

Title 1. Government and Finances – Chapter 123

PER CAPITA

Shakotiwi? Stawihé Olihwá·ke

Issues concerning where they give the money

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123.1. Purpose and Policy

123.1-1. *Purpose.* The purpose of this law is:

- (a) To specify the procedure to be followed in the event that per capita payments are distributed by the Nation; and
- (b) To clearly state the responsibilities of the various Oneida entities in the distribution or maintenance of any such per capita payments.

123.1-2. *Policy.* It is the policy of the Nation to have a consistent methodology for distribution of per capita payments, including payments derived from gaming revenues and regulated by IGRA.

123.2. Adoption, Amendment, Repeal

123.2-1. This Law is adopted by the Oneida Business Committee by resolution BC-7-12-00-B and amended by resolution BC-11-06-02-A, BC-6-16-04-C, BC-04-22-09-A, BC-05-09-12-B and BC-08-14-13-D and BC-02-22-17-D.

123.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

123.2-3. 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.

123.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that this law repeals Oneida Business Committee resolution 11-06-02-A.

123.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

123.3. Definitions

123.3-1. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) “Adult” means a Tribal member who is at least eighteen (18) years of age on or before September 1st of a given year.
- (b) “Arrears” means the amount of money a Tribal member has not paid pursuant to the most recent child support court order against him or her.
- (c) “Court of competent jurisdiction” means the Judiciary, a state or federal court or another court recognized by the Judiciary as having the jurisdiction to hear and determine a particular legal proceeding.
- (d) “Day” means calendar days, unless otherwise specifically stated.
- (e) “Debtor” means a Tribal member owing a debt to an Oneida entity.
- (f) “Direct Deposit” means the electronic distribution of funds.
- (g) “Distribution” means the transfer of funds to Tribal members.
- (h) “IGRA” means the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et.seq.

- (i) “Judiciary” means the Nation’s judicial system, which includes the Family Court, Trial Court and/or Appellate Court.
- (j) “Legally Incompetent Adult” means a Tribal member who is at least eighteen (18) years of age and has been declared incompetent by a court of competent jurisdiction pursuant to applicable law.
- (k) “Majority Age Beneficiary” means a Tribal member who has reached eighteen (18) years of age by September 1st 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.
- (m) “Nation” means the Oneida Nation.
- (n) “Oneida Entity” means a department, board, committee, commission or chartered corporation of the Nation or the Judiciary.
- (o) “Outstanding Check” means a check that has been written by the Nation, but has not yet cleared the bank on which it was drawn.
- (p) “Per Capita Payment” means the amount authorized by the General Tribal Council to be distributed to Tribal members.
- (q) “Pooled Account” means the account set up by the General Tribal Council or Oneida Business Committee, through resolution, for the purpose of managing undistributed funds pursuant to the Nation’s laws.
- (r) “Proof of Education” means the documents identified in Article III of the Per Capita Trust Agreement as acceptable to demonstrate that the tribal member has received a high school diploma or its equivalent.
- (s) “Rule” means a set of requirements enacted by the Trust Enrollment Committee and/or the Trust Enrollment Department in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.
- (t) “Tribal Member” means an individual who is an enrolled member of the Nation.
- (u) “Trust Account” means an account(s) established by the Trust Enrollment Committee for the purpose of maintaining per capita funds for persons pursuant to the Nation’s revenue allocation plan, which includes, but is not limited to, minor beneficiaries and legally incompetent adults.
- (v) “Trust Enrollment Committee” means that body designated by the General Tribal Council to manage the trust funds for the Nation on behalf of Tribal members, and which is also responsible for the Nation’s enrollment records.
- (w) “Trust Fund Accountant” means the third party professionals hired by the Trust Enrollment Committee to oversee trust accounts established pursuant to this law.

123.4. General

123.4-1. This section sets forth the responsibilities delegated under this law.

123.4-2. *Supersedes.* This law supersedes any contradictory language contained in any other per capita payment plan.

123.4-3. *Budgetary Limitations.* This law may not be construed as mandating a per capita payment; per capita payments may only be issued at the direction of the General Tribal Council through adoption of a resolution.

123.4-4. *Oneida Business Committee.* The Oneida Business Committee shall:

- (a) Identify and allocate funds available for per capita payments;

- (b) Forward approved revenue allocation plans to the Bureau of Indian Affairs;
- (c) Transfer funds to the appropriate Oneida entity(ies) pursuant to the Nation's laws within a reasonable time frame;
- (d) Be responsible for any activities not specifically identified but reasonably related to the responsibilities in this in this sub-section; and
- (e) Enter into a Per Capita Trust Agreement and Memorandum of Agreement with the Trust Enrollment Committee.

123.4-5. *Trust Enrollment Committee.* The Trust Enrollment Committee shall:

- (a) Manage trust accounts related to per capita payments with fiduciary responsibility;
- (b) Maintain the Nation's membership rolls so that the Trust Enrollment Department can accurately identify which Tribal members are eligible for distribution;
- (c) Provide input to the Finance Department regarding per capita matters included in the Nation's revenue allocation plan;
- (d) Be responsible for any activities not specifically identified but reasonably related to the responsibilities in this sub-section; and
- (e) Enter into a Per Capita Trust Agreement and Memorandum of Agreement with the Oneida Business Committee.

123.4-6. *Trust Enrollment Department.* When a per capita payment is approved, the Trust Enrollment Department shall:

- (a) Develop and finalize a list of the eligible distribution recipients broken down into the following categories: minor beneficiaries, majority age beneficiaries, legally incompetent adults, adults and elders. For the purposes of this section, elder means a Tribal member who meets the age requirements as of December 31st of a given year to be eligible for an elder distribution as determined by the effective General Tribal Council Resolution.
- (b) Provide the finalized list of Tribal members eligible to receive the distribution to the Oneida Accounting Department and trust fund accountant.
- (c) Send membership distribution and trust account forms and receipts related to approved per capita payments.
- (d) Manage and maintain the Enrollment Database including, but not limited to, membership and distribution information.
- (e) Process the distribution data and forward the data to the Oneida Accounting Department and trust fund accountant.
- (f) Ensure the availability and liquidity of funds for transfer of the trust funds under the authorization of the Trust Enrollment Committee.
- (g) Provide fund transfer instructions to the relevant initiating institution: the custodial bank or the Oneida Accounting Department.
- (h) Work with the Trust Enrollment Committee to establish any necessary trust accounts.
- (i) Monitor all trust accounts for the purposes of necessary reporting, claims and distribution verification.
- (j) Record issued, voided, redeemed, and outstanding check distributions in the Enrollment Database.
- (k) Complete trust account reconciliations.
- (l) Calculate attachment amounts for collection of Oneida entity debts and implement Oneida entity attachments.

123.4-7. *Oneida Accounting Department.* When a per capita payment is approved, the Oneida

Accounting Department shall:

- (a) Initiate and complete the funds transfer upon receipt of funds transfer instructions from the authorizing Oneida entity and shall ensure that the physical movement of funds happens no later than one (1) business day prior to the distribution date.
- (b) Record issued, voided and outstanding check distributions on the general ledger.
- (c) Complete bank account reconciliations.
- (d) Process per capita distribution to the payables ledger.
- (e) Perform all activities related to fiscal and calendar year end processes, including providing tax documents and tax reporting as required by applicable law.
- (f) Submit notice of any fees associated for reissuance of a distribution to the Trust Enrollment Department, in accordance with sections 123.5-2(d)(1) and 123.5-2(d)(2).

123.4-8. *Tribal Treasurer.* The office of the Oneida Treasurer shall identify funds and shall timely transfer the necessary amount of relevant funds to the Trust Enrollment Committee, the trust fund accountant and the Oneida Accounting Department.

123.4-9. *Attachments.* Per capita payments are benefits offered by the Nation to Tribal members. All per capita payments, except distributions to or from a trust account for a beneficiary, may be subject to attachment prior to distribution in accordance with this section. Entities seeking to attach a per capita payment shall follow the timelines identified in this law.

(a) Per capita payments may only be attached for the following purposes, and in the following order:

(1) Child support arrears ordered by a court of competent jurisdiction. After child support arrears are fully satisfied, the Trust Enrollment Department shall apply any remaining per capita payments for the payment of debt owed to an Oneida entity.

(A) If a Tribal member owes arrears in more than one (1) child support order, the Oneida Nation Child Support Agency shall equally divide the per capita payment based on the number of court orders under which arrears are owed.

(2) Debt owed to an Oneida entity that is past due. After child support arrears and debt owed to an Oneida entity have been fully satisfied, the Trust Enrollment Department shall apply any remaining per capita payment for the payment of a federal tax levy.

(A) "Debt owed to an Oneida entity" includes any money owed to an Oneida entity and any fines that have been issued by an Oneida entity.

(B) If a Tribal member owes debt to more than one (1) Oneida entity, the Trust Enrollment Department shall equally divide the per capita payment based on the number of Oneida entities that are owed debt.

(3) A federal tax levy.

(b) If the amount of the per capita payment exceeds the amount of the attachment, the Trust Enrollment Department shall distribute the remaining balance to the Tribal member, provided the Tribal member has met the distribution requirements contained in this law. If there is a remaining unclaimed balance, the Tribal member may request it to be distributed as provided in 123.5-2(e). The Trust Enrollment Department shall deposit any remaining refused balance in accordance with 123.5-5.

(c) *Child Support Attachments.* Claimants or their designated representative shall submit

all requests for attachments for child support arrears to the Oneida Nation Child Support Agency.

(1) After receiving an initial attachment request for child support arrears, the Oneida Nation Child Support Agency shall send a one-time notice and a voluntary federal income tax withholding request form to those Tribal members whose per capita payment will be attached for child support arrears.

(2) The Oneida Nation Child Support Agency shall prepare a certified accounting of all attachment requests and forward the accounting to the Judiciary.

(3) The Trust Enrollment Department may not process an attachment of a Tribal member's per capita payment to collect child support arrears without first having received an order of determination issued by the Judiciary.

(4) After the child support arrears have been satisfied, if an attachment request is submitted for the same Tribal member's per capita payment based on new child support arrears, the Oneida Nation Child Support Agency shall issue another one-time notice and federal income tax withholding form in accordance with 123.4-9(c)(1).

(d) *Oneida Entity Debt Attachments.* Oneida entities are not required to receive an attachment order from the Judiciary prior to initiating a per capita payment attachment unless an attachment hearing is requested under section 123.4-9(d)(5).

(1) *Notice of Indebtedness.* Prior to initiating an attachment, the Oneida entity owed the debt shall provide written notice of indebtedness to the debtor by first (1st) class mail at the debtor's last known address.

(A) *Frequency of Notice.* Oneida entities shall send debtors notice of indebtedness for each month a debt is owed with each notice being sent a minimum of thirty (30) calendar days apart. Oneida entities shall send two (2) consecutive monthly notices prior to the debt becoming eligible for attachment.

(B) *Notice Content.* Oneida entities shall include the following in their notices of indebtedness:

- (i) How many notices of indebtedness have been provided prior to the subject notice and the dates of all prior notices;
- (ii) The amount of the debtor's indebtedness;
- (iii) Information for making payment on the debt; and
- (iv) An explanation that if the debt is not paid in full within thirty (30) calendar days from the date of the second consecutive monthly notice, the entity may initiate an automatic attachment of the Tribal member's per capita payment.

(2) *Initiating an Attachment.* After thirty (30) calendar days have lapsed since the Oneida entity sent the second consecutive monthly notice of indebtedness, the Oneida entity may initiate an attachment by providing the debtor with a final notice of indebtedness with intent to attach. The Oneida entity shall send the final notice to the debtor by certified mail. Additionally, the Oneida entity shall post notice of intent to attach in the Nation's newspaper, where such notice includes only the debtor's name, the Oneida entity owed a debt and the Oneida entity's contact information for payment. The Oneida entity shall submit its request to

post to the newspaper at the same time as the final notice with intent to attach is mailed in order to ensure that notice is posted in the newspaper a minimum of ten (10) business days before the close of the debtor's thirty (30) calendar day time period to resolve the debt or request an attachment hearing.

(A) The Oneida entity shall include the following in the final notice of indebtedness with intent to attach:

- (i) The dates of all prior notices of indebtedness provided to the debtor;
- (ii) The amount of the debtor's indebtedness;
- (iii) Information for making payment on the debt;
- (iv) An explanation that this is the final notice and the Oneida entity has by this final notice initiated an attachment against the debtor;
- (v) An explanation that if the debt is not paid in full within thirty (30) calendar days from the date of the final notice of indebtedness with intent to attach that the Trust Enrollment Department will automatically attach the debtor's available per capita payment in order to satisfy the debt;
- (vi) An explanation that the debtor may request an attachment hearing with the Judiciary to contest the validity of the debt by submitting a petition to the Judiciary within thirty (30) calendar days from the date of the of the final notice of indebtedness with intent to attach and that the debtor is responsible for any filing fees required by the Judiciary; and
- (vii) A membership distribution form which the debtor shall submit to the Trust Enrollment Department no later than September 1st in order for voluntary federal income taxes to be withheld.

(B) *Attachment Deadlines.* In order for the Trust Enrollment Department to process an attachment for a current per capita payment distribution, Oneida Entities shall:

- (i) Send the Trust Enrollment Department a one-time final accounting of all debts subject to attachment no later than July 31st, provided that, in order for a debt to be included in the final accounting, the Oneida entity's shall have sent the debtor a final notice of indebtedness with intent to attach in which the debtor's thirty (30) day period to resolve the debt or request an attachment hearing with the Judiciary expires on or before July 31st; and
- (ii) Receive, review and respond to the withholding report, in accordance with the deadline provided by the Trust Enrollment Department.

(3) *Calculating the Attachment Amount.* The Trust Enrollment Department shall determine the amount of per capita payment attachment based on the order provided in section 123.4-9(a).

(4) *Payment of Debt Prior to Attachment.* A debtor may make payments towards

a debt subject to attachment at any time.

(A) Oneida entities shall keep record of all debtors payments and shall only include unpaid debts in their final accounting submitted to the Trust Enrollment Department.

(B) Once the Oneida entity has submitted the final accounting to the Trust Enrollment Department, the attachment amount may not be modified. If a debtor makes a payment towards a debt subject to attachment after the final accounting has been submitted to the Trust Enrollment Department, the Oneida entity shall reimburse the debtor for payments received in excess of the amount of the debt noticed to the debtor within thirty (30) calendar days from its receipt of the per capita payment attachment.

(5) *Requesting an Attachment Hearing.* A debtor may request an attachment hearing with the Judiciary to contest the validity of the debt by submitting a petition to the Judiciary within thirty (30) calendar days from the date of the final notice of indebtedness with intent to attach, provided that the debtor shall include a copy of the final notice of indebtedness with intent to attach with the petition.

(A) The debtor shall pay any filing fees required by the Judiciary before the Judiciary may consider the petition complete.

(B) When a request for an attachment hearing is timely made, the Oneida entity is still not required to obtain a judgment, but shall receive an attachment order before the Trust Enrollment Department may attach a per capita payment to collect debt owed to the Oneida entity.

(6) *Multiple Attachments.* If a single per capita payment is not sufficient to satisfy the debt owed to an Oneida entity, the Oneida entity shall follow the process contained in section 123.4-9(d)(1)-(5) for each per capita payment it seeks to attach.

(e) *Federal Tax Levy Attachments.* Claimants or their designated representatives shall submit all requests for attachments for a federal tax levy to the Judiciary. The Trust Enrollment Department may not process an attachment of a Tribal member's per capita payment to collect a federal tax levy without first having received an order of determination from the Judiciary.

(f) The Judiciary may order and the Trust Enrollment Department may process attachments against per capita payments of Tribal members who do not return a notarized membership payment form as required under 123.5-2(b)(1) or who refuse a payment under 123.5-2(f). If the amount of the per capita payment exceeds the amount of the attachment resulting in a remaining unclaimed balance, the Tribal member may request it to be distributed as provided in 123.5-2(e). The Trust Enrollment Department shall deposit any remaining refused balance in accordance with 123.5-5.

123.4-10. *Federal Income Tax Withholding.*

(a) *Voluntary.* The Trust Enrollment Department shall withhold federal income taxes from a distribution only when the following applies:

(1) Tribal members whose per capita payment is not subject to attachment in accordance with section 123.4-9 may voluntarily request to have federal income tax withheld, provided that Tribal members shall make such requests in accordance with the applicable distribution deadlines.

(2) If the Trust Enrollment Department receives a timely voluntary request to have federal income tax withheld from a Tribal member whose per capita payment is subject to attachment in accordance with section 123.4-9, the Trust Enrollment Department shall apply the federal income tax withholding to the applicable distribution before any attachments are applied.

(b) *Mandatory.* A Tribal member who meets all of the requirements of this law, but refuses to provide the Trust Enrollment Department with his or her social security number or individual tax identification number is subject to mandatory federal income tax withholding from his or her per capita payment, as required by federal law.

(c) *IRS Publication 15a.* The Nation shall comply with the most recent edition of IRS Publication 15a.

123.5. Distributions

123.5-1. *General.* This section sets forth the required processes for distribution of per capita payments.

123.5-2. *Deadlines.* The following deadlines apply in regards to the annual per capita payment. Where the dates fall on a Saturday, Sunday, or holiday the deadline is construed to be the close of business on the following business day. For any additional per capita payments, the Trust Enrollment Committee may establish dates and deadlines associated with those payments, as needed.

(a) *Eligibility.* Eligibility falls into the following categories:

(1) *Filing Deadlines.* An individual who is not a Tribal member shall file a new enrollment application no later than the close of business on January 31st in order to be considered eligible for the following per capita payment.

(A) *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 March 31st.

(B) A newly enrolled Tribal member is eligible only for per capita payments authorized to be distributed following the effective date of his or her enrollment; he or she is not eligible to receive any per capita payments that were distributed prior to the effective date of his or her enrollment.

(2) *Dual Enrollment.* A Tribal member who is dually enrolled with another Indian tribe is not eligible for a per capita payment unless his or her relinquishment from the other tribe has been processed and written verification that the member is no longer enrolled with that tribe has been received by the Trust Enrollment Department by September 1st.

(b) *Distribution Documents.*

(1) *Adult Distribution Form and Instructions.* Unless and until the Trust Enrollment Department modifies the Adult Distribution Form and Instructions by creating rules, the Trust Enrollment Department shall comply with the following.

(A) Prior to July 1st of the year the Trust Enrollment Department shall mail membership distribution forms and instructions to all adult Tribal members. Adults shall complete, notarize and return a notarized membership distribution form to the Trust Enrollment Department by close of business on or before September 1st in order to be eligible for a per capita distribution.

(B) The Trust Enrollment Department shall make available late membership distribution forms and shall accept such forms in compliance with section 123.5-2(e).

(2) *Majority Age Beneficiary Distribution Form and Instructions.*

(A) Prior to April 1st of the year the Trust Enrollment Department shall mail trust account forms and instructions to eligible majority age beneficiaries for trust account distributions in accordance with Article III of the Per Capita Trust Agreement.

(B) The Trust Enrollment Department shall make available late trust account forms and shall accept such forms in accordance with Article III of the Per Capita Trust Agreement and IGRA.

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

(d) *Direct Deposit.* Adults and majority age beneficiaries may submit a direct deposit form at any time, provided that in order for it to be applied to an upcoming distribution, the Tribal member shall submit the direct deposit form by the applicable per capita or trust account distribution form deadline.

(1) Upon receipt of notice from the Oneida Accounting Department of any fees incurred by the Nation associated with reissuance of a distribution, the Trust Enrollment Department shall deduct any such fees from the reissued distribution. (Fees may include, but are not limited to, stop payment and direct deposit bank rejection fees).

(2) The Nation shall waive fees if a check is reissued due to an error on its behalf. A reissue made due to an error on the Nation's behalf may not count against the Tribal member as identified in 123.5-2(e)(2)(A).

(e) *Request for a Prior Per Capita Payment.*

(1) *Unclaimed Payment.* Tribal members shall submit a request for a prior adult per capita payment, for which the Tribal member was eligible, but was not claimed or fully attached, by September 1st of the next year. For example, if a payment's original distribution date is in 2000, then the deadline is September 1, 2001. If a request is not received by the deadline date, the payment expires and the Trust Enrollment Department shall deposit such funds in a pooled account in accordance with 123.5-5.

(A) The Trust Enrollment Department shall process prior per capita payments requested by eligible adults according to the Trust Enrollment Committee's rules regarding distribution timelines.

(B) The Trust Enrollment Department shall process prior per capita payments requested by a majority age beneficiary in accordance with Article III of the Per Capita Trust Agreement.

(2) *Distribution of Outstanding Checks including rejected Direct Deposit funds.* Tribal members shall submit a request for an adult or majority age beneficiary's prior distribution, for which a Tribal member already claimed, but did not redeem, by September 1st of the next year. For example, if a distribution's original issue date is in 2000, then the deadline is September 1, 2001.

(A) An adult, minor beneficiary or majority age beneficiary's distribution may only be reissued once. After the distribution/rejected direct deposit funds are reissued, the Tribal member has ninety (90) days to redeem it or the distribution will expire and may not be reissued. The Trust Enrollment Department shall process expired funds in accordance with 123.5-5.

(B) Upon receipt of notice from the Oneida Accounting Department of any fees incurred by the Nation associated with reissuance of a distribution, the Trust Enrollment Department shall deduct any such fees from the reissued distribution. (Fees may include, but are not limited to, stop payment and direct deposit bank rejection fees).

(i) The Nation shall waive fees if a check is reissued due to an error on its behalf. A reissue made due to an error on the Nation's behalf may not count against the Tribal member as identified in 123.5-2(e)(2)(A).

(f) *Refusal of Distributions.* An adult or majority age beneficiary may refuse any distribution due to him or her, including a trust account distribution, by completing a refusal form available with the Trust Enrollment Department. However, if the Judiciary has approved an attachment of an adult distribution, only the remaining portion of the distribution, if any, may be refused. Majority age beneficiary and legally incompetent adult distributions are not attachable.

(1) Upon submitting the refusal form to the Trust Enrollment Department, the adult or majority age beneficiary irrevocably waives his or her right to the specific distribution as indicated on the form.

(2) Tribal members seeking to refuse a distribution shall submit refusal forms in accordance with sections 123.5-2(b)(1)(A) and 123.5-2(b)(2)(A).

(3) The Trust Enrollment Department shall process refused distributions in accordance with 123.5-5.

123.5-3. *Deceased Tribal Members.*

(a) *Deceased Tribal Member Distribution Forms.* Tribal members are eligible to receive a distribution so long as the Tribal member has complied with the distribution documents and/or distribution rule(s) requirements. This includes distributions identified to be deposited to a trust account. The estate of a deceased Tribal member may not submit a membership distribution form on behalf of the deceased to claim a distribution. The Tribal member is only eligible for the distribution if the Tribal member either personally or through an appointed representative submits the distribution form while the Tribal member is still living. Should a Tribal member become deceased after submitting the required distribution form, but before the distribution date, the Trust Enrollment Department shall continue to issue the distribution in the name of the deceased Tribal member. The Trust Enrollment Department shall not reissue any distributions in the name of any claimant or the decedent's estate.

(b) *Deceased Minor/Majority Age Beneficiary or Legally Incompetent Adult.*

(1) *When there is a Beneficiary Designation Form on Record.* A minor/majority age beneficiary's or a legally incompetent adult's trust account balance upon death is inheritable upon the date of the beneficiary's death in accordance with the most recent beneficiary designation form on record as applicable. Within thirty

(30) calendar days of learning of a minor/majority age beneficiary's or legally incompetent adult's death, the Trust Enrollment Department shall provide notice of any remaining trust account balance to the designated beneficiary using the last address on file. Should a designated beneficiary claim the remaining trust account balance, the Trust Enrollment Department shall issue the distribution in the name of the first available designated beneficiary(s). If a designated beneficiary does not request distribution of the remaining balance of a trust account within one (1) year after the Trust Enrollment Department's date of notice, the Trust Enrollment Department shall liquidate and deposit the trust fund account as follows:

(A) For the remaining balance in minor/majority age beneficiary's trust account, to the Oneida Youth Leadership Institute.

(B) For the remaining balance in a legally incompetent adult's trust account, to the General Fund.

(2) *When there is No Beneficiary Designation Form on Record.* The Trust Enrollment Committee shall establish rules defining potentially interested parties in the event there is no signed beneficiary designation form on record. The Trust Enrollment Committee shall also include in such rules notice provisions that put those potentially interested parties on notice that the Nation has a probate process and the potential consequences of a failure to comply with the probate process. Where a distribution is issued in accordance with the issuance of a domiciliary letter naming a personal representative of the estate, the Trust Enrollment Department shall issue the distribution in the name of the estate of the minor/majority age beneficiary or the legally incompetent adult.

123.5-4. *Relinquishment of Tribal Membership.* Tribal members are ineligible for any current, future and/or prior per capita payment distributions as of the date his or her Tribal membership is relinquished.

(a) *Relinquished Adult.* The Trust Enrollment Department shall process funds set aside for a relinquished adult's distribution in accordance with 123.5-5.

(b) *Majority Age/Minor Beneficiary Relinquishment.* Upon a majority age/minor beneficiary's relinquishment the following provisions apply:

(1) The Trust Enrollment Department shall deposit any funds in a trust account for a majority age/minor beneficiary in a joint savings account in the name of the Trust Enrollment Committee and the relinquished majority age/minor beneficiary.

(2) A relinquished majority age/minor beneficiary is eligible to claim the joint savings account if he or she is eighteen (18) years of age by September 1st of the distribution year and submits the majority age distribution form by July 1st of the same year. In addition, a relinquished majority/minor age beneficiary shall claim any remaining funds held in the joint savings account prior to the first distribution following his or her twenty-first (21st) birthday.

(3) A relinquished majority age/minor beneficiary may refuse his or her joint savings account funds at the age of eighteen (18). The proof of education requirement is not required to refuse joint savings account funds, however the relinquished majority age/minor beneficiary shall satisfy the requirements of section 123.5-2(f).

(4) The Trust Enrollment Department shall follow the Trust Enrollment Committee's standard operating procedure for allocating any fees necessary for the establishment and maintenance of a relinquished majority age/minor beneficiary's joint savings account to the said account.

(5) The Trust Enrollment Department shall deposit any unclaimed joint savings account funds in a Pooled Account in accordance with section 123.5-5.

(c) *Legally Incompetent Adult Relinquishment.* Upon a legally incompetent adult's relinquishment the Trust Enrollment Department shall disburse any funds in a trust account for the legally incompetent adult to the guardian of the legally incompetent adult.

(1) If the trust account funds for a legally incompetent adult are not claimed within one (1) year after the date of relinquishment, the Trust Enrollment Department shall liquidate and deposit the trust fund account in accordance with 123.5-5.

123.5-5. *Pooled Account.* Pooled account funds are identified by the Trust Enrollment Department, to be used for a purpose designated by General Tribal Council. Pooled account funds result from the following.

(a) *Expiration of Unclaimed Per Capita Payments.* Tribal Members' rights to unclaimed Per Capita Payments expire upon the occurrence of any one (1) of the following:

(1) A Tribal member submits a refusal form under 123.5-2(f);

(2) A Tribal member fails to request a prior distribution or trust account funds within the time provided under this law and/or the Per Capita Trust Agreement;

(3) An adult receives a distribution in accordance with 123.5-3(a) and the distribution is not redeemed within one (1) year of the date of distribution;

(4) The estate of a deceased majority age/minor beneficiary fails to request distribution of the trust account within the time provided under 123.5-3(b); or

(5) The interested party of a deceased legally incompetent adult fails to request distribution of the trust account within the time provided under 123.5-3(b).

123.6. Minor/Majority Age Beneficiaries and Legally Incompetent Adults

123.6-1. *Minor Beneficiaries.* This section sets forth a consistent method to protect and preserve the interests of minor beneficiaries in any distribution to which a minor beneficiary may be eligible. All distributions to minor beneficiaries are governed by this law, IGRA, the Tribal Revenue Allocation Plan and the Per Capita Trust Agreement.

(a) *The Trust Enrollment Committee.* The Trust Enrollment Committee shall establish standard operating procedures for setting up, monitoring and distributing the trust accounts. The Trust Enrollment Committee may choose to maintain pooled or individual accounts, separate accounts for each distribution or series of distributions, or any other combination which is in the best interests of the beneficiaries and which is consistent with the terms of the Per Capita Trust Agreement and the Trust Enrollment Committee's investment policy.

(1) The Trust Enrollment Committee is responsible for the protection and preservation of per capita payment funds for beneficiaries. As part of that responsibility, the Trust Enrollment Committee shall complete and issue any necessary reports to the beneficiaries. The Trust Enrollment Committee shall develop rules, which establish valuation dates and frequency of reports and

identify data critical to the completion of the reports. The Trust Enrollment Committee may delegate such reporting responsibilities to duly selected vendors.

(b) *Costs of Account.* The Trust Enrollment Department shall apply administrative costs related to a trust account to the said account. Administrative costs are those costs related to third party fees and expenses resulting from managing the accounts. Administrative costs do not include any costs related to the expenses of the Trust Enrollment Committee or Trust Enrollment Department.

(c) *No Guarantee.* It is the Trust Enrollment Committee's responsibility to invest beneficiaries' distributions in accordance with the Per Capita Trust Agreement. Because the market affects the value of trust accounts, beneficiaries are not guaranteed any specific amount of distribution made prior to becoming a majority age beneficiary.

(d) *Disbursement to Majority Age Beneficiaries.* Disbursement of trust account funds to majority age beneficiaries is governed by the Per Capita Trust Agreement, provided that to be eligible for a distribution, the majority age beneficiary is required to:

(1) Meet the age and education requirements where:

(A) If the majority age beneficiary has proof of education by September 1st of the distribution year as required by the Per Capita Trust Agreement, he or she is eligible for distribution at eighteen (18) years of age.

(B) If the majority age beneficiary does not have proof of education by September 1st of the Distribution year as required by the Per Capita Trust Agreement, he or she remains eligible to claim their trust account funds upon reaching twenty-one (21) years of age.

(C) *Exceptions.* The following Tribal members are exempt from the requirement to provide proof of education in order to be eligible for a minor trust account distribution prior to reaching twenty-one (21) years of age:

(i) Majority age beneficiaries declared to be a legally incompetent adult under 123.6-2. In such circumstances, the Trust Enrollment Department shall liquidate and deposit any funds from the minor's trust account into a legally incompetent adult trust account.

(ii) Majority age beneficiaries who have documentation of learning or other disability from a professional qualified to make such a diagnosis and who are able to present a certificate of attendance showing he or she has attended twelve (12) years of school. In such circumstances, that certificate of attendance is deemed the equivalent to proof of education.

(D) *Fraudulent Proof of a Diploma.* In the event the Trust Enrollment Department deems that a majority age beneficiary has submitted fraudulent proof of education, the Trust Enrollment Department shall:

(i) If distribution has not been made to the Tribal member, withhold distribution of the trust account funds until the requirements of this law have been met;

(ii) Impose a fine against the Tribal member of one-third (1/3) of the Tribal member's entire trust account funds;

(iii) Notify the Tribal member of the following:

(a) His or her proof of education has been deemed fraudulent;

(b) If not already distributed to the Tribal member, the trust account funds may not be distributed until he or she submits valid proof of education or reaches twenty-one (21) years of age;

(c) A fine of one-third (1/3) of the Tribal member's entire trust account funds has been imposed; and

(d) How to appeal the Trust Enrollment Department's determination of the fraudulent proof of education, including any applicable time limits.

(iv) If necessary to satisfy the fine, take action to have the Tribal member's future per capita payments attached in accordance with this law.

(v) Deposit any funds collected to pay a fine imposed pursuant to this section in a pooled account in accordance with 123.5-5.

(2) Complete and submit a majority age beneficiary distribution form and/or deferral payment agreement by July 1st of the distribution year. A majority age beneficiary may postpone distribution of all or some of his or her trust account funds by entering into a deferral payment agreement pursuant to the Per Capita Trust Agreement.

123.6-2. *Legally Incompetent Adults.* This section sets forth a consistent method to protect and preserve the interests of legally incompetent adults in any distribution for which they may be eligible. If a distribution includes legally incompetent adults as eligible recipients, the Trust Enrollment Department shall deposit such distributions into a trust account in accordance with the Tribal Revenue Allocation Plan and IGRA.

(a) *The Trust Enrollment Committee.* The Trust Enrollment Committee shall establish standard operating procedures for setting up, monitoring, and distributing trust accounts. When an adult is declared legally incompetent, the Trust Enrollment Department shall place any distribution that is claimed on his or her behalf in a trust account for health, welfare and/or education expenses. The Trust Enrollment Committee shall develop rules for determining when a guardian qualifies for distribution from an established trust account.

(b) *Reversal of Incompetency.* If a court of competent jurisdiction determines that an adult is no longer legally incompetent, the adult shall provide the Trust Enrollment Department with a certified copy of the order. Provided that the adult is eligible for the distribution and has followed the processes required under this law, upon receipt of an order reversing incompetency, the Trust Enrollment Department shall distribute any funds held in the trust account for the legally incompetent adult to the adult now deemed competent.

123.6-3. *Beneficiary Designation Forms.* The Trust Enrollment Department shall provide all minor/majority age beneficiaries and legally incompetent adults with beneficiary designation forms which name a beneficiary to inherit any remaining trust account balance in the event of the minor/majority age beneficiary's or legally incompetent adult's death. Once every year, the Trust Enrollment Department shall mail such forms out to newly enrolled Tribal members, all

persons that became a majority age beneficiary in that year and Tribal members declared a legally incompetent adult in that year or had a new guardian appointed in that year. The beneficiary designation form is required to include the following:

- (a) An explanation of the effect of and benefits to designating a beneficiary(s);
- (b) An explanation of the potential consequences to not naming a beneficiary(s); and
- (c) A signature field for the applicable of the parent/guardian or majority age beneficiary with an explanation of when each party is expected to sign.

123.7. Per Capita Actions

123.7-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or rules.

123.7-2. No administrative hearing body, including a board, committee or commission, is authorized to hear a complaint regarding actions taken pursuant to this law and/or rules.

123.7-3. In regards to taking actions authorized under this law, complaints filed with the Oneida Judiciary shall name the Trust Enrollment Department.

End.

Adopted - BC-7-12-00-B

Emergency Amendments – BC-01-03-01-B

Emergency Amendments - BC-2-28-01-E

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

Emergency Amendments - BC-6-25-03-G (Child support priority for attachment)

Amendments - BC-6-16-04-C (Child support priority for attachment)

Emergency Amendments - BC-9-12-07-A (one-time per capita payment)

Amendments – BC-04-22-09-A (High School Diploma; legally incompetent adults)

Emergency Amendments – BC-06-08-11-D (Fraudulent diploma; dual enrollments)

Emergency Amendments extended – BC-11-09-11-E (Fraudulent diploma; dual enrollments)

Amendments Adopted – BC-05-09-12-B (Fraudulent diploma, dual enrollments)

Emergency Amendments – BC-09-12-12-A (Change in distribution date) Expired 3-12-13

Amendments Adopted – BC-08-14-13-D

Amendments Adopted – BC-02-22-17-D