

CHAPTER 5-3
GAMING REVENUE ALLOCATION
(08/08/1998)

GAMING REVENUE ALLOCATION

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GAMING REVENUE ALLOCATION ORDINANCE

§ 1. Authority and Purpose

This second amendment to the Forest County Potawatomi Community Gaming Revenue Allocation Ordinance is enacted pursuant to the sovereign authority of the General Council of the Forest County Potawatomi Community of Wisconsin, ("hereinafter "Tribe") under Article IV, Section 1(b) of the Constitution of the Forest County Potawatomi Community of Wisconsin, and under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. sec. 476 (1994), and under Section 11(b)(3) of the Indian Gaming Regulatory Act of 1988, 25 U.S.C. sec. 2710(b)(3) (1994) (hereinafter "The Act").

§ 2. Findings

The General Council finds:

- (A) That membership in the Forest County Potawatomi Community is governed by Article II of the Constitution of the Forest County Potawatomi Community of Wisconsin.
- (B) That Section 11(b)(3) of the Act provides for the per capita distribution of profits from Indian gaming enterprises if that distribution is undertaken pursuant to a revenue allocation plan which also provides for the funding of tribal operations, programs, and economic development, and is approved by the Secretary of the Interior.
- (C) That it is in the best long-term interests of the Forest County Potawatomi Community of Wisconsin to provide for certain per capita distributions of the gaming revenues of the Community to qualified members of the Community.
- (D) That the General Council of the Forest County Potawatomi Community adopted a Gaming Revenue Allocation Ordinance on December 10, 1994, which provided for a one-time per-capita distribution of gaming revenues to qualified members of the Tribe.
- (E) That the General Council of the Forest County Potawatomi Community of Wisconsin adopted a First Amendment to the Gaming Revenue Allocation Ordinance on September 16, 1995, which provided for a second per capita distribution of gaming revenues to qualified members, and to provide a mechanism for making further such distributions to members in the future at a percentage not to exceed 20% of the annual net gaming revenues and in accordance with the Indian Gaming Regulatory Act of 1988.
- (F) That the General Council concluded that it is appropriate and in the long-term interests of the Tribe to adopt this Second Amendment to the Gaming Revenue Allocation Ordinance to amend the formula for calculating the per capita distributions of the annual net gaming revenues from 20% to 50%, provided such distributions are in accordance with the Indian Gaming Regulatory Act and do not

compromise the operations of the government of the Forest County Potawatomi Community.

§ 3. Definition of Eligible Members

Members of the Forest County Potawatomi Community of Wisconsin shall be deemed to be eligible for the benefits afforded under this Second Amendment to the Gaming Revenue Allocation Ordinance if they are enrolled as members of the Forest County Potawatomi Community.

§ 4. Use of Gaming Net Revenues of the Forest County Potawatomi Community

4.1. The Forest County Potawatomi Community shall make to eligible members of the Community per capita payments, in such amounts as may be determined by the General Council of the Community, provided that the cumulative total of such payments during any year shall never exceed fifty (50%) per cent of the annual net gaming revenues available to the Community for the expenditure.

4.2. Fifty (50%) per cent of the net gaming revenues, or such percentage greater than fifty (50%) per cent of net gaming revenues as may be determined by the General Council of the Forest County Potawatomi Community, shall be used for the following purposes:

- (A) To supplement the costs of operating the government operations of the Forest County Potawatomi Community, including the costs of programs which serve the welfare of the members of the Tribe;
- (B) To fund economic development projects which create employment opportunities for members of the Forest County Potawatomi Community, and develop the infrastructure of the Forest County Potawatomi territory; and
- (C) To purchase land for ownership by the Forest County Potawatomi Community.

§ 5. Policy for the Distribution of Per Capita Revenue

It is the intent of the General Council of the Forest County Potawatomi Community that the provisions of the Second Amendment to the Gaming Revenue Allocation Ordinance relating to the distribution of per capita payments shall comply with the provisions of The Act and with all other applicable federal laws and regulations. The General Council recognizes that the long-term social, cultural, and economic interests of the membership of the Forest County Potawatomi Community are best served by using the net revenues generated by the gaming operations of the Forest County Potawatomi Community to strengthen the self-determination and economic development of the Tribe. The per capita distribution of a portion of those net revenues to the eligible members of the Community is consistent with these purposes because it enables individual members to address the particular economic needs of their families, which in turn strengthens the social fabric and security of the Forest County Potawatomi Community.

§ 6. Individual Per Capita Payments

6.1. Amount of Payment

Each eligible member of the Tribe, as defined in Section 3 herein, shall receive such payments as may be approved by the General Council, except as provided for under Sections 6.3, 6.4, 6.5 and 6.6 herein, provided that the cumulative total of such payments during any fiscal year shall not exceed fifty per cent (50%) of the annual net gaming revenues available to the Tribe for expenditures.

6.2. Disbursement of Payments

The disbursement of payments defined under Section 6.1 shall be under the direction of the Treasurer of the Forest County Potawatomi Community through the Forest County Potawatomi Community Accounting Department, and shall be conducted in a manner consistent with generally accepted accounting principles.

6.3. Trust for Incompetents

The Executive Council of the Tribe shall place into trust in a low-risk interest or dividend bearing account in a federally-insured financial institution the per capita payments, or any portion or percentage thereof, of any individual who is declared to be incompetent by a court of competent jurisdiction.

- (A) Procedure for placing Payment Into Trust. Upon its own initiative, or upon receiving a petition from at least two (2) enrolled members of the Forest County Potawatomi Community, one of whom must be an immediate family member of the affected individual, the Executive Council may make a determination that an individual entitled to receive per capita payments is incompetent. Such a determination shall be made following a hearing, at which the Executive Council shall consider all testimony and evidence as to the reasons that the individual is incompetent.
- (B) Authority to Pay Living Allowance. The Executive Council shall have the discretion to pay a living allowance up to the entire per capita payment amount out of a trust established pursuant to Section 6.3(A) of this Second Amendment to the Gaming Revenue Allocation Ordinance upon the receipt of a petition of a legal guardian of any individual declared to be legally incompetent. Such petition shall include a detailed budget of monies necessary for the health, education and welfare of the individual declared to be incompetent.
- (C) Account Statements of Trust Account. The Executive Council shall make available a monthly statement of account of any monies placed into trust for an individual declared to be legally incompetent to the legal guardian of such person.
- (D) Authority of the Executive Council to Delegate Responsibility. The Executive Council shall have the authority to delegate by appropriate resolution the

responsibility to oversee the administration of trust accounts established for persons declared to be legally incompetent under this Section.

- (E) Right of Affected Individuals to Petition the Executive Council. Any individual who is regarded as legally incompetent under this Section shall have the right to petition the Executive Council.

6.4. Trust for Minors

The General Council finds that the immediate needs and living expenses of minors under the age of 18 are primarily the responsibility of the parents or legal guardians of the minors and that such minors are not faced with the same financial obligations as are adults. The General Council further finds that the best interests of the Tribe are furthered if per capita payments are used by adult members of the Tribe to improve living conditions for themselves and their families and per capita payments to minor members of the Tribe are held in trust for the future benefit of the minors. Accordingly, the Executive Council shall deposit the per capita payment for enrolled minor children of the Tribe in a Minors' Trust established by the Executive Council, for that purpose (the "Minors' Trust").

- (A) Terms of the Trust. The terms of the Minors' trust shall be set forth in a trust agreement between the Trustee and the Tribe as established from time to time by the Executive Council of the Tribe, subject to and consistent with this Section 6.4 and the Minors' Trust Distribution Ordinance of the Tribe approved by the General Council, as amended from time to time (the "Distribution Ordinance").
- (B) Trustee. The Minors' Trust shall have such Trustee as is appointed from time to time by the Executive Council. The Trustee will be bonded for at least \$5 million.
- (C) Distributions. Distributions of funds held in the Minors' trust shall be made to each beneficiary from his or her share of the Minors' Trust as provided in the Distribution Ordinance.
- (D) Irrevocable. The Minors' Trust shall be an irrevocable trust subject to the power to amend contained in this Section 6.4.
- (E) Power to Amend.
 - (1) The General Council may amend this Section 6.4 from time to time provided that such amendment must be approved at a meeting of the General Council by a number of votes equal to at least two-thirds (2/3) of the great of: (a) the total number of votes cast by the General Council on the proposed amendment at such meeting; or (b) the annually established quorum requirement in effect for the General Council meeting at which the proposed amendment is voted upon. The total votes will be divided by three and multiplied by two and any fraction will be rounded up to the next whole number to determine the number of votes required.

- (2) The Executive Council may amend the provisions of the trust agreement (other than the distribution provisions) of the Minors' Trust from time as necessary or appropriate to accomplish the objectives of the Minors' Trust and to comply with applicable law.

- (F) Power of Substitution. The Tribe, by action of its Executive Council, shall have the power to substitute assets of the Minors' Trust for other assets of equal value.

6.5. Withholding to Pay Tribal Debts

The Treasurer of the Tribe, through the Tribe's Accounting Department, shall withhold a member's payments under subsection (A), and deliver such payments for deposit to the Tribe's general account to reimburse the Tribe for debts owed by the member to the Tribe, in the following situations:

- (A) Voluntary Assignment & Instruction. Amounts shall be withheld pursuant to a Voluntary Assignment & Instruction signed by the member entitled to receive such payments and delivered to the Tribe's Accounting Department.
- (B) Tribal Court Judgment. Amounts shall be withheld pursuant to a Judgment of the Forest County Potawatomi Community Tribal Court, declaring that the member entitled to receive such payments owes a debt to the Tribe.

The Tribal Court shall determine whether all or a portion of such payments may be withheld to satisfy Judgment.

6.6. Withholding to Pay Child Support

The Treasurer of the Tribe, through the Tribe's Accounting Department, shall withhold a member's payments under subsection (A), and deliver such payments to a person entitled to receive child support from such member in the following situations:

- (A) Voluntary Assignment & Instruction. Amounts shall be withheld and paid for the benefit of a child or children pursuant to a Voluntary Assignment & Instruction signed by the member entitled to receive such payments and delivered to the Tribe's Accounting department.
- (B) Tribal Court Judgment. Amounts shall be withheld and paid to a person entitled to receive child support pursuant to a Judgment of the Forest County Potawatomi Community Tribal Court declaring that the member entitled to receive such payments owes child support.

The Tribal Court shall determine whether all or a portion of such payments may be withheld to satisfy the Judgment.

§ 7. No Retroactive Payments

No individual who becomes enrolled in the Tribe subsequent to the date of this Second Amendment shall be retroactively entitled to receive per capita payments under this Second Amendment.

§ 8. Federal Taxes

The Treasurer of the Forest County Potawatomi Community shall withhold from the payments made to each member of the community who receives a per capita payment under this Second Amendment the amount required to be withheld by the Internal Revenue Service of the United States.

§ 9. Severability

If any section or part of this Second Amendment, or application thereof to any party, person, or entity, shall be declared to be invalid for any reason whatsoever by a court of competent jurisdiction, or by the Secretary of the Interior, the remaining parts of this Second Amendment to the Gaming Revenue Allocation Ordinance shall not be affected thereby and shall remain in full force and effect as though no part hereof had been declared to be invalid.

§ 10. Sovereign Immunity

Nothing in this Second Amendment to the Gaming Revenue Allocation Ordinance shall be construed to constitute a waiver of the sovereign immunity from suit of the Tribe or any officer or agent of the Tribe.

§ 11. Amendment or Repeal of Ordinance

The Second Amendment to the Gaming Revenue Allocation Ordinance, or any part or provision hereof, may be amended or repealed by the General Council, provided that such amendment or repeal is subject to the approval of the Secretary of the Interior under the provisions of Section 11(b)(3) of the Indian Gaming Regulatory Act.

§ 12. Dispute Resolution Procedure

12.1. Determination by Executive Council

Should a dispute arise regarding the allocation of net gaming revenues or distribution of per capita payments, any tribal member with such a dispute shall make a written submission to the Executive Council for a determination on the controversy. The submissions shall include facts regarding the nature of the controversy, actions taken up to the time of the written submission and by whom, the party's request for relief and any legal or factual support for the request. The Executive Council, having quorum, shall review the written submission(s) and determine whether an allocation/distribution or denial thereof is consistent with the terms and purpose of the Ordinance and Section 11(b)(3) of the Indian Gaming Regulatory Act. The Executive Council, in making its determination, may accept written or oral evidence in support of the written submissions. The Executive Council shall inform the parties involved in the controversy

in writing of its decision and the reasons supporting its decisions, addressing the terms and purpose of the Ordinance and Section 11(b)(3) of the Indian Gaming Regulatory Act.

12.2. Appeal to the Tribal Court

Any party to the controversy may appeal any decision made by the Executive Council under Section (A) above to the Tribal Court pursuant to the Tribal Court Code.

12.3. Scope of Dispute Resolution Procedures

The procedures listed in (A) and (B) above are not intended to provide a forum for amending the Ordinance. Any amendments to the Ordinance must be approved by the General Council in accordance with Article IV, Section 1(b) and 1(d) of the Forest County Potawatomi Community of Wisconsin Constitution, Section 11 of the Second Amendment to the Gaming Revenue Allocation Ordinance and Secretary of the Interior under Section 11(b)(3) of the Indian Gaming Regulatory Act.

SCHEDULE A
MINORS' TRUST DISTRIBUTION PLAN

§ 1. Distributions

Distributions of funds held in the Trust established by the Tribe to hold the per capita payments for minor children of the Tribe (the "Minors' Trust") shall be made to or for the benefit of each beneficiary from his or her share of the Minors' Trust as follows:

- 1.1. Discretionary Distributions. The Trustee may make discretionary payments to provide for the proper support, maintenance, health and education of the beneficiary, taking into consideration the needs, other financial resources, age, health and education requirements of the beneficiary, and any other considerations relevant to the beneficiary. In determining whether such discretionary distributions shall be made, the Trustee shall obtain approval from the Executive Council of the Tribe.
- 1.2. Scheduled Distributions After Age 18. On or about each of the 19th through 35th birthdays of a beneficiary, the Trustee shall distribute to the beneficiary an amount equal to the following respective fractions of the then-remaining balance of the share of such beneficiary in the Minors' Trust:

<u>Birthday</u>	<u>Fraction</u>
19 th	1/100
20 th	1/99
21 st	1/98
22 nd	1/97
23 rd	1/96
24 th	1/19
25 th	1/18
26 th	1/17
27 th	1/16
28 th	1/15
29 th	1/7
30 th	1/6
31 st	1/5
32 nd	1/4
33 rd	1/3
34 th	1/2

On or about the 35th birthday of a beneficiary, the Trustee shall distribute to the beneficiary all of his or her remaining share of the Minors' Trust.

- 1.3. Special Distributions. In addition to the distributions described above, the Trustee shall also make the following special distributions from the Minors' Trust to a beneficiary who has attained age 18.

- (A) Education: The Trustee shall, upon request of the beneficiary, distribute to a beneficiary upon each attainment by him or her of any of the following education objectives, an amount equal to one percent (1%) of the then-remaining share of such beneficiary in the Minors' Trust:
- (1) Receipt of a high school diploma or equivalent.
 - (2) Successful completion of first year of a full-time post-high school education program approved by the Tribal Education Department as eligible for scholarship grants.
 - (3) Successful completion of second year of such full-time post-high school education.
 - (4) Successful completion of third year of such full-time post-high school education.
 - (5) Successful completion of a full-time post-high school degree education.
- (B) Employment or Active Military Service: Within 60 days after each December 31st the Trustee shall, upon request of the beneficiary, distribute to a beneficiary from his or her share of the Trust an amount to the total amount actually received by such beneficiary in the preceding year as cash compensation for services rendered by such beneficiary as an employee, independent contractor, or active military service, not to exceed one percent (1%) of the then remaining share of such beneficiary in the Minors' Trust. Proof of preceding year compensation shall be approved by the Tribal Finance Department.

1.4. Distributions Upon Death

- (A) Death After Age 18 Having Exercised Power of Appointment. If a beneficiary of the Minors' Trust dies after attaining age 18 and has exercised a power of appointment over his or her share of the Minors' Trust, the beneficiary's then-remaining share of the Minors' Trust shall be distributed 90 days after date of death as directed in the power of appointment.
- (B) Death Prior to Age 18 or After Age 18 Without Exercising Power of Appointment.
If a beneficiary of the Minors' Trust dies before attaining age 18, or dies after attaining age 18 but does not exercise a power of appointment over his or her share of the Minors' Trust, the beneficiary's then-remaining share of the Minors' Trust shall be distributed 90 days after date of death in the following order of priority:
- (1) Entirely to the surviving spouse, if any, of such deceased beneficiary.
 - (2) If there is no surviving spouse of the beneficiary, then entirely to the children, including any legally adopted children, of such deceased beneficiary, in equal shares (with descendants of any deceased child taking their parent's share in equal amounts).

- (3) If there are no surviving children or descendants of deceased children of the beneficiary, then entirely to the surviving parent or parents of such deceased beneficiary (including an adoptive parent) in equal shares.
 - (4) If there is no surviving parent of the beneficiary, then entirely to the siblings, including any half-siblings, of such deceased beneficiary, in equal shares (with descendants of any deceased sibling taking their parent's share in equal amounts).
 - (5) If there are no surviving siblings and no descendants of any deceased siblings, then entirely to the surviving grandparent or grandparents of such deceased beneficiary (including adoptive grandparents) in equal shares.
 - (6) If there are no surviving grandparents, then entirely to the Tribe.
- (C) Minor Recipients. If any person entitled to receive a distribution from a deceased beneficiary's share of the Minor's Trust pursuant to paragraph (1) or (2) above has not yet attained age 18 at the time of such distribution, such recipient's distributable amount shall be retained in the Minors' Trust, subject to the terms and conditions thereof.
- 1.5. No Pledge or Assignment of Beneficiary. No beneficiary of the Minors' Trust shall have any power to convey any current or future interest in the beneficiary's interest in such Trust to any other person (except as provided in Section 1.4(A) above) and in no case may a beneficiary transfer, create a security interest or encumber his or her interest in the Minor's Trust.

§ 2. Amendment

The General Council may amend this Distribution Plan from time to time and, upon such amendment, direct the Executive Council shall amend the provisions of the Minors' Trust consistent with such amendment; provided that such amendment must be approved at a General Council meeting by a number of votes equal to at least two-third (2/3) of the greater of: (i) the total number of votes cast by the General Council on the proposed amendment at such meeting; or (ii) the annually established quorum requirement in effect for the General Council meeting at which the proposed amendment is voted upon. The votes will be divided by three and multiplied by two and any fraction will be rounded up to the net whole number to determine the number of votes required.

§ 3. Effective Date

- 3.1. All provisions of the Distribution Plan shall be effective upon approval of the Minors' Trust Amendment to the Gaming Revenue Allocation Ordinance by the United States Department of the Interior, Bureau of Indian Affairs and approval of the Trust Agreement by the Executive Council of the Tribe.
- 3.2. The provisions related to scheduled distribution after 18 and Special Distributions (Sections 1.2 and 1.3, above) shall become effective on January 1, 2024 and shall apply to minors who have not reached the age of 18 on that date. A beneficiary that has reached the age of 18 prior to January 1, 2024 will not be subject to Sections 1.2 and 1.3 of this Schedule A, but will follow the schedule and special distribution sections (1.2 and 1.3) in the prior Schedule A of the Forest County Potawatomi Community Revenue Allocation Plan last amended on June 23, 2001.
- 3.3. Any beneficiary who receives Scheduled or Special Distributions prior to January 1, 2024 may choose to participate in this Amended Minors' Trust Distribution Plan by executing a payment election document provided by the Tribal Finance Department. Such payment elections shall be irrevocable.

Legislative History

- 08/09/1997 Enacted as "Second Amendment to Gaming Revenue Allocation Ordinance" by General Council Resolution No. GC007-97
- 08/12/2000 Amended by General Council Resolution GC006-2000, adding Section 6.4, Minors' Trust
- 08/12/2000 Amended by General Council Resolution GC007-2000, adopting Minors' Trust Distribution Plan
- 08/12/2000 Amended by General Council Resolution GC008-2000, adding Sections 6.5 and 6.6, Child Support and Tribal Debt provisions
- 06/23/2001 Amended by General Council Resolution GC001-2001, adding Section 12, Dispute Resolution
- 02/10/2024 Amended by General Council Resolution GC002-2024, amending Distribution Plan Schedule A, deletes Section 1.4 (B) subsections 3-5.
- 11/09/2024 Amended by General Council Resolution GC016-2024, reinstating section 1.4 (B) subsections 3-5.
- 02/08/2025 Amended by General Council Resolution GC002-2025, adopting Third Amendment to Schedule A Minors' Trust Distribution Plan.

The Gaming Revenue Allocation Ordinance supersedes the following previous Ordinances:

Gaming Revenue Allocation Ordinance enacted by Referendum Election Resolution No. GC013-1994
Amended Gaming Revenue Allocation Ordinance enacted by GC Resolution September 16, 1995

References in text:

For additional information relating to child support, referred to at Section 6.6, See Child Support Ordinance, 3-3 FCPC Code.

