



*Poarch Creek Indians*  
*Tribal Council Ordinance*

TCO 2011-008

**Ordinance Amending the  
Poarch Band of Creek Indians Revenue Allocation Ordinance**

- WHEREAS,** the Poarch Band of Creek Indians is a federally recognized Indian Tribe organized pursuant to the Final Determination of Federal Acknowledgment, 25 U.S.C. 476;
- WHEREAS,** the Constitution of the Poarch Band of Creek Indians authorizes the Tribal Council to appropriate and distribute resources needed to conduct the necessary activities and functions of a Tribal government;
- WHEREAS,** on February 19, 2006, the Tribal Council adopted the Poarch Band of Creek Indians Revenue Allocation Ordinance, TCO 06:001, to address the Tribe's use of revenues generated by the Tribe's enterprises including the Tribe's gaming enterprises;
- WHEREAS,** on November 6, 2007, the Tribal Council repealed and replaced TCO 06:001 with TCO 07:012 in order to reflect new Tribal laws that govern the budgeting, use and disbursement of funds generated by the Tribe's enterprises including net revenues generated by the Tribe's gaming enterprises;
- WHEREAS,** the per capita payment program authorized by TCO 07:012 is intended to confer an equivalent benefit on each similarly situated member of the Tribe;
- WHEREAS,** some members, from time to time, fail to make payment to the Tribe due on loans and advances from the Tribe or tribal entities, and for fees, costs, rent, judgments, user fees, or other charges arising from programmatic benefits and governmental services provided by the Tribe or tribal entities to such members;
- WHEREAS,** this failure of tribal members to make payment to the Tribe produces an inequitable result if these members are allowed to participate in a per capita payment equally with members who are not responsible for any defaults on payment obligations to the Tribe;
- WHEREAS,** the Tribal Council desires to ensure equity and fairness in the per capita payment program for all tribal members by having a member's per capita payment involuntarily assigned to the Tribe in the event that a member has an outstanding payment default to the Tribe until such funds have been recovered by the Tribe
- WHEREAS,** the Tribe potentially faces liability if the Tribe fails to surrender per capita payments which are subject to a tax levy issued by the Internal Revenue Service on behalf of the United States Treasury; and
- WHEREAS,** the Tribal Council desires to make it clear that the Tribe will comply with tax levy issued by the Internal Revenue Service on behalf of the United States Treasury.
- NOW THEREFORE BE IT ORDAINED,** that the Tribal Council hereby amends the Poarch Band of Creek Indians Revenue Allocation Ordinance No. 07:012 as follows:

## **Section 1. Definitions**

Tribes refers to the Poarch Band of Creek Indians.

Tribal Council, refers to the governing body of the Poarch Band of Creek Indians.

Minor shall refer to an individual who is under 18 years of age.

Legally Incompetent means an individual who has been declared to be under a legal disability other than being a minor, by a court of competent jurisdiction.

Net gaming revenues means gross revenues derived from the Tribe's gaming activities, less amounts paid out as or paid for prizes and total operating expenditures, excluding any management fees.

Tribal Elders Support Program refers to the social welfare benefit program for tribal members, which was established pursuant to TCO 03:004. The initial base investment for this elders support program was funded by the Tribal Discretionary Fund prior to the adoption of the permanent distribution formula for all profits from the Tribe's business enterprises in TCO 04:002, (which was repealed by TCO 07:009). In establishing the elders support program, the Tribe's intention was for the initial base investment to support all future payments to the maximum extent possible, so that no additional investment would be needed.

Tribal Obligation means a tribal member's obligation to make a payment to the Tribe due on loans and advances from the Tribe or tribal entities, and for fees, costs, rent, damages, judgments, user fees, or other charges arising from programmatic benefits and governmental services provided by the Tribe or tribal entities to such member.

Tribal Obligation Default means a failure of a member to make timely payment of a Tribal Obligation in accordance with its terms.

## **Section 2. Tribal Use of Net Gaming Revenues**

As provided by Tribal Ordinance 07:013, the revenues generated by the Tribe's gaming enterprises may be used to cover the gaming enterprise's operating expenditures, costs of capital improvements, debt service or other authorized expenditure as set out in budgets approved by the Tribal Council. Gaming revenues remaining following the payment of a gaming enterprise's operating expenditures, debt service, capital improvements and other authorized expenditures for each fiscal year shall be transferred to a fund for appropriation by the Tribal Council for the upcoming fiscal year.

Not less than 80% of the net gaming revenues so transferred to the fund for appropriation by the Tribal Council shall be appropriated by the Tribal Council to fund: Tribal Government operations and programs, programs and services carried out by Tribal Authorities, Commissions, Advisory Committees, and other Tribal instrumentalities, economic development activities and capital improvements, and other discretionary Tribal government operations, programs and member services, including, but not limited to, the Tribal Elders Support Program.

Not more than 20 % of the net gaming revenues so transferred to the fund for appropriation by the Tribal Council shall be available to make per capita payments to Tribal members in an amount and manner to be approved by the Tribal Council annually. The payments shall be made in three age categories: (1) under 18 years of age; (2) 18 years of age; and (3) over 18 years of age. Each member shall receive the same payment as every other member of his/her age category each year. Per capita payments shall be mailed to the member's current address verified or changed by the member as stated in section 3. Per capita payments due to Minors or Legal Incompetents shall be made as provided in section 4.

**Section 3. Eligibility/Requirements for Per Capita Payments**

a. All living members of the Poarch Band of Creek Indians who are on the Tribal rolls shall be eligible to receive per capita distributions as provided by this Ordinance.

b. Membership in the Poarch Band of Creek Indians shall be determined in accordance with the Tribal Enrollment Ordinance. The rights of a person to appeal an adverse determination on his or her membership application shall be determined under the Tribal Enrollment Ordinance.

c. In order to provide for orderly review and consideration, membership applications approved within sixty (60) days or less of a scheduled per capita distribution date (including a birthday payment) shall not be found eligible for distribution until the next scheduled distribution.

d. Each member shall be responsible for providing current address information to the Census Office in accordance with procedures and instructions established by the Census Office. Members shall be responsible for providing address changes to the Census Office as they occur. The Tribe is not responsible for sending a per capita check to the wrong address if the Tribal member has failed to provide a current and correct address.

**Section 4. Per Capita Payments to Minors and Other Legal Incompetents**

a. The interests of minors and other legally incompetent members, otherwise entitled to receive per capita payments, shall be deposited into an irrevocable Poarch Creek Trust Fund (PCTF) which shall be established for the benefit of each such minor or legally incompetent member in low-risk interest-bearing account in a federally-insured financial institution.

b. Distribution of the Trust Funds. The trust assets of each such account including all interest and other investment income maintained for a minor shall be disbursed to the member-beneficiary upon reaching the age of eighteen (18) in an amount and manner to be approved by the Tribal Council, or to the member-beneficiary's heirs in the event of the member's death prior to reaching age eighteen. The trust assets of each such account maintained for a legally incompetent member shall be disbursed to the member-beneficiary upon the end of the legal incompetency as determined by a Court having jurisdiction over the matter, or to the member-beneficiary's heirs in the event of the member's death.

c. Funds in the PCTF of a minor or legally incompetent member may be available for the benefit of a beneficiary's health, education, and welfare when the needs of such person are not being met from other sources, such as Tribal funds or state or federal public entitlement programs, and upon a finding of need by the Tribal Court. In order to request such funds, the following provisions apply:

(1) A written request must be submitted to the Tribal Court by the beneficiary's parent or legal guardian detailing the purpose and needs for such funds.

(2) The parent or legal guardian shall maintain records and account to the Tribal Court in sufficient detail to demonstrate that the funds disbursed were expenses as required by this Ordinance and any applicable federal law.

(3) Any other standards, procedures, and conditions that may be subsequently adopted by the Tribal Council consistent with any applicable federal law shall be met.

d. The Tribal Court of the Poarch Band of Creek Indians shall have jurisdiction and authority over any dispute regarding funds held for minor or legally incompetent members.

## **Section 5. Garnishment of Per Capita Payments**

a. **Garnishment.** Except as specifically set forth in this section, the per capita disbursements to which each Tribal member is entitled are absolutely exempt from creditors and shall not be garnished, levied, attached, or paid to any other person or entity. Per capita payments may be garnished only as follows:

(1) *Debts owed to the United States Treasury—Internal Revenue Service.* The Internal Revenue Service on behalf of the United States Treasury may request a levy of a member's per capita distribution for the member's tax liability, including interest and costs. If a Notice of Levy is issued pursuant to applicable Internal Revenue Code sections, then the Tribe shall comply.

(2) *Garnishment for child support.* A parent, guardian, court-appointed trustee, or other individual or entity, who has lawfully provided for the support of any minor Tribal member, may request the court-ordered garnishment of any responsible enrolled member's per capita distribution for the support of the minor child. Garnishment for child support shall be effective only if:

(i.) There is a valid, final, court order or judgment that is enforceable according to any uniform child support act adopted by the Tribe.

(ii.) The garnishment is received by the Tribal finance office no less than 30 days before a scheduled disbursement.

b. *Priorities.* In the event there are multiple garnishments against a member, priority for disbursement of garnished funds shall be in the order set forth in this section, namely:

(1) Debts to the United States Treasury for tax liability; and

(2) Child support.

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

c. *Limitation on garnishment.* Except as specifically set forth in subsection (a) of this section and Section 6 below, the per capita 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.

## **Section 6. Involuntary Assignment for Tribal Obligation Default**

a. The per capita payment program authorized by this Ordinance is intended to confer an equivalent benefit on each similarly situated member of the Tribe. However, some members, from time to time, fail to make payment to the Tribe due on loans and advances from the Tribe or tribal entities, and for fees, costs, rent, damages, judgments, user fees, or other charges arising from programmatic benefits and governmental services provided by the Tribe or tribal entities to such members. It would be contrary to the purpose of the per capita payment program, and an inequitable result, if a member responsible for an outstanding Tribal Obligation Default participated in a per capita payment equally with members who are not responsible for any Tribal Obligation Default. Therefore, the Tribal Council has determined it to be appropriate to incorporate this Section 6 in the Gaming Revenue Allocation Ordinance.

b. Notwithstanding anything to the contrary contained in this Ordinance, and without regard to a member's eligibility to participate in a per capita distribution pursuant to Section 3, a member's per capita distribution shall be involuntarily assigned to the Tribe in the event of a Tribal Obligation Default, and the Tribe will retain for its own use the share of tribal net gaming revenues to which such member would have otherwise been entitled to receive, until the entire amount of all Tribal Obligations with respect to which such member is in Tribal Obligation Default has been recovered by the Tribe.

c. Upon occurrence of a Tribal Obligation Default, the Tribe shall, upon written notice thereof to the responsible member, have the right and authority, as provided in Subsection b. above, to retain and apply the share of tribal net gaming revenues, to which such member would otherwise be entitled as a per capita payment, without any further action, proceeding, or authorization by the Tribal Court or any other authority; provided, however, within seven (7) days of such member's receipt of notice from the Tribe, the affected member may petition the Tribal Court for a declaration that no Tribal Obligation Default has occurred or that the amount of Tribal Obligations that the Tribe claims is in default is inaccurate. Pending the Tribal Court's decision on such petition, the Tribe shall hold any per capita share of such member retained pursuant to this Section in escrow. The Tribe may rescind a notice of Tribal Obligation Default and resume paying per capita to the member if the Tribal Obligations at issue are satisfied by another means.

d. The unenforceability of a direct claim against a member for collection and payment of Tribal Obligation(s) at issue due to expiration of a statutory limitation period, discharge in bankruptcy, or any other defense of such member against such direct claim shall not limit or affect the involuntary assignment of the member's per capita distribution pursuant to this Section.

e. Upon a member's commission of a Tribal Obligation Default, such member shall cease to have any property right, entitlement, or interest in any per capita distribution made thereafter until the Tribe has retained and recovered the entire amount of Tribal Obligations concerning which such member is in Tribal Obligation Default. From and after such complete retention and recovery of defaulted Tribal Obligations, the member shall again be entitled to participate in future per capita payments.

f. Without limitation on the foregoing, each Tribal Obligation incurred and owed by a member to the Tribe shall be secured by a first priority, perfected lien and security interest, attaching to all future per capita distributions to which such member may be entitled, automatically and without further tribal action. The Tribe may foreclose such lien upon commission of a Tribal Obligation Default by a member upon notice to such member and without further action, proceeding, or authorization of any kind by the Tribal Court or any other authority; provided that the affected member may petition the Tribal Court for a declaration concerning the existence and amount of Tribal Obligation Default pursuant to Subsection c. The Tribe may enforce all rights and remedies available to it against a member who has defaulted on Tribal Obligations individually or cumulatively at its discretion, and it shall not be required to make any election of remedy.

## **Section 7. Taxation**

Per capita payments are subject to Federal taxation. Members receiving payments shall be informed that they are responsible for payment of applicable taxes. The Tribe shall deduct and withhold taxes from per capita payments to the extent and in the amounts required by 26 U.S.C. § 3402(r) or any successor statute. In addition, the Tribe may, in its discretion, withhold such greater amount of tax from per capita payments to a Member as such Member may voluntarily request.

**Section 8. Enforcement and Dispute Resolution**

The Tribal Court of the Poarch Band of Creek Indians shall have jurisdiction and authority to review the expenditure of net gaming revenues in accordance with this Ordinance, to enforce this Ordinance and appropriately remedy any instance of non-conformance and to resolve any disputes arising from the allocation of net gaming revenue and the distribution of per capita payments.

**Section 9. Effect on Other Laws**

This Ordinance supersedes, replaces and repeals all prior policies, procedures, and ordinances with regard to the use of gaming net revenues.

**Section 10. Amendments**

This Ordinance may be amended in accord with the Tribal Constitution. All amendments shall be subject to the final approval of the Secretary of the Interior before they become effective.

**APPROVAL**

I, the Chairman of the Poarch Band of Creek Indians, hereby affix my signature to this ordinance authorizing it to become official this 1st day of September, 2011.



Buford L. Rolin  
Tribal Chairman  
Poarch Band of Creek Indians

**CERTIFICATION**

I, the Secretary of the Poarch Band of Creek Indians, certify that the foregoing is a true extract from the minutes of the Tribal Council meeting of the Poarch Band of Creek Indians, compromised of nine members with 8 in attendance on the 1st day of September, 2011, and that the above is in conformity with the provisions therein adopted by a vote of 8 in favor, 0 against, and 0 abstentions, and that the above is the signature of the Chairman.



David W. Gehman  
Secretary  
Poarch Band of Creek Indians