

Band Assembly Bill 09-02-03-01

A bill amending Title 24 of the Mille Lacs Band Statutes Annotated.

The District I Representative introduced the following bill on the 26th day of October, 2000.

Preamble

Be it enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Title 24 of the Mille Lacs Band Statutes Annotated and repealing and replacing 24 MLBSA § 3308. The Band Assembly determines that it is in the best interests of the Band to limit the amount of earnings or other income that may be withheld from individuals under the jurisdiction of the Mille Lacs Band.

§ 1. Amendment to Title 24 and Repealing and Replacing 24 MLBSA § 3308

24 MLBSA § 3308 is repealed and replaced in its entirety by the provisions of § 2 of this Act and Title 24 of Mille Lacs Band Statutes Annotated is amended to include the remaining sections of this Act.

§ 2. Withholdings from Earnings

The Court of Central Jurisdiction shall have the authority to order the Office of Management and Budget; or any political subdivision of the Band; or any employer or other entity within the territorial jurisdiction of the Mille Lacs Band, to deduct from the earnings of any person to which a debt judgment has been obtained. Except in circumstances of child support or spousal maintenance awards, the wages or earnings of individuals shall not be taken in excess of 10 percent of their disposable earnings.

§ 3. Withholdings from Per Capita Payments

The garnishment, attachment or any other withholding from per capita payments to Mille Lacs Band members for debts owed are prohibited except as provided for in this Act.

- (a) The Secretary/Treasurer of the Mille Lacs Band or his/her designee may withhold up to 50% of any per capita payment from an individual and applied towards any debt(s), or fine(s) from the Court of Central Jurisdiction, owed the Mille Lacs Band or any political subdivision not inconsistent with the following;
 - (1) Any withholding or deduction of a per capita payment by the Secretary/Treasurer under this Act shall not occur except pursuant to Mille Lacs Band Ordinance 08-95 § 2 et seq. or 3 MLBSA § 7.

- (2) Any withholding or deduction from a per capita payment under § 3(a) of this Act shall take priority over any withholdings occurring under § 3(b) of this Act.
 - (3) Any withholdings or deductions from a per capita payment under § 3(a) shall be applied towards debts or fines owed the Mille Lacs Band of Ojibwe government prior to a political subdivision of the Band.
- (b) The Court of Central Jurisdiction shall have the authority to order the Office of Management and Budget to garnish or withhold from the per capita payment of any person to which a civil judgment(s) has been obtained, whether individually or cumulatively, in an amount not to exceed 30%.
 - (c) The Court of Central Jurisdiction shall have the authority to order the Office of Management and Budget to garnish or withhold up to 100% of any per capita payment for child support payments or arrearages. Any such garnishment or withholding made pursuant to § 3(c) of this Act shall take priority over any garnishment or withholding made pursuant to § 3(a) or § 3(b) of this Act.
 - (d) In the event that more than one garnishment or withholding occurs for civil judgment(s), fine(s) or debt(s) pursuant to § 3(a) and § 3(b) of this Act, the following shall apply;
 - (1) If the amount withheld from the per capita payment under § 3(a) exceeds 30% no withholdings may occur under § 3(b).
 - (2) After applying an amount withheld under § 3 (b) of this Act to the creditor first in priority the remaining amount, which may not exceed 30% cumulatively, of a per capita payment may be withheld. Priority shall be in the judgment first filed in the Court of Central Jurisdiction.

§ 4. Prohibition on Assignment of Per Capita Payment

The assignment or transfer of any interest in a per capita payment is prohibited except as provided for in this Act.

- (a) An assignment or transfer of interest in per capita payments may only be made to the Mille Lacs Band or any political subdivision thereof.
- (b) To the extent that a per capita payment is assignable or transferable under § 4 (a) of this Act, an interest in per capita payments may not be made in excess of 50% of the per capita payment(s).

§ 5. Sovereign Immunity of the Band

Nothing contained in this Act shall be construed as a waiver of the Sovereign Immunity of the Mille Lacs Band of Ojibwe.

§ 6. Definitions

For the purpose of this Act:

- (a) The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, or otherwise, and includes periodic payments to a personal retirement program.
- (b) The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required to be withheld such as but not limited to federal income tax, social security, state income tax if any, pension deductions, cost of health insurance coverage for obligor and dependants.
- (c) The term "garnishment" means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of any lawful debt.
- (d) The term "per capita payment" means any distribution of gaming proceeds to members of the Mille Lacs Band in accord with the net gaming distribution plan as approved by the Secretary of Interior pursuant to 25 U.S.C. § 2701 et seq. or as may otherwise be defined by Band Statute.
- (e) The term "political subdivision" shall mean the Mille Lacs Reservation Housing Authority as defined in Title 12 of the Mille Lacs Band Statutes Annotated and the Corporate Commission of the Mille Lacs Band as defined Title 16 of the Mille Lacs Band Statutes Annotated or any other entity defined in Band statutes as a political subdivision of the Band.

§ 7. Other Remedies and defenses

Nothing contained in this Act shall be construed as altering or amending any remedies or defenses that may otherwise be available to an individual under Band law.

§ 8. Effective date

The effective date of this Act shall be the day after it becomes law.

Ordinance 03-01

Introduced to the Band Assembly on this
twenty-sixth day of October in the year
Two thousand.

Passed by the Band Assembly on this
twenty-sixth day of October in the year
Two thousand.

Herb Weyaus

Herb Weyaus, Speaker of the Assembly

APPROVED

Date: _____

Date: 11/03/00

Melanie Benjamin, Chief Executive

Melanie Benjamin

Vetoed

FILED

Date: _____

Jay Kanassatega, Acting Solicitor General

OFFICIAL SEAL OF THE BAND