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**Memorandum**

**TO:** Legislative Operating Committee (LOC)  
**FROM:** Douglass McIntyre, Staff Attorney  
**DATE:** July 6, 2016  
**RE:** Per Capita (Law) Amendments: Public Meeting Comment Review

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On May 19, 2016 and June 16, 2016 public meetings were held regarding amendments to the Per Capita law. The May 19<sup>th</sup> public meeting notice contained a minor error and the sponsor determined that it would be in the best interest of fairness to hold the May 19<sup>th</sup> public meeting and an additional meeting where the error in the notice was corrected. These amendments would:

- Reduce the frequency of per capita distributions to elders while still maintaining the elders payments by placing elders on the same distribution schedule as adults [see 9.5-2 and 9.4-6(a)];
- Reduce the processing of adult per capita payments by eliminating the submission of the notarized form for adult members who have direct deposit on file with the Trust Enrollment Department [see 9.5-2(b)(1)(A)];
- Create the majority age beneficiary category distinct from minor beneficiary [see 9.3-1(j)];
- Establish bank fees for closed accounts and returned distributions [see 9.5-2(d)(2) and 9.5-2(e)(2)(B)];
- Transfer the Trust Enrollment Committees hearing authority to the Oneida Judiciary [see 9.7-1]; and
- Revise the attachment process to allow entities to collect debt owed to the Nation without requiring a court order [see 9.4-9(d)].

This memorandum is submitted as a review of the oral and written comments received during the May 19, 2016 and June 16, 2016 public meetings and written comments received prior to the end of the public meeting comment period on June 23, 2016. The public meeting draft with comments, as well as the transcripts of both public meetings and all written comments received, has been attached for your review.

**Comment 1. Majority Age Beneficiary Category**

**Lois Powless:** That is the only thing I can see in there and as far as the part of the beneficiary, is also in there. I am not familiar with that either and so I would need some explanation on that as

to what that is all about. The beneficiary part, that is all I need to know. But that needs to be clarified, that first one. (6/16/16 PM)

### *Response*

The commenter asks for clarification on the third bullet of the public meeting notice which reads: “[c]reate the majority age beneficiary category distinct from minor beneficiary.” Section 9.3 adds two definitions for separate beneficiaries:

(k) “Majority Age Beneficiary” means a Tribal member who has reached eighteen (18) years of age by September 1<sup>st</sup> and is eligible to claim a trust account for the first time in the distribution year.

(l) “Minor Beneficiary” means a Tribal member who is less than eighteen (18) years age.

These additions were added to clarify differences between:

-a member who is not eligible for distribution because they are under eighteen (18) years of age (minor beneficiary); and

-a member who is eligible to claim a trust account for the first time (majority age beneficiary).

There are certain deadlines and requirements within the law pertaining to majority age beneficiaries that do not apply to minor beneficiaries or adults. Having a defined term allows for easy reference to this group.

There are no recommended changes based on the comment.

## **Comments 2, 3, 4 and 5. Elder Distribution**

### **Comment 2.**

**Wes Martin:** Thank you. The ones right now, the first 2 bullet points, I agree with, that is the reducing of the per cap I believe for the tribal members that turn 62 or 65 between October 1<sup>st</sup> through December 30<sup>th</sup>. I think that’s a great idea. And the notarized statement if you have a direct deposit, I think that will eliminate some of the stuff, so the rest I will bring back to the next one. (5/19/16 PM)

### **Comment 3.**

**Lois Powless:** I think there needs to be more clarification on that first one where you talk about reducing the frequency of the per capita. I know what they are talking about, and it is for the ones that turn sixty-two (62) during the year, but that is not in there. It might be in the whole packet, I don’t know, I didn’t read the packet, I just now got it. So anyway, there needs to be clarification on that because the way it reads now it sounds like all of the elders are getting paid more frequently that the rest of the members of the Tribe. Is that right? (6/16/16 PM)

### **Comment 4.**

**Lillian King:** I was just concerned about that same thing as my sister Lois Powless had said about that. I misunderstood that, I thought they were trying to do away with the “elders” and have them be “adults” and weren’t going to have “elders” anymore but just “adults”. That is the

way I understood when I read the first line here “reduce the frequency of per capita distributions to elders while still maintaining the elders payments by placing elders on the same distribution schedule as adults.” (6/16/16 PM)

#### **Comment 5.**

**Wes Martin:** Thank you. I think I understand but if you read it and if I’m an elder and I look at the first “reduce the frequency of per capita distributions to elders” it sounds like they are reducing the payments with the frequency you know it says they are reducing it. I think the per cap law, I am not sure if that has a termination date for the elder per cap but... What is the distinction between an “elder” and “adult.” It says we are taking elder and putting them the same as adult. Is that the category from eighteen (18) to sixty-two (62) or fifty-five (55)? Is that classified as an adult and the elders are after that? It changes us from elders to adults basically and I believe we are still adults. ... But that first one is kind of confusing. It is like you are reducing the distribution of per cap to the elders if you look at it. Thank you. (6/16/16 PM)

#### *Response*

The commenters reference the first bullet point of the public meeting notice which reads “[r]educe the frequency of per capita distributions to elders while still maintaining the elders payments by placing elders on the same distribution schedule as adults.”

Under the current law, there is a separate process for elder’s per capita distribution. These proposed amendments eliminate this separate process and set distributions of per capita on the same distribution schedule. While this would reduce the overall frequency of the department distributing per capita, it would not affect the frequency of distribution to a member. In both the current and proposed amendments the term “adult” is defined to distinguish members over eighteen (18) from minors. Elders are a subset of adults who are eligible for elder distributions. These amendments do not do away with elder’s per capita or reduce distribution to elders.

There are no recommended changes based on the comments.

#### **Comment 6. Child Support Attachment**

**Brian Doxtator:** The child support arrearments, my second comment, on (c)(1), line, I don’t know where this would be, but I don’t agree that 100% of our per cap should be placed towards child support, I think there is a certain percentage in the industry, 30% or 40%, not all of their wage is taken. I know it is a big social argument, I get that, but even if we went with, if we put a percentage in there, that the Tribe shall only take 50% for child support arrears at least the other 50% goes back to that individual. What you don’t see is people that have arrears but have custody of their children, the arrears are actually going out of the house and then because of whatever reason, the mom died, she’s in prison or whatever, she’s not around, now the dad who has arrears doesn’t get his per cap even though he has full custody of the children. So that’s a situation in our community right now. So I am just saying in the arrears section, I don’t think we should be taking 100% and that we should put a block on that and I don’t know what that percentage is, but I want to say county and state do 30%, I don’t know, but I also do know that the child support is a strong social statement by our community but right not it’s not the same as it used to be 10 years ago so, thank you. (5/19/16 PM)

*Response*

The commenter requests a limit on the percentage of per capita that can be attached for child support. The commenter is correct that only a certain percentage of employment wages are garnished for child support under both Oneida and state law:

	Wisconsin	Tribal law w/ income less than \$7,000	Tribal law w/ income more than \$7,000
1 child	17%	17%	14%
2 children	25%	25%	20%
3 children	29%	29%	23%
4 children	31%	31%	25%
5+ children	34%	34%	27%

However, the case cited (where a child is in the care of the parent still owing child support) is rare and there are mechanisms available through the court to remedy those. Additionally, if a limit were placed on the percentage of per capita that could be attached for child support arrearage, the per capita would not necessarily make it to the member. Before any amount is given to the member, the law allows for attachment to fully satisfy the following debts in order:

1. child support arrearage,
2. debt owed to an Oneida entity,
3. Federal tax levy.

Any amount left over would then be given to the member. Any changes based on the comment are a policy decision for the LOC.

**Comment 7. Entities able to Attach**

**Dan Hawk (written):** LOC, as you may know, Oneida Small Business, Inc. was created from set-a-side funding by the State of Wisconsin due to gaming compact negotiation. Although, some Oneida people have paid their loans, some in full, and yet others pay month after month on time. There are also some Oneida people that are in default.

It is time, that LOC include repayment of OSB, Inc. loans (percapita intercept and garnishment) so that other Oneida Small Business people may enjoy the benefits of the Revolving Loan Fund, like many others have already done.

As a note, several Oneida people have already signed off on their percapita for repayment of the loan as a condition of the loan but, Trust and Enrollment will not enforce it because repayment of OSB, Inc. is not in the written law.

*Response*

The commenter requests that Oneida Small Business, Inc. (OSB) be included in the law so that default loans could be collected from per capita payments. Currently, OSB is not able to attach a per capita because section 9.4-9(a)(1) to (3) provides that attachment may only be for:

- (1) Child support arrearage;
- (2) Debt owed to an Oneida entity that is past due; or
- (3) Federal tax levy

As Oneida entity is defined as “a department, board, committee, commission or chartered corporation of the Nation or the Judiciary”, OSB would not be able to attach a member’s per capita payment.

Any changes based on this comment would be a policy decision for the LOC. Any changes should be added as 9.4-9(a)(4).

## **Comments 8 and 9. Oneida Entity and Judgments**

### **Comment 8.**

**Rae Skenandore:** I just have one quick comment on the package. On the front, the last bullet says “revise the attachment process to allow entities to collect debt owed to the Nation without requiring a court order,” but the analysis does not have that in there. Under policy mechanisms the attachments still have to go through the Judiciary, but then in the law it says you don’t. My comments are the content of the package more than anything because I thought the law was going to follow the garnishment and not returning the nation to go through the court system for debt owed. So it is just some clarification on the package. (6/16/16 PM)

### **Comment 9.**

**Laurell Spooner:** I am here on behalf of the Oneida Housing Authority and it is my understanding that we would submit to the Enrollment office for a judgment versus at least letting the Tribal member hear it in court before there is a garnishment of their per cap. Would they not then, have a, be able to, would they have to take us to court then if we were getting a judgment?

**David P. Jordan:** Yes.

**Laurell Spooner:** So it would be putting the burden, right now the burden is on the Tribal entity, and I think that is where it should stay, for us to pay the filing fee versus the Tribal member paying the filing fee.

**Krystal John:** So the change in process is that there is no longer a judgment required so the reference to a required judgment is an inaccurate reference because the process has been changed to allow for an automatic attachment of per capita payment for debts owed to the Tribe, which is very similar to how the federal government handles garnishments through taxation. So, this would say that once we have met our notice requirements for noticing you of a pending attachment, we will automatically attach unless you request a hearing date in advance of that attachment.

**Laurell Spooner:** So would that hearing be in court then?

**Krystal John:** That is correct, it would be with the Judiciary.

**Laurell Spooner:** Okay, thank you, I think that cleared it up. (5/19/16 PM)

### *Response*

Under the proposed amendments, an Oneida entity is not required to receive an attachment order before initiating a per capita payment attachment. A member has a right to request a hearing before the judiciary but must request one. A department would still need to follow the requirements found under 9.4-9(d) which includes sending multiple notices to the last known address and publishing in the Tribal newspaper before an attachment would be made.

There are no recommended changes based on the comments.

## **Comments 10, 11 and 12. Notarized Form**

### **Comment 10**

**Wes Martin:** Thank you. The ones right now, the first 2 bullet points, I agree with, that is the reducing of the per cap I believe for the tribal members that turn 62 or 65 between October 1<sup>st</sup> through December 30<sup>th</sup>. I think that's a great idea. And the notarized statement if you have a direct deposit, I think that will eliminate some of the stuff, so the rest I will bring back to the next one. (5/19/16 PM)

### **Comment 11**

**Lillian King:** And the same way with "processing of adult per capita payments by eliminating the submission of the notarized form for adult members who have direct deposit on file with the Trust Enrollment Department." I misunderstood those two things there. That is what I was concerned about. (6/16/16 PM)

### **Comment 12**

**Wes Martin:** What Mrs. King is referring to is the elimination and I am for that because we have to go around and find a notary and submit that now but you have to have direct deposit to eliminate that is my understanding. (6/16/16 PM)

### *Response*

The commenters seem to support the second bullet point of the public meeting notice which reads "[r]educe the processing of adult per capita payments by eliminating the submission of the notarized form for adult members who have direct deposit on file with the Trust Enrollment Department [see 9.5-2(b)(1)(A)]"

The Per Capita law currently requires each adult member to return a notarized membership payment form by end of the day on September 1<sup>st</sup> each year in order to be eligible to receive his or her per capita payment. This draft eliminates this requirement for those with a direct deposit form on file.

There are no recommended changes based on these comments.

### **Comment 13. Distribution Date**

**Lois Powless:** Yes I did. On chapter 9, on the current law, in regards to the payment date, I was concerned for the parents with children that go to school, if they could get their payment earlier if possible because they do have a lot of expense and some of those families have large families and they have a really hard time making the payments for their education. And I was just wondering if that could be changed because according to the law it says "on or before". It doesn't say it has to be on [September] thirtieth (30<sup>th</sup>). I was wondering if it could be changed so that at least the parents of child that are in school would get their payment earlier because school starts in the earlier part of the month and I am sure they would be very happy to get their per capita so they could pay for whatever they have to for their children. (6/16/16 PM)

### *Response*

The commenter requests a change in the distribution date citing that children go back to school before the per capita payment is distributed. The law reads:

(c) *Annual Distribution Date.* The Trust Enrollment Department shall distribute all annual per capita payments **on or before September 30<sup>th</sup>**, excluding those to beneficiary trust accounts, which are governed by the Per Capita Trust Agreement.

The language “on or before September 30<sup>th</sup>” allows for a distribution date that would be before the start of the school year. Generally the per capita distributions have been made near the end of September because the Nation operates a fiscal year beginning October 1<sup>st</sup> and ending on September 30<sup>th</sup>.

Additionally, the current and proposed law contains a number of deadlines including a new enrollment application deadline (January 31<sup>st</sup>), enrollment deadline (March 31<sup>st</sup>), membership payment form sent to members deadline (July 1<sup>st</sup>), submission of completed membership payment form (September 1<sup>st</sup>), request for prior unclaimed payment (September 1<sup>st</sup>), a request for a claimed payment but not redeemed (September 1<sup>st</sup>) and a deadline for when the payments must be distributed (September 30<sup>th</sup>). If the distribution date is to be made earlier, these deadlines should be adjusted as well.

Any changes based on this comment are a policy decision for the LOC.

### **Comment 14. Age of Distribution**

**Brian Doxtator(May 19<sup>th</sup>):** Um, 2 comments on 9.3-1, line 28, adult, I would like to recommend that be changed to 25. I think it’s an irresponsibility of the government to give these 18 year olds that amount of money. And that to suffice the possible conflict that the community may see in that, that maybe a minimum payment of, say \$5,000, is provided upon completion of the high school diploma or whatever that is in law, but I don’t think they should get it at 18. And I am picking the age of 25 because there are certain IRS rules and regulations, higher scholarship and all this other stuff that kinda goes to age 24, so that one.

...

**David P. Jordan:** For your first one, from 18 to 25, is your intent that they maybe get partial at 18 and then get the rest at 25?

**Brian Doxtator:** Yeah, I mean 5,000 bucks, go and blow do what you want but you aren’t getting the rest until you’re 25.

**David P. Jordan:** Okay.

**Brian Doxtator:** That’s what I think would help a lot of parents who lose the ability to claim their child because they get a \$28,000 check and they have the same income as their parents and the parent can’t claim that child by IRS law even though they took care of them all year.

**David P. Jordan:** Yeah, ok, I know other tribes do that as well.

**Brian Doxtator:** Yeah, so that’s my thought. I don’t if \$5,000 is the magic number, but you know for an 18 year old to have 5,000 bucks, they’d be satisfied because most of the 30 year old I talk to, they just hate that they don’t have that money, that they blew it on cars and fun. Now they are getting \$28,000 and that number is growing every year as you know. (5/19/16 PM)

### *Response*

The commenter suggests that the draft be amended so that a partial distribution be provided to a member when he or she qualifies for distribution (likely around 18 years old) and the remaining amount be distributed at an older age such as at age 25. The commenter cites the irresponsible nature of someone that young receiving a large amount of money and the loss of the ability to claim a child on taxes.

Disbursement of trust account funds to majority age beneficiaries is governed by the Per Capita Trust Agreement which is a separate agreement between the Oneida Business Committee (on behalf of the General Tribal Council) and the Trust Enrollment Department. The Per Capita Trust Agreement provides that a beneficiary meeting the age and educational requirements “shall receive one trust account maturity payment . . . on or immediately after reaching the age of eighteen (18).” To make the changes sought by the commenter, the Per Capita Trust Agreement would first need to be amended.

There are amendments to the Per Capita Trust Agreement currently being negotiated and that would be the best place to address this comment. However given the likely time that it will take to complete amendments to the agreement, it is recommended that the amendments to the law move forward.

### **Comment 15 and 16. Per Capita Trust Agreement**

#### **Comment 15**

##### **Bonnie Pigman(written):**

I am requesting a single word deletion in the following section of the Per Capita Law. After an extensive amount of time and work put into these amendments I appreciate your indulgence to making this one correction. Please provide a response to the Trust Enrollment Department as to whether or not the change would occur, including the reason(s) if the change was declined.

1. Line 545: Section 9.6-1 (d) (1) (C) (i): 2<sup>nd</sup> sentence remove the word "automatically". There is no language in the Per Capita Trust Agreement that supports the action of "automatic liquidation and depositing of legally incompetent adult minor trust funds".

a. Article III A. (2) states "Funds for a minor declared legally incompetent shall be put into a trust account for the legally incompetent adult.

#### **Comment 16**

**"Bonnie Pigman:** I am here on behalf of the Trust Enrollment Department and I am looking at a single word deletion in the following section of the Per Capita law. It's under line 545, section 9.6-1(d)(1)(c)(i), it's the second sentence to remove the word “automatically.” There is no language in the per capita trust agreement that supports the action of automatic liquidation and depositing of legally incompetent adult minor trust funds. So in that Per Capita Trust agreement it states in article III.A.2 funds for a minor declared legally incompetent shall be put into a trust account for the legally incompetent adult, so there is no language to say that it automatically goes there. So change the word automatic to take that word automatically out. (5/19/16 PM)

*Response*

The Department requests the following edit to Section 9.6-1(d)(1)(C)(i):

(i) Majority age beneficiaries declared to be a legally incompetent adult under 9.6-2. In such circumstances, the Trust Enrollment Department shall ~~automatically~~ liquidate and deposit any funds from the minor's trust account into a legally incompetent adult trust account.

It is recommended that the change be made so the language will conform to the Per Capita Trust agreement.

**Conclusion**

There were oral comments provided at the public meetings on May 19, 2016 and June 16, 2016 and comments provided in writing which the LOC should consider and incorporate as appropriate. Given the small number of comments, it is recommended that these comments be reviewed at the July 6, 2016 LOC meeting. The interested parties were provided the LOC packet as notice of this memorandum.