

Ordinance 27-01

An Ordinance amending Title 24 of the Mille Lacs Band Statutes Annotated.

The District II Representative introduced the following bill on the 17th day of July, 2001.

Preamble

It is 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 and Court Order #38. 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. The Band Assembly seeks to establish policies and procedures for a fair and effective method of debt collection in the Court of Central Jurisdiction.

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24 MLBSA § 3308 is repealed and replaced in its entirety by the provisions of § 2 of this Act and Title 24 of the Mille Lacs Band Statutes Annotated is amended to include the remaining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

§ 2. Definitions

For the purpose of this Act:

- (a) The term "actual damages" means an amount assessed pursuant to an adjudicated matter before a court of competent jurisdiction for damages actually incurred. Such damages do not include nominal, exemplary or punitive damages, or court costs or attorney fees.
- (b) 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.
- (c) The term "disposable income" means that part of the income of any individual remaining after the required deduction from that income of any amounts, such as but not limited to, federal income tax, social security, state income tax, if any, pension deductions, and cost of health insurance coverage for obligor and dependents. Disposable income shall also include per capita payments.
- (d) The term "garnishment" means any legal or equitable procedure through which the earnings of an individual are withheld for payment of any lawful debt.

- (e) 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.
- (f) 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 in Title 16 of the Mille Lacs Band Statutes Annotated or any other entity defined in Band statutes as a political subdivision of the Band.

§ 3. Withholding from Earnings

As an ancillary proceeding to (1) a civil action for the recovery of money filed in the Court of Central Jurisdiction, or (2) a civil judicial proceeding, public act or record granted full faith and credit by the Court of Central Jurisdiction pursuant to 24 MLBSA § 2009, the Court of Central Jurisdiction shall have the authority, pursuant to its subject matter jurisdiction as described in 5 MLBSA § 111, to order the Office of Management and Budget to deduct from the earnings of any person to which a debt judgement or judgement for child support has been obtained and remit the amount deducted to the judgement creditor. Except in circumstances of child support payments and arrearages, the earnings of an individual shall not be taken in excess of ten percent (10%) of the individual's disposable income.

§ 4. Withholding from Per Capita Payments

As an ancillary proceeding to (1) a civil action for the recovery of money filed in the Court of Central Jurisdiction, or (2) a civil judicial proceeding, public act or record granted full faith and credit by the Court of Central Jurisdiction pursuant to 24 MLBSA § 2009, the Court of Central Jurisdiction shall have the authority, pursuant to its subject matter jurisdiction as described in 5 MLBSA § 111, to order the Office of Management and Budget to withhold portions of per capita payments from Band members against whom a debt judgement or judgement for child support has been obtained and remit the amount withheld to the judgement creditor. Except in circumstances of child support payments and arrearages, such amounts shall not exceed thirty percent (30%) of a payment. In cases involving child support payments and arrearages, such amount shall not exceed seventy percent (70%) of a payment.

§ 5. Ripeness

The Court of Central Jurisdiction shall not initiate a withholding proceeding pursuant to this Act for any debt that is not at least 60 days past due, except in circumstances of current child support payments and arrearages.

§ 6. Notice to Debtor; Hearing

In any withholding proceeding pursuant to this Act, the debtor shall receive notice as required by the Mille Lacs Band Rules of Civil Procedure. Upon such notice to the debtor, the Court of Central Jurisdiction shall hold a hearing, at the debtor's request, to permit the debtor to dispute the financial obligation in question. The burden of proof shall be on the debtor to show that a proposed garnishment would be improper.

§ 7. Priority

The Court of Central Jurisdiction shall order any deduction from a per capita payment in the following order:

- (a) child support payments or arrearages;
- (b) Debts owed to the Band or any political subdivision thereof;
- (c) Federal creditor obligations;
- (d) Debts owed to other creditors who have obtained a judgement in a court of competent jurisdiction, if such judgement is been granted full faith and credit by the Court of Central Jurisdiction.

§ 8. Full Payment of Debts

The Court of Central Jurisdiction shall order the payment of debts recognized pursuant to section 3 or 4 from the Band member's per capita payments until such debts are repaid in full or discharged by the creditor or a court under the following conditions:

- (a) child support payments and arrearages, regardless of when incurred, shall at all times have priority over debts recognized pursuant to (b), (c) and (d) of § 7.
- (b) At no time shall the Court of Central Jurisdiction order deductions from a per capita payment in excess of 70% of such payment.

§ 9. Notice to Creditor

The Court of Central Jurisdiction shall duly inform any creditor whose prior judgement has been modified by the Court due to a judgement granted in favor of a subsequent creditor with higher priority.

§10. Duty of Creditor

Failure by the Creditor to inform the Court of Central Jurisdiction when a debt has been repaid in full or discharged by the creditor or a court shall constitute grounds for a finding of contempt of court by the Court of Central Jurisdiction.

§ 11. 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 or any of its political subdivisions.

§ 12. Civil Procedure

All actions pursuant to this Act shall be conducted in accordance with the Mille Lacs Band Rules of Civil Procedure. The Office of Solicitor General shall develop appropriate forms for use in any action pursuant to this Act. The Court of Central Jurisdiction shall retain copies of such forms for use by any party.

§ 13. Severability

If any section, term or provision of this Act is held by the courts of the Mille Lacs Band to be illegal or in conflict with any existing Band Statute or other applicable law, the validity of the remaining sections, terms and/or provisions of this Act shall not be affected and shall retain the force of Band law.

§ 14. Effective date

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

Ordinance 27-01

Introduced to the Band Assembly on this
Seventeenth day of July in the year
Two thousand one.

Passed by the Band Assembly on this
Seventeenth day of July in the year
Two thousand one.

APPROVED

Date: 7/25/01

Date: _____

FILED

Date: 7/25/01

Herb Weyaus

Herb Weyaus, Speaker of the Assembly

Melanie Benjamin

Melanie Benjamin, Chief Executive

Vetoed

Tadd Johnson

Tadd Johnson, Solicitor General

OFFICIAL SEAL OF THE BAND