

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

NOV 07 2024

Date: _____

ORDINANCE NO.: 334 (2024)

An ordinance amending C.C. Chapter 16C-6 to modify the distribution schedule of the Minors Trust Fund.

WHEREAS, Cherokee Code (C.C.) Sec. 16C-6, entitled "Minors and other legal incompetent", governs distributions from the Minors Trust Fund to eligible Minors Fund participants when they become adults; and

WHEREAS, generally speaking, Sec. 16C-6 requires distributions to be made on a staggered schedule of three distributions, the first being made when the eligible participant reaches 18 years of age, the second at 21 years of age, and the third at 25 years of age; and

WHEREAS, the EBCI Investment Committee and the EBCI Office of Budget and Finance have determined that a new schedule of five staggered distributions, at ages 18, 20, 22, 24 and 25, will better meet the needs of Minors Fund participants and will decrease the tax burden participants experience with the current the distribution schedule.

NOW, THEREFORE, BE IT ORDAINED the Eastern Band of Cherokee Indians Tribal Council, in Council assembled, at which a quorum is present, that C.C. Chapter 16C-6 shall be amended to read as follows:

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

The interests of minor and legally incompetent members otherwise entitled to receive per capita payments 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.
- (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. The necessary provisions to achieve these goals shall be included in the trust documents.

1 (5) *Contingent Provisions.* To the extent that applicable law and IRS guidance allows the following trust
2 provisions to be included without triggering adverse tax consequences to the individual trust
3 beneficiaries (e.g., taxation prior to actual distribution of the trust funds), the following shall be
4 included in, or later added by amendment to, the trust documents. To the extent that the tax
5 consequences of including these provisions is unclear or uncertain under applicable law or IRS
6 guidance, the Trustees of the Minors Trust Fund are authorized to request an IRS private letter ruling
7 and to act in accordance with any IRS guidance received pursuant to such a request.

8 (A) There shall be ~~three~~five staggered distributions from the minor's trust fund to eligible members
9 reaching the age of majority as follows:

10 1) The first distribution shall be in an amount which is the lesser of ~~\$50,000.00~~ 25,000.00 or
11 one-~~fifth~~ fourth the amount of the total amount held in trust for the eligible member, and
12 shall be made upon meeting the following eligibility criteria:

13 a. Prior to receiving the first distribution, an enrolled member who reaches the age of 18
14 years must submit the following documentation: (1) the original or a certified copy
15 of their high school diploma or GED; (2) if the member has been home schooled, a
16 writing from the state agency in the state in which the member was home schooled
17 indicating that the member has successfully passed the state-wide test accepted by the
18 state for such students. The enrolled member must submit the documentation to the
19 Trustees prior to receiving any funds from the Minors Trust Fund. If the Tribe
20 determines that the diploma, GED or other writing is questionable, the Tribe may
21 require other proof. Proof of completion of a course of studies from a correspondence
22 school is not acceptable; a student or graduate of a correspondence school must also
23 prove that they have successfully passed the same or a similar state-wide test as
24 required in this subsection of home school graduates. Effective April 1, 2011, any
25 minor member will be required to complete the ~~online-Manage-Your-EBCI-Money~~
26 required financial course and include his/her Certificate of Completion to be entitled
27 to receive any monies. Any minor member, who fails to submit the appropriate
28 information as described above shall not be entitled to any monies held on their behalf
29 in the Minors Trust Fund until the minor member has provided evidence of attaining
30 such a degree and Certificate of Completion for the ~~online-Manage-Your-EBCI~~
31 Money Course financial course; or

32 b. The minor member reaches the age of ~~20+~~ years, whichever occurs first. Minor
33 members with learning disabilities or other disabilities may present a certificate of
34 attendance showing that the student has attended a full 12 years of school and that
35 certificate shall be deemed to be an equivalent degree for purposes of this section.

36 2) The second distribution shall be in an amount which is the lesser of ~~\$25,000.00~~ 50,000.00
37 or one-~~fifth~~ fourth the amount of the total amount remaining after the first distribution held
38 in trust for the eligible member, and shall be made when the member reaches the age of
39 ~~24~~ years. If the first distribution occurs under 16C-6(a)(5)a.1)(b) above, then the eligible
40 member shall be distributed both amounts of the first and second disbursements, at the
41 same time, totaling the lesser of ~~\$50,000.00~~ 100,000 or one-~~third~~ half the total of the total
42 amount held in trust for the eligible member.

43 3) The third distribution shall be made when the eligible member reaches age 22 years and
44 shall be in an amount which is lesser of \$50,000 or one-fifth the amount of the total amount
45 remaining after the first and second distributions.

46 4) The fourth distribution shall be made when the eligible member reaches age 24 years and
47 shall be in an amount which is lesser of \$50,000 or one-fifth the amount of the total amount
48 remaining after the first, second, and third distributions.

- 1 3) The ~~fifth~~ third distribution shall be in an amount totaling the entire remaining amount held
2 in trust for the eligible member and shall be made when the eligible member reaches the
3 age of 25 years.

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6 **BE IT FINALLY ORDAINED** that all ordinances which are inconsistent with this ordinance are rescinded, and that
7 this ordinance shall become effective upon ratification by the Principal Chief.

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9 *Submitted by Brandi Claxton, Finance Director*