

**CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA**

Date: _____

ORDINANCE NO. ____ (2026)

An ordinance to amend Tribal law to provide that distributions from the Minor's Trust Fund to eligible enrolled members may be made as part of the Tribe's GenWell program, and not subject to Federal income tax, when the distributions comply with requirements of the General Welfare Exclusion adopted by the Internal Revenue Service.

WHEREAS, the Eastern Band of Cherokee Indians is a federally-recognized Indian tribe with sovereign powers of self-government; and

WHEREAS, Tribal Council is authorized and empowered to adopt laws and regulations for the general government of the Tribe, to govern the management of real and personal property held by the Tribe, and is vested with full power to enforce obedience to such laws and regulations as may be enacted by the Tribe (EBCI Charter and Governing Document § 23); and

WHEREAS, the Tribe seeks to improve the general welfare of its members through a variety of Tribal programs, including providing financial distributions for social welfare, medical assistance, education, housing or other similar needs intended to qualify for the General Welfare Exclusion (GWE) from federal taxation as provided by the Internal Revenue Service; and

WHEREAS, one of the ways the Tribe has improved the general welfare of its members is by creating a Minors Trust Fund, in which certain net gaming revenues from the Tribe's casinos operated under the Indian Gaming Regulatory Act are invested and distributed on a per capita basis to eligible enrolled members upon the occurrence of qualifying events; and

WHEREAS, historically, per capita distributions from the Minors Trust Fund have been subject to federal income taxation; and

WHEREAS, the U.S. Internal Revenue Service has issued guidance, or is expected to issue guidance, providing that distributions from the Minors Trust Fund to eligible enrolled members may satisfy GWE requirements and therefore be free from federal taxation as income.

WHEREAS, Tribal law governing distributions from the Minors Trust Fund should be amended so enrolled members receive the full benefit of the General Welfare Exclusion.

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present, that CC Chapter 16C, known as the Gaming Revenue Allocation Plan, shall be amended to read as follows:

Sec. 16C-2. Definitions.

For purposes of this chapter:

Act shall mean the Indian Gaming Regulatory Act, Pub. L. 100-497, 25 U.S.C. 2701 et seq.

BIA shall mean the Bureau of Indian Affairs, or the official of such agency with the duty or assigned authority to act in behalf of the agency.

Capital improvement program (CIP) shall mean the program established to provide funding for ongoing capital improvements of Tribal operations and programs.

Cherokee Central Schools Assistance Fund shall mean that fund established to provide funding to implement the Cherokee Central Schools Strategic Plan and the Facility Master Plan.

Cherokee Central School Board shall mean those officials elected to carry out the policies and procedures for the Cherokee Central School System.

Debt service sinking fund shall mean the fund established for the purposes set forth in Section 16C-14.

Distributable net revenue shall mean all revenue distributed to the Tribe by a gaming operation, which shall be calculated as follows: gross revenue of the gaming operation less (1) prizes and operating expenses, (2) payments owed to a management contractor, (3) debt service payments (including without limitation principal, interest, and related fees, costs, and expenses), and (4) contributions to duly authorized capital/expansion reserve funds. Distributable net revenue shall include surplus regulatory funds distributed to the Tribe by the Tribal Gaming Commission.

Eligibility for disbursement shall apply to any person who is enrolled as of September 30, 1997, March 31, 1998, and each subsequent disbursement date thereafter with the Tribe, provided that person is enrolled no less than 60 days preceding a scheduled disbursement and meets all requirements of this chapter.

Endowment and Investment Funds shall mean the trust funds established pursuant to this chapter to administer funds allocated for investment and appreciation for the long-term benefit of the Tribe and its members.

External investments shall mean investments that may be made by the Minors Trust Fund, Debt Service Sinking Fund and the Endowment and Investment Funds which must be made under the Prudent Investor Rule, in accordance with the investments permitted to be made by such funds in this chapter, as amended or supplemented from time to time.

Equivalent degree shall mean a high school diploma, GED, degree from a vocational or technical college, or other appropriate educational institution as determined by the Tribe.

General Welfare Exclusion Program shall mean the laws and policies written or adopted by the Tribe to provide a mechanism for providing benefits, which may include financial distributions, to eligible Tribal members so that the benefits are excluded from federal income taxation by the U.S. Internal Revenue Service.

Higher education shall mean college, graduate, or professional school. Higher education shall not mean secondary school.

Higher education funding program shall mean those funds established to provide funds to benefit enrolled members who attend institutions of higher education.

Housing Fund shall mean the fund created for the purpose of providing funds to assist in housing development as permitted to be made by this chapter, as amended or supplemented from time to time.

Interim Distribution Fund shall mean a fund into which 50 percent of distributable net revenue is deposited monthly by Tribal Management and from which funds are distributed as per capita payments or as general welfare payments to competent adult members on a semi-annual basis and into the Minors Trust Fund semi-annually for minor and other legally incompetent members. This Fund shall be invested only in U.S. Treasury bills, other U.S. Government obligations or collateralized bank certificates of deposits. Only one type of instrument shall be used during the accrual period and the type of investment used will be determined by interest rate predictions within the accrual period. The obligations shall have a maturity date of no later than November 15 and May 15. The instrument used during each period shall be approved by the Investment Committee and the Tribal Budget and Finance Office by September 1 and March 1.

Internal investments shall mean investments that are made by allocation or distribution of funds through the Tribal budget process.

Manager shall mean that person or institution retained by the Tribe to manage and oversee the investments of the Minors Trust Fund.

Members shall mean those persons who are duly recognized as enrolled members of the Eastern Band of Cherokee Indians by the Tribe.

Minor shall mean a member who has not yet reached the age of 18 years.

Minor Trust Fund shall mean a fund created by the Tribe pursuant to Section 16C-6 to receive a portion of the distributable net revenue for and on behalf of enrolled minor and incompetent members of the Tribe.

Revenue allocation plan shall mean this Chapter 16C of the Cherokee Code.

State shall mean the State of North Carolina.

Tribal Council shall mean the legislative body of the Eastern Band of Cherokee Indians.

Tribal Court shall mean the Cherokee Court established pursuant to Article 7 of the Cherokee Code.

Tribal Entity shall mean only Qualla Housing Authority, Cherokee Boys Club, the Tribal Casino Gaming Enterprise, the Tribal Bingo Enterprise, the Cherokee Indian Hospital Authority, Cherokee Cablevision, Kituwah LLC, and the Eastern Band of Cherokee Indians Community Development Corporation (Sequoyah Fund).

Tribal management shall mean the Executive Committee and the Tribal Finance Officer, who shall be jointly responsible for verifying the calculation of distributable net revenue on a monthly basis for purposes of this chapter and for making monthly deposits of such distributable net revenue into the appropriate accounts or funds under this chapter.

Tribal shares is defined as: Total Shares = 12 months/12 shares of the competent adult + 12 months/12 shares minors + x months per deceased members (as defined in section 16C-5(b))/12 shares).

Tribe shall mean the Eastern Band of Cherokee Indians. It does not mean individual members of the Tribe.

(Ord. No. 888, 10-13-2005; Ord. No. 457, 9-12-2006; Ord. No. 481, 10-3-2008; Ord. No. 873, 9-18-2009; Ord. No. 245, 8-5-2016; Ord. No. 20, 2-14-2018; Ord. No. 369, 12-15-2022; Ord. No. 550, 6-9-2023)

Sec. 16C-5. Distribution to members.

- (a) *Semi-annual distribution.* Per capita payments, or if appropriate, general welfare distributions, shall be made two times each year to all competent adult members eligible for the distribution as set forth in Section 16C-4. Likewise, an appropriate share shall be set aside twice each year in the Minors Trust Fund on behalf of minor and incompetent members.
- (b) *Distribution for deceased members.* Eligible members as defined under Section 16C-4 who have passed away prior to the date of any scheduled disbursement shall be eligible to receive a pro rata share of the proposed per capita disbursement for each and every month during the calculation period that they were alive. The Tribal Finance Office shall disburse any and all funds of the deceased Tribal member to the authorized, or court appointed, administrator for the deceased's estate.
- (c) *Distribution to handicapped members.* Eligible minors who have a severe handicap or terminal illness may request early distribution of per capita payments, or if appropriate, general welfare distributions, through their parent or guardian in accordance with Section 16C-6(c)(3).
- (d) *Garnishment.* Except as specifically set forth in this section, the per capita disbursements to which each Tribal member is entitled, and general welfare distributions, are absolutely exempt from creditors and shall not be garnished, attached, or paid to any other person or entity except as provided in this section. Per capita payments and general welfare distributions may be garnished only as follows:
 - (1) *Garnishment for child support.* A parent, guardian, court-appointed trustee, or other individual or entity, who has provided for the support of any minor Tribal member, may request the court-ordered garnishment of any responsible enrolled member's per capita distribution and general welfare distributions for the support of the minor child. Such a garnishment shall only be effective if it is ordered in compliance with subparagraph (d)(3), below.
 - (2) *Garnishment for debts owed to the Eastern Band of Cherokee Indians.* The Tribe including the Cherokee Court and Cherokee Supreme Court, or other Tribal entity as defined in this Chapter, may administratively garnish a member's per capita payment and general welfare distributions to reimburse the Tribe or the Tribal entity for any outstanding fees, costs, rent, judgments, user fees, or other charges owed to the Tribe or the Tribal entity. This subsection shall not apply to fees, costs, rent, judgments, user fees, or other charges owed to individual Tribal members except for deceased Tribal

- member's estates collecting money judgments, or for criminal restitution ordered in a criminal sentence, which garnishment for such collection shall be allowed. Such a garnishment shall only be effective if it is ordered in compliance with subparagraph (d)(3), below.
- (3) *Procedure.* Garnishment orders may only be entered if the following minimum due process requirements have been met:
- (A) Garnishment of per capita and/or general welfare distributions is only permitted to enforce a valid, final, and enforceable court order or judgment entered after the defendant was personally served with a summons and complaint, and given an opportunity to be heard in compliance with the law of the jurisdiction granting the judgment.
 - (B) The defendant must be given notice of the request for garnishment, either in the complaint originally served on the defendant or by a motion served on the defendant by first class mail at least ten days prior to hearing on the garnishment motion.
 - (C) A list of garnishments must be received by the Tribal finance office no less than 30 days before a scheduled disbursement.
 - (D) The garnished funds shall be deposited with the Tribal Court for disbursement in accordance with the court order after the time for legal review under subparagraph (d)(4) has passed.
 - (E) After these procedures have been followed once, the garnishment order shall remain in effect for subsequent distributions until the debt is paid in full.
- (4) *Legal review.* Funds garnished pursuant to Tribal court order shall be held by the Tribal finance office for a period often working days after the disbursement. Upon a request within those ten days by a member whose disbursement has been garnished, the office of the attorney general will review the court records to ensure there was compliance with the procedures set forth in this section. Upon discovery of a failure to comply with these procedures, the office of the attorney general will notify the court and the funds shall be held by the court in escrow until the Tribal member can be given notice and an opportunity to be heard.
- (e) *Voluntary assignment.* This subsection shall apply only to debts owed to the Tribe or to a Tribal entity listed in Section 16C-2. A member who owes an obligation to the Tribe or a Tribal entity may enter into a voluntary assignment agreement for all or part of the amount of a scheduled disbursement, subject to the following limitations:
- (1) The Office of the Attorney General shall develop a voluntary assignment agreement form. Voluntary assignments shall not be enforced unless they are completed on the proper form, notarized, and filed with the Tribal Finance Office at least 60 days prior to a scheduled per capita disbursement or if appropriate, general welfare disbursement.
 - (2) A fee of \$35.00 per voluntary assignment will be charged to the member requesting the assignment to defer the costs of administering the assignment by the Tribal Finance Office.

- (3) A voluntary assignment may cover past and/or future obligations owed by the member to the Tribe or Tribal Entity. A single assignment may obligate multiple distributions, such as to ensure repayment on a monthly basis of a Tribally guaranteed home mortgage loan, however a separate fee shall be administered for each per capita distribution , or if appropriate, general welfare distribution.
 - (4) Voluntary assignments, unless they expressly state otherwise, convey to the Tribe all present and future right, title and interest in per capita distributions, or if appropriate, general welfare distributions; they shall remain in effect and are irrevocable until the debt for which the assignment is made is paid in full.
 - (5) A Tribal member who receives a Tribal guarantee of a loan to purchase, refinance, construct or improve a home under a loan guarantee program approved by the Tribal Council may assign his or her per capita , or if appropriate, general welfare disbursement, in advance to the Tribal division, program or entity charged with administering the guarantee program, or have his/her per capita or general welfare distributions garnished by the Tribe or Tribal Entity under subsection (d), for repayment of the debt owed to the Tribe or the lender, maker, holder, successor or assign of the mortgage.
- (f) *Priorities.* In the event there are multiple garnishments or assignments against a member, priority for disbursement of funds shall be as follows:
- (1) Garnishment under subsection (d) for child support;
 - (2) Garnishment under subsection (d) for debts to the Tribe or a Tribal Entity; and
 - (3) Assignments under subsection (e) for debts to the Tribe or a Tribal Entity.

Within each category above, priority shall be determined by the date of the garnishment order or the grant of the assignment.

- (g) *Limitation on garnishment.* Except as specifically set forth in subsections (d) and (e) of this section, the disbursements to which each Tribal member is entitled are absolutely exempt from creditors and shall not be garnished, attached, or paid to any other person or entity, including the Tribal Court. Any resolution, ordinance, or code provision which states or implies otherwise is hereby rescinded and shall have no further force or effect.
- (h) *Timing for per capita distributions.* Distribution to members shall be made within 75 days of the following:

March 31 and September 30 of each year.

Any scheduled per capita disbursements made in accordance with this Chapter shall be made within 75 days of the above referenced dates. Per capita distributions shall occur only on regular business days. The Finance Office shall calculate and disburse per capita to eligible members no later than 75 days following the first disbursement closure date and again at the close of the fiscal year. In calculating disbursement, the Finance Office shall use financial data provided by the TBE and TCGE operations for the first semi-annual disbursement and the second semi-annual disbursement, which shall be reconciled to a certified audit. Tribal Management shall make appropriate allocations and transfers and insure that per capita distributions are made no later than 75 days after the end of the first disbursement closure date and again at the end of the fiscal year.

- (i) *Certified roll of eligible members.* The Tribal Enrollment Office shall deliver to Tribal Management a current certified roll of all members eligible under this Chapter, and in accordance with the Tribal Enrollment Ordinance, as of March 31 and a second certified roll as of September 30 of each disbursement year. Said certification shall be submitted to the Finance Office no later than 15 days following the aforementioned dates. Only names of the newly enrolled members for the current year shall be published in the Cherokee One Feather no later than 15 days following the aforementioned dates.
- (j) *Percentage of distributable net revenue.* The percentage of the distributable net revenue available for distribution to each competent adult member under this Chapter shall be determined by applying the following formula: An amount shall be added which is the sum of Total Shares. Total Shares is defined as: Total Shares = 12 months/12 shares of the competent adult + 12 months/12 shares minors + x months per deceased members (as defined in Section 16C-5(b))/12 shares. Total shares shall then be divided into 50 percent of distributable net revenue to equal the distribution per share. The distribution per share shall be multiplied by the total shares distributable to competent adult members, minors, and deceased members which shall equal no more than the Minors Trust Fund and/or per capita distribution which is required pursuant to this Chapter. Anyone not on the certified roll for the semi-annual distribution shall have no right to any past Minors Trust Fund and/or per capita distributions. This requirement shall become effective on the date of ratification of the ordinance from which this Article derives.
- (k) *Balance of funds.* The balance of the funds after calculation of the amount to be distributed to competent adult members as set forth in Section 16C-5 shall be transferred to the fund for the benefit of enrolled minor and incompetent adult members, to be allocated as set forth in Section 16C-6.
- (l) *Improper assignments and garnishments before 1999.* No per capita assignment or garnishment, except for child support or debts to the Tribe, should have been accepted by the Cherokee Court of Indian Offenses after the ratification of Ordinance No. 528 (1999) on April 14, 1999. The court improperly accepted assignments and garnishments after that date, and those assignments and garnishments are void and unenforceable by operation of law. Because members of the Tribe and the public have relied in good faith on the court's improper action, however, the Tribal Council has determined that those improper assignments and garnishments will be partially honored on a one-time basis using the following procedure:
- (1) The remedy provided in this subsection shall apply only to garnishments ordered by the court after April 14, 1999, and filed with the court on or before November 29, 1999. Valid garnishments or assignments of per capita ordered by the court before April 14, 1999 shall remain enforceable until paid in full. No garnishment or assignment of per capita filed after November 29, 1999 shall be valid or enforceable in any way, unless it is for child support or a debt to the Tribal government or a Tribal Entity.
 - (2) Garnishments for child support or Tribal debts, and other garnishments ordered prior to April 14, 1999, shall be released to the court after the ten-day legal review period provided in subsection (d)(4) of this section. The Tribal finance office shall freeze all other funds subject to court garnishments or assignments pending hearing.

- (3) The garnishments or assignments subject to a hearing under this subsection shall be paid only in the amount of the principal loan or debt, plus interest at a rate of 24 percent per annum (two percent per month) from the date of the loan through November 30, 1999.
- (4) The Tribal Court shall conduct a hearing on each garnishment or assignment. The clerk of court shall give the debtor and creditor notice by personal service or mail at least 30 days prior to the hearing. The hearing shall be held before a judge or magistrate whose name does not appear on the original garnishment order.
- (5) At the hearing, the creditor shall have the burden of proving, by clear and convincing evidence, the principal amount of the loan or debt on which the garnishment or assignment was based. The debtor shall have the right to raise defenses at the hearing. If the creditor fails to meet that burden of proof, then the judge or magistrate shall enter an order that the creditor receive nothing.
- (6) At the conclusion of each hearing, the judge or magistrate shall enter an order, signed in person by that judge or magistrate, stating:
 - (A) The principal amount of the loan or debt, if proven; and
 - (B) The amount of interest accrued at two percent per month from the date of the loan through November 30, 1999.

In no event shall the amount ordered by the court exceed the amount of the original assignment or garnishment order.

- (7) Upon receipt of the order described in subparagraph (1)(6) from the court, the finance office shall release the funds so ordered to the clerk of court for distribution to the creditor. Any balance remaining, after hearings and orders on all garnishments allegedly executed by a Tribal member, shall be released to the Tribal member.
- (8) Orders entered pursuant to this section shall remain in effect until the allowed amount is paid in full.
- (9) This subsection shall not affect the validity of garnishments for child support or Tribal debts, the validity of garnishments ordered by the court before April 14, 1999, or the validity of voluntary assignments properly filed with the finance office under former subsection (e). All such garnishments and assignments have priority over the orders entered under this subsection.
- (10) This subsection is not intended to affect the contractual rights of any creditor. It is intended to provide a partial remedy for creditors whose garnishments or assignments are otherwise void and unenforceable by operation of law. For any alleged claim that remains unsatisfied after the hearing, the creditor may file a separate civil action against the debtor in the Tribal Court and pursue the judgment collection procedures provided by Chapter 25, which do not include garnishment or assignment of per capita.
- (11) The clerk of court shall prepare a budget amendment providing for the return of all filing fees charged to creditors for garnishments or assignments ordered after April 14, 1999 and covered by the hearing procedures of this subsection. Upon approval of that budget, the clerk shall return all such filing fees to the respective creditors. Debtors shall not be required to pay those filing fees.

- (12) The Tribal Court is directed to post the following notice in a prominent location easily visible to the public in the clerk's office at all times:

NO VOLUNTARY ASSIGNMENTS OR GARNISHMENTS OF PER CAPITA PAYMENTS WILL BE ACCEPTED BY THIS COURT. PER CAPITA PAYMENTS CAN ONLY BE GARNISHED AFTER A JUDGMENT IS ENTERED BY THIS COURT FOR CHILD SUPPORT OR DEBTS OWED TO THE EASTERN BAND OF CHEROKEE INDIANS OR ITS ENTERPRISES.

- (13) Nothing in this Chapter shall be deemed a waiver of the sovereign immunity of the Eastern Band of Cherokee Indians, or its officers, agents, or employees acting in their official capacities. To the extent that any other Tribal law may be interpreted as such a waiver of sovereign immunity for any claim or action related to distribution of per capita payments, it is hereby rescinded.
- (m) In connection with a loan transaction or an agreement to repay a debt, the Tribe or a Tribal Entity may create a secured interest in an enrolled member's present and future per capita distributions by having the enrolled member execute a security agreement and financing statement, which may be combined into a single document. The financing statement or combined document is deemed to be properly filed and the security interest perfected when the statement or combined document is maintained in the files of the Budget and Finance Office or the Tribal program or Tribal Entity obtaining the security interest, and the per capita distribution is possessed by the Tribe. A per capita distribution is possessed by the Tribe from the time the funds are received by the Tribe until they have been distributed by check or electronic transfer to the enrolled member.

Sec. 16C-6. Minors and other legal incompetents.

The interests of minor and legally incompetent members otherwise entitled to receive per capita payments, or if appropriate, general welfare distributions, shall be protected as follows:

- (a) *Trust Fund for enrolled minor and incompetent members.*
- (1) Within 60 days after approval of this section by the Secretary of Interior, the Tribe shall establish a legal trust (hereinafter "the Minors Trust Fund") for the benefit of all minor members and legally incompetent members who shall be eligible for per capita payments, or if appropriate, general welfare distributions.
 - (2) Members of the Investment Committee shall serve as the Trustees of the Minors Trust Fund, provided that there shall be no fewer than three Trustees. The Trustees shall select an institutional Manager and such other advisors as they deem necessary, with suitable expertise and discretion to administer the Minors Trust Fund and invest its assets. The Minors Trust Fund shall be invested in a reasonable and prudent manner so as to protect the principal and seek a reasonable return.
 - (3) The Minors Trust Fund shall be established as a "grantor" trust, under which the Tribe is the grantor and owner of the trust for the benefit of its enrolled minor and incompetent members.

- (4) The Minors Trust Fund shall comply with all applicable internal Revenue Code provisions and Internal Revenue Service (IRS) regulations, revenue procedures, revenue rulings, or other guidance in force from time to time, to ensure that amounts contributed to and held in the fund, shall not be taxable to the individual enrolled member until they are actually distributed, or made available for distribution pursuant to this section, to the individual enrolled member; provided, however, that distributions that qualify to be non-taxable because they satisfy the requirements of the IRS' General Welfare Exclusion may be made under that exclusion. The necessary provisions to achieve these goals shall be included in the trust documents.
- (5) *Contingent Provisions.* To the extent that applicable law and IRS guidance allows the following trust provisions to be included without triggering adverse tax consequences to the individual trust beneficiaries (*e.g.*, taxation prior to actual distribution of the trust funds), the following shall be included in, or later added by amendment to, the trust documents. To the extent that the tax consequences of including these provisions is unclear or uncertain under applicable law or IRS guidance, the Trustees of the Minors Trust Fund are authorized to request an IRS private letter ruling and to act in accordance with any IRS guidance received pursuant to such a request.
- (A) There shall be five staggered distributions from the ~~m~~Minor's ~~t~~rust ~~f~~und to eligible members reaching the age of majority as follows:
- 1) The first distribution shall be in an amount which is the lesser of \$50,000.00 or one-fifth the amount of the total amount held in trust for the eligible member, and shall be made upon meeting the following eligibility criteria:
 - a. Prior to receiving the first distribution, the enrolled member has reached the age of 18 and must submit the following documentation: (1) the original or a certified copy of their high school diploma or GED; (2) if the member has been home schooled, a writing from the state agency in the state in which the member was home schooled indicating that the member has successfully passed the state-wide test accepted by the state for such students. The enrolled member must submit the documentation to the Trustees prior to receiving any funds from the Minors Trust Fund. If the Tribe determines that the diploma, GED or other writing is questionable, the Tribe may require other proof. Proof of completion of a course of studies from a correspondence school is not acceptable; a student or graduate of a correspondence school must also prove that they have successfully passed the same or a similar state-wide test as required in this subsection of home school graduates. Effective April 1, 2011, any minor member will be required to complete the required financial course and include his/her Certificate of Completion to be entitled to receive any monies.

Any minor member, who fails to submit the appropriate information as described above shall not be entitled to any monies held on their behalf in the Minors Trust Fund until the minor member has provided evidence of attaining such a degree and Certificate of Completion for the financial course; or

- b. The minor member reaches the age of 20 years, whichever occurs first. Minor members with learning disabilities or other disabilities may present a certificate of attendance showing that the student has attended a full 12 years of school and that certificate shall be deemed to be an equivalent degree for purposes of this section.
- 2) The second distribution shall be in an amount which is the lesser of \$50,000.00 or one-fourth the amount of the total amount remaining after the first distribution held in trust for the eligible member, and shall be made when the member reaches the age of 20 years. If the first distribution occurs under 16C-6(a)(5)(A)1)b. above, then the eligible member shall be distributed both amounts of the first and second disbursements, at the same time, totaling the lesser of \$100,000.00 or one-third the total of the total amount held in trust for the eligible member.
 - 3) The third distribution shall be made when the eligible member reaches age 22 years and shall be in an amount which is the lesser of \$50,000.00 or one-third the amount of the total account balance.
 - 4) The fourth distribution shall be made when the eligible member reaches age 24 years and shall be in an amount which is the lesser of \$50,000.00 or one-half the amount of the total account balance.
 - 5) The fifth distribution shall be in an amount totaling the entire remaining amount held in trust for the eligible member and shall be made when the eligible member reaches the age of 25 years.

(B) The amendments to this section presented by Ordinance 334 (2024) shall be implemented and effective January 1, 2025; this applies to all applications received after January 1, 2025.

(b) *Advance distributions for education.*

- (1) It is the policy of the Tribe to provide the best possible education for enrolled members. It is the Tribe's specific goal in establishing the Minors Trust Fund to help each student fund a college education. It is recognized that some members may encounter extraordinary educational problems preventing them from being able to attend or benefit from college. In those situations, a beneficiary may request an advance distribution to fund other urgent educational needs that cannot be funded by other sources.
- (2) In general, an advance distribution for educational purposes shall be requested only for attendance at a secondary school, college, graduate or professional

school. However, incompetent and minor members with learning or other disabilities shall be eligible to request a distribution for special training or education in academic or non-academic programs or schools for disabled or handicapped students. For purposes of this section, "secondary school" shall mean a private school or boarding school that is a member of the National Association of Independent Schools.

- (3) In order to request an advance distribution from the Minors Trust Fund for educational purposes, a written request must be submitted by the parent or legal guardian, or in the case of a member who has attained age 18 without graduating from high school, by the member, to the Trustees. The funds requested may not exceed the cost of tuition, program fees, miscellaneous fees, room, board, books and equipment.
 - (4) Any advance distribution for education shall be disbursed jointly to the parent/legal guardian (or member, age 18—24) and the school, program or other institution providing the educational services.
 - (5) If such a request is granted, the amount disbursed shall not exceed the proportional share of the Minors Trust Fund allocated to the requesting beneficiary at the time of the request. The Tribe may require that the amount disbursed be paid directly from the Tribe to the educational institution or vendor and/or that a receipt be provided from the educational institution or vendor after payment.
- (c) *Advance distributions to minors and incompetents for health care.*
- (1) It is the policy of the Tribe to make funds in the Minors Trust Fund available for the benefit of beneficiary's unmet health care needs. In the event of unmet health care needs, a beneficiary may request an advance distribution of their share of the trust to fund actions and services that fulfill urgent medical needs, but only when such needs cannot be met from other available personal, Tribal or other public sources.
 - (2) In order to request an advance distribution for unmet health needs, a written request must be submitted by the parent or legal guardian (or member, age 18—24) to the Trustees. The request must include sufficient, current written information about the specific treatment or unmet health need for which the advance distribution will be used. Whether the documentation is sufficient and current shall be determined by the Trustees. The funds requested may not exceed the cost of necessary medical or dental treatment that cannot be met from other available personal, Tribal or other public sources.
 - (3) In addition, a parent or legal guardian may request early disbursement of trust funds for a severely handicapped or terminally ill minor who is not likely to reach the age of 18 years. Such a request must be supported by specific documentation by both educational and medical personnel to support the representation of either the severity of the handicap or the terminal illness.

- (4) Any advance distributions for health care will be disbursed jointly to the member's parent/legal guardian or member (age 18—24) and the hospital or other health care institution providing the specific medical services.
 - (5) If such a request is granted, the amount disbursed shall not exceed the proportional share of the Minors Trust Fund allocated to the requesting beneficiary at the time of the request. The Tribe may require that the amount disbursed be paid directly from the Tribe to the health care provider or vendor and/or that a receipt be provided from the health care provider or vendor after payment.
- (d) *Advance distributions for housing*
- (1) It is the policy of the Tribe to make funds in the Minors Trust Fund available for the benefit of minors fund beneficiaries for unmet housing needs. In the event of unmet housing needs, a minor beneficiary may request an advance distribution of their share of the trust to fund the purchase of housing, but only when such needs cannot be reasonably met from other available personal, Tribal or public sources.
 - (2) In order to request an advance distribution for unmet housing needs, a beneficiary must submit a written request to the Trustees. A written request must include sufficient, current information and documentation of housing needs and housing costs.
 - (3) In order to be eligible for an advance distribution for housing, beneficiaries must satisfy all the following criteria:
 - (A) must be a beneficiary of the Minors Trust Fund with an account balance;
 - (B) must be between the ages of 18—24;
 - (C) housing purchase must be the beneficiary's primary residence;
 - (D) must demonstrate proof of income;
 - (E) must have land held in the name of the beneficiary or for a mobile home purchase, beneficiary must have land held in their name OR a minimum of a ten-year lease.
 - (4) If such a request is granted, the amount disbursed shall not exceed 98 percent of the home's purchase price and 80 percent of the beneficiaries account balance at the time of the request. Payment shall be made directly to the seller, home-builder, or financing institution. The distributed amount shall be "grossed-up" to account for the amount a tax withheld by the Tribe for remittance to the Internal Revenue Service.
- (e) *Decision process for advance distributions.*
- (1) Any advance distribution for educational, health, or housing needs shall be made only in the Trustees' sole discretion. If an advance distribution is made, the beneficiary's account is thereby reduced by the amount of the advance distribution.

- (2) The Trustees are authorized to establish a screening committee of health and educational professionals to review and make recommendations regarding advance distribution requests. The committee is authorized to create policies and procedures by which to discharge its responsibilities. The policies and procedures must be approved by the Trustees before implementation. The ultimate decision to distribute funds, however, shall remain in the sole discretion of the Trustees.
 - (3) The Trustees shall develop and approve internal policies and procedures governing distributions to beneficiaries from the Minors Trust Fund.
- (f) *Distributions for deceased persons.*
- (1) Any person for whose benefit funds are held in the Minors Trust Fund who passes away shall have any funds held for their benefit disbursed in the following order of priority:
 - (A) If the deceased person has a surviving spouse and/or child(ren), then the funds shall be divided and distributed equally to all such persons.
 - (B) If the deceased person has no surviving spouse or children, then the funds shall be divided and distributed equally to the person's surviving parent(s) or a relative(s) who served as a guardian(s), if any.
 - (C) If the deceased person has no surviving spouse, children, parents or a relative(s) who served as a guardian(s), then the funds shall be divided and distributed equally to the person's surviving sibling(s), if any.
 - (D) If no spouse, children, parents, a relative(s) who served as a guardian(s), or siblings survive the deceased person, then the deceased person's share shall revert to the Grantor (the Tribe).
 - (E) In no event shall the funds of a deceased person be distributed to the person's estate.
 - (2) A recipient of funds disbursed pursuant to subsection (e)(1) above does not have to be an enrolled member.
 - (3) A potential recipient identified in subsection (e)(1) does not have to submit a claim or a request for a disbursement. The death of the minor member is the event which shall cause the Tribe to disburse the money. However, before the Tribe may make a disbursement, a potential recipient must provide to the Tribe information including, but not limited to, their name, address, age, relationship to the deceased, and social security number, so that the Tribe may conduct a proper disbursement. The Tribe shall make the disbursement only after it is satisfied that it has made reasonable efforts to properly identify the recipients and it has received necessary information from identified recipients.
 - (4) If there are multiple recipients, the Tribe shall disburse the money in equal shares to them.
 - (5) If a recipient is a minor, his or her share shall be disbursed to the parent(s) or a relative(s) who served as a legal guardian(s), who the Tribe has determined

provides the primary care for the minor recipient and is legally responsible for him or her.

- (6) The EBCI Investment Committee, as Trustees of the Minors and legal incompetents fund, shall review and determine the proper recipient(s) of funds held for a deceased person in coordination with the Office of the Attorney General.
- (g) *Disbursements prior to attaining 18 years of age.* Except as provided in subsections (b) or (c) or (e) of this section, no disbursements from the Minors Trust Fund shall occur until the minor has at least obtained the age of 18 years. No court order evidencing emancipation prior to attaining majority shall be accepted or acted upon to authorize a disbursement from the Minors Trust Fund.
- (h) *Voluntary disenrollment.* No distributions whatsoever from the Trust Fund shall be made to any minor or, in the alternative to any guardian or parent of a minor or legally incompetent member, when that minor, or that minor's guardian or parent voluntarily chooses to renounce and abandon their enrollment with the Tribe. Any monies held for the minor prior to disenrollment shall be distributed equally among the other beneficiaries of the Trust Fund.
- (i) *Timing of disbursements.* For purposes of this Chapter, disbursements made from the Minors Trust Fund shall only occur at the end of each calendar quarter. The Tribe shall withhold 25 percent from each distribution to be distributed from each individual's trust account when it makes a disbursement to ensure proper payment of mandatory federal income taxes.
- (j) *Effective date.* This amended section shall be effective upon the date it is approved by the Secretary of the Interior. Upon approval, all funds held in the Minors Reserve Fund established under prior law for enrolled minors and incompetents shall be transferred to the Minors Trust Fund.
- (k) *No implied waiver.* Nothing in this section or in the related trust documents shall be deemed to be a waiver of the sovereign immunity of the Eastern Band of Cherokee Indians for purpose of any access by creditors to assets in the Minors Trust Fund.
- (l) *Alternative provision.* To the extent that applicable IRS guidance does not allow implementation of subsection (a)(5)(A), above, on a tax deferred basis, then the Trustees shall implement that subsection by establishing a taxable trust account or accounts to hold such funds as are remaining after payment of taxes until the enrolled member provides evidence of a high school diploma or equivalent degree or attains the age of 21 years.
- (m) *Special supplement.* Beginning in fiscal year 2004 and each year thereafter, the Tribe shall set aside from non-Reserve and non-Trust Fund monies, and in a separate budget line item, an amount not to exceed \$250,000.00. This amount shall be calculated to make up for reasonably foreseeable losses in the Minors Trust Fund principal caused by investment volatility. The set-aside monies shall be used only as follows: any person entitled to a distribution from the Minors Trust Fund who would, at the time of distribution, receive less than their full share of Minors Trust Fund principal due to losses to principal since fiscal year 2002 caused by market volatility, will be paid an

amount from the set-aside funds sufficient to make up for the loss of principal. Any person who received a Reserve Fund distribution in fiscal year 2003 but who did not receive their full share of principal shall be paid the difference retroactively.

Sec. 16C-7. Taxation.

All per capita payments made to individual members are subject to federal taxation, and members receiving per capita payments shall be subject to the withholding of appropriate amounts for such tax payment in the manner and to the extent provided by applicable law; provided, however, that payments made to individuals members in a manner that satisfies the requirements of the IRS' General Welfare Exclusion are not subject to federal taxation, and members receiving such payments as general welfare payments under the Tribe's GenWell program will not be subject to withholding for federal income tax purposes.

BE IT FINALLY ORDAINED that if any provision of a prior ordinance conflicts with a provision of this ordinance, the conflicting provision of the prior ordinance shall be deemed rescinded and the conflict removed, and that this ordinance shall become effective when ratified by the Principal Chief.

Submitted by Michael McConnell, Attorney General, and Brandi Claxton, Secretary of the Treasury.