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CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA
SEP 06 2018

DATE

ORDINANCE NO. 334 (2018)

WHEREAS, the Eastern Band of Cherokee Indians established the Minors Trust Fund under Cherokee Code Section 16C-6 to protect the interests of minor and legally incompetent members of the Eastern Band of Cherokee Indians entitled to receive per capita payments; and

WHEREAS, amendments to the language of the Minors Trust Fund and code provisions are necessary from time to time; and

WHEREAS, the implementation of staggered distributions of the Minors Trust Fund to beneficiaries of the fund limits the access to the trust except for certain permissible advance distributions as provided for in Cherokee Code Section 16C-6; and

WHEREAS, there is a need to amend the Cherokee Code Section 16C-6 and the Minors Trust Fund trust documents to reflect advance distributions for housing needs of beneficiaries of the Minors Trust Fund.

NOW THEREFORE BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee Indians, in Council assembled at which a quorum is present, amendments to the Minors Trust Fund trust document and Cherokee Code 16C-6 are hereby approved as attached.

BE IT FURTHER ORDAINED that any ordinance or resolution that is inconsistent with this ordinance is hereby rescinded.

BE IT FINALLY ORDAINED this ordinance shall become effective upon ratification by the Principal Chief and acceptance by the United States Department of Interior as a change to the tribe's Revenue Allocation Plan.

Submitted by: The EBCI Investment Committee

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.

(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 three staggered distributions from the minor's trust fund to eligible members reaching the age of majority as follows:

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

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a. Prior to receiving the first distribution, an enrolled member who reaches the age of 18 years 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 online Manage Your EBCI Money 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 online Manage Your EBCI Money Course; or

b. The minor member reaches the age of 21 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 \$25,000.00 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 21 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 \$50,000.00 or one-half the total of the total amount held in trust for the eligible member.

3) The third 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) 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~~~~minor~~ 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—214) 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 ~~minor members~~ beneficiary's unmet health care needs. In the event of unmet health care needs, a ~~minor~~ beneficiary may request an advance distribution of ~~his~~ 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 met from other available personal, Tribal or public sources.

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(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

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(4) If such a request is granted, the amount disbursed shall not exceed 98% of the home's purchase price and 80% 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.

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(de) Decision Process for Advance Distributions.

(1) Any advance distribution for educational, ~~or~~ 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.

(fe) 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 in order of priority:

(A) If the deceased minor 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 minor has no surviving spouse or children, then the funds shall be divided and distributed equally to the minor's surviving parent(s), if any.

(C) If the deceased minor has no surviving spouse, children or parents, then the funds shall be divided and distributed equally to the minor's surviving sibling(s), if any.

(D) If no spouse, children, parents, or siblings survive the deceased minor, then the deceased minor's share shall revert to the Grantor (the Tribe).

(E) In no event shall the funds of a deceased minor be distributed to the minor'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 legal guardian(s), who the Tribe has determined provides the primary care for the minor recipient and is legally responsible for him or her.

(gf) *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.

(hg) *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.

(ih) *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.

(ji) *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.

(kj) *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.

(lk) *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.

(ml) *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. 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.

(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. 401, 9-18-2010; Ord. No. 38, 6-2-2016)