizing entity, initiate and
199 complete the funds transfer. The physical movement of funds must happen no later than one
200 day prior to the issue date of the checks.

201 (b) Record issued, voided; and stale dated checks on the General Ledger.

202 (c) Complete bank account reconciliations.

203 9.7-5. *Tribal Treasurer.* The office of the Tribal Treasurer shall be responsible for the identification
204 of funds and the timely transfer of the necessary amount of relevant funds to the Trust Committee
205 and the Accounting Division. The relevant funds shall be segregated and obligated for the per capita

206 payments and are those necessary to:
207 (a) Make a payment to those tribal members responding to the notice and address
208 verification deadline who are not minors.
209 (b) Make a minor trust account payment based on the number of respondents to the notice
210 and address verification deadline who are minors.
211 (c) Cover unverified member payments for those members who are unresponsive to the
212 notice and address verification deadline.

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217 Adopted - BC-7-12-00-B

218 Emergency Amendments - 2-28-01-E (expired)

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

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