

Ordinance 38-12

An Ordinance amending Subchapter IV-a (Withholding from Earnings and Per Capita Payments) of Chapter 3 (Procedure) in Title 24 of the Mille Lacs Band Statutes Annotated entitled Judicial Proceedings which authorizes, in part, the withholding from per capita distribution to amend the language in Band Assembly Bill 14-04-37-12 adopted on this date.

The District II Representative introduced the following Bill on the 9th day of November, 2011.

Preamble

It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Subchapter IV-a of Chapter 3 in Title 24 of the Mille Lacs Band Statutes Annotated to amend the language in Band Assembly Bill 14-04-37-12.

I.

1. Subchapter IV-a of Chapter 3 in Title 24 of the Mille Lacs Band Statutes Annotated is hereby amended as follows:

§ 3351. Definitions

(e) The term “per capita payment” means any distribution of gaming proceeds to members of the Mille Lacs Band pursuant to the Band’s Net Gaming Revenue Allocation Plan as approved by the Secretary of the Interior pursuant to 25 U.S.C. § 2701 *et seq.*, or any other distribution to a member of the Mille Lacs Band that is designated a “per capita payment” by Band statute. No Band Member and no other person or entity shall have any right, title, interest or entitlement in or to any per capita payment unless and until the payment is made. The rights, if any, of judgment creditors or other persons or entities to obtain a share of a per capita payment when it is made are governed by Sections 3352 through 3359 of this Title.

§ 3352. 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 withhold from the earnings of any person to which a debt judgment or judgment for child support or arrearages has been

obtained and remit the amount withheld to the judgment creditor. Except in circumstances of child support payment or arrearages, the earnings of an individual shall not be withheld in excess of ten percent (10%) of the individual's disposable income. Except as specifically provided in this Section or controlling Federal law, the Court shall not order any withholding from the earnings of any person to satisfy any judgment or other claim.

§ 3353. 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 and remit portions of per capita payments from Band Members for the sole purpose of satisfying a judgment or a lien against the Band Member to whom the per capita payments are payable that is:

- (a) In favor of the United States Internal Revenue Service;
- (b) For child support payments or arrearages;
- (c) In favor of an individual Band member, *provided* that the Court shall not order the withholding and remission of any portion of a per capita payment to satisfy a judgment or lien obtained in connection with a loan or other transaction relating to a bail bond or other similar transaction; or
- (d) In favor of the Band or any political subdivision thereof.
- (e) Except for judgments or liens for child support payments or arrearages, the total amounts withheld from a per capita payment to satisfy the judgments or liens listed above shall not exceed thirty percent (30%) of the payment. In cases involving judgments or liens for child support payments or arrearages, the total amount withheld shall not exceed fifty percent (50%) of the payment. Except as specifically provided in this Section or controlling Federal law, the Court shall not order any withholding from a per capita payment to satisfy any judgment or other claim.

§ 3356. Priority

The Court of Central Jurisdiction shall give priority to any withholding from earnings or per capita payments in the following order:

- (a) Satisfaction of a judgment or lien in favor of the United States Internal Revenue Service, except to the extent that Federal law allows priority to be given to satisfaction of a judgment or lien for child support payments or arrearages;
- (b) Satisfaction of a judgment or lien for child support payments or arrearages;
- (c) Satisfaction of a judgment or lien in favor of individual Band Members who obtained the judgment lien in the first instance in the Court of Central Jurisdiction, *provided* that the Court shall not order the withholding of any portion of a per capita payment to satisfy a judgment or lien obtained in connection with a loan or other transaction relating to a bail bond or other similar transaction;
- (d) Satisfaction of a judgment or lien in favor of the Band or any political subdivision thereof;
- (e) Satisfaction of any other judgment in favor of a Band Member for which withholding from earnings is authorized under Section 3352 of this Subchapter, *provided* that the Court shall not order the withholding of a portion of a per capita payment to satisfy such a judgment; and
- (f) Satisfaction of any other judgment in favor of a non-Band Member for which withholding from earnings is authorized under Section 3352 of this Chapter, *provided* that the Court shall not order the withholding of a portion of a per capita payment to satisfy such a judgment.

§ 3357. Full Payment of Debts

The Court of Central Jurisdiction shall order the withholding of portions of a person's earnings or from a Band Member's per capita payments in accordance with Sections 3352 through 3356 of this Subchapter until such time as the judgments or liens for which portions of the person's earnings or the Band Member's per capita payments are being withheld are paid in full or discharged by the judgment creditor.

§ 3358. Notice to Creditor

The Court of Central Jurisdiction shall duly inform any creditor for whom a prior order of withholding has been modified by the Court due to an order of withholding granted in favor of a subsequent creditor with higher priority.

§ 3359. Duty of Creditor

Any creditor who has obtained an order of withholding pursuant to this Chapter must notify the Court of Central Jurisdiction within five (5) days when a judgment subject to such an order has been repaid in full or discharged by the creditor. The failure of a creditor to provide such notice to the Court shall constitute grounds for a finding of contempt by the Court of Central Jurisdiction.

Ordinance 38-12
(Band Assembly Bill 14-04-38-12)

Introduced to the Band Assembly on this
ninth day of November in the year
Two-Thousand eleven.


Passed by the Band Assembly on this
ninth day of November in the year
Two-Thousand eleven.



Curt Kalk, Speaker of the Assembly

APPROVED:

Date: 11-10-11



Marge Anderson, Chief Executive

OFFICIAL SEAL OF THE BAND