

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: OCT 05 2020

ORDINANCE NO.: 283 (2020)

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WHEREAS, the Eastern Band of Cherokee Indians is duly authorized to establish and regulate membership and enrollment under its sovereign powers as a federally recognized Indian Tribe; and

WHEREAS, Brandon Brake was legally adopted as an infant in Shirly, Long Island, Suffolk County, New York in 1972; and

WHEREAS, Mr. Brakes adoptive parents did not live on the Qualla Boundary and had no contact or knowledge of the Tribe, and therefore Mr. Brake had unaware of the Tribe, his eligibility to be an enrolled member, and eligibility for per-capita distributions; and

WHEREAS, Mr. Brake is the biological son of Kathy Linda Ross, who is the daughter of Earnest Deedanuskie Ross, granddaughter of William and Melinda Otter Ross, all enrolled members of the Tribe; and

WHEREAS, Mr. Brake was not enrolled as an infant because his adoptive parents had no knowledge of the Tribe; and

WHEREAS, Mr. Brake moved to Texas with his adoptive family in 1974, where he has lived ever since; and

WHEREAS, Mr. Brake has attempted for years to locate his biological parents, but was unable to do so until 2020 and therefore unable to locate or contact his biological or Tribal family; and

WHEREAS, Mr. Brake was recently enrolled in the Tribe, along with his two children, a 16 year old son and a 14 year old daughter; and

WHEREAS, Mr. Brake, like many others, is now experiencing financial hardships in part due to the COVID-19 pandemic, he was unemployed from October 2019 to March 2020, and his home is in forbearance; and

WHEREAS, there could be many other persons such as Mr. Brake and it is in the best interests of the Tribe and these persons to provide financial compensation for the previous per capita payments that the person would have received had they been enrolled at the time.

47 NOW THEREFORE BE IT ORDAINED, by the Tribal Council of the Eastern Band of Cherokee
48 Indians, in council assembled, at which a quorum is present, that Cherokee Code
49 Chapter 16C is hereby amended as follows:
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51 **Sec. 16C-4. – Membership and eligibility.**

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53 [no changes to subsections (a) through (d)]
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55 (e) *Time limit for claiming distribution or requesting reissuance of a distributed per capita check.*

56 (5) *Infant payments missed.* The 60 day time limit expressed in this Subsection does not
57 apply to certain persons who were or were not enrolled as members of the Tribe as
58 infants but who were legally adopted as infants. To claim missed per capita
59 distribution, these persons must submit a resolution to Tribal Council requesting a
60 hearing on the matter and must:

61 (A) Have been enrolled as a member while and infant or who were legally
62 adopted as an infant but were not enrolled in the Tribe;

63 (B) Be living and eligible to receive per capita distributions;

64 (C) Provide the same personal information to the Tribe that is required of all other
65 recipients or per capital distributions;

66 (D) Prove that they were adopted as infants;

67 (E) Prove that they have lived their entire lives until they made the claim in a
68 place sufficiently removed from the Qualla Boundary to preclude their contact with
69 or knowledge of the Tribe; and

70 (F) Prove that they were unaware of their membership in the Tribe, of their
71 eligibility to receive distributions, and the time limit for claiming the.

72 If an adopted member satisfies these requirements to Council's satisfaction at the hearing, the
73 Tribal Council may declare the person eligible to receive per capita distributions and may
74 direct payment to that person. In these cases, the person may receive their share of distributions
75 made since the person attained 18 years of age. However, the person shall not receive more
76 than \$50,000 in unclaimed distributions. The Tribe shall not pay any more than the principal
77 amount determined by the Tribe to be due and is not liable to pay interest or any other
78 enhancements to the principal amount
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80 BE IT FINALLY ORDAINED, that all ordinances and resolutions inconsistent with this ordinance
81 are rescinded, and this ordinance shall become effective upon ratification by the
82 Principal Chief.
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84 *Submitted by Brandon Brake*