



Title 1. Government and Finances – Chapter 123 PER CAPITA Rule #1 –Distributions Rule

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1.1. Purpose and Delegation

1.1-1. *Purpose.* The purpose of this rule is to create processes by which the Trust Enrollment Department, with the approval of the Trust Enrollment Committee, determines the valuation dates for the minors trust payment funds, addresses prior adult per capita payment distributions, determines when a guardian qualifies for distribution from an established trust, and addresses a decedent's trust account balance distribution.

1.1-2. *Delegation.* The Per Capita law delegated the Trust Enrollment Committee rulemaking authority pursuant to the Administrative Rulemaking law.

1.2. Adoption and Authority

1.2-1. This rule was adopted by the Trust Enrollment Committee in accordance with the procedures of the Administrative Rulemaking law.

1.2-2. This rule may be amended or repealed pursuant to the procedures set out in the Administrative Rulemaking law.

1.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

1.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure, or other regulation; the provisions of this rule control.

1.2-5. This rule supersedes all prior rules, regulations, internal policies, or other requirements relating to the Per Capita law.

1.3. Definitions

1.3-1. This section governs the definitions of words and phrases used within this rule. All words not defined herein are to be used in their ordinary and everyday sense.

(a) "Approved Letter of Authority" means a certified copy of court documentation evidencing appointment of a legal guardian of estate for a legally incompetent adult such as Letters of Guardianship or other court orders.

(b) "Death Certificate" means a document, which for the purpose of this rule shall be either an original or certified copy, documenting the death of an individual.

(c) "Department" means the Oneida Trust Enrollment Department.

(d) "Guardian" means a person appointed by a court of competent jurisdiction to manage the financial affairs of a Tribal member who a court has determined to be incompetent.

- (e) “Interested Party” means a person(s) who may potentially be considered a beneficiary of a deceased Tribal member’s remaining trust fund account.
- (f) “Legally Incompetent Adult” means a Tribal member who is at least eighteen (18) years of age and has been declared incompetent by a court of competent jurisdiction pursuant to applicable law(s).
- (g) “Judiciary” means the Nation’s judicial system, which includes the Family Court, Trial Court, and/or Appellate Court.
- (h) “Nation” means the Oneida Nation.
- (i) “Personal Representative” means a person to whom authority to administer a decedent’s estate has been granted by the Division of Land Management, the Judiciary, or another court of competent jurisdiction.
- (j) “Tribal Member” means an individual who is an enrolled member of the Nation.
- (k) “Trust Account” means an account(s) established by the Trust Enrollment Committee for the purpose of maintaining per capita funds for persons pursuant to the Nation’s revenue allocation plan, which includes, but is not limited to, minor beneficiaries and legally incompetent adults.
- (l) “Trust Enrollment Committee” or “Committee” means that body designated by the General Tribal Council to manage the trust funds for the Nation on behalf of Tribal members, and which is also responsible for the Nation’s enrollment records.

1.4. Valuation

- 1.4-1. The valuation of the minors trust portfolios shall be determined at least quarterly by the Committee.
- 1.4-2. The Committee may delegate valuation reporting responsibilities to duly selected vendors and may share data determined by the Committee to be critical to the completion of the valuation report with the vendor.

1.5. Distribution of Prior Adult Per Capita Payments

- 1.5-1. The Nation shall distribute all properly submitted and eligible requests for a prior unclaimed adult per capita payment pursuant to section 123.5-2(e) of the Per Capita law during the next distribution date as approved by the Committee or established by law.
- 1.5-2. The Nation shall distribute all properly submitted and eligible requests to reissue a prior distribution for which a Tribal member claimed, but did not redeem, within a reasonable amount of time. Upon notice from the Oneida Accounting Department of a rejected direct deposit, the Nation may reissue the check without further action from the Tribal member.

1.6. Distribution to a Guardian from a Trust Account

- 1.6-1. Tribal members who have been declared legally incompetent and whose guardian has provided the Department with an Approved Letter of Authority, shall have their per capita shares placed into a trust account pursuant to the Per Capita law.
- 1.6-2. The guardian may file a petition with the Department to request distributions from a legally incompetent adult’s trust account for that individual’s health, welfare, and/or educational expenses.
 - (a) The petition may include a request for regular distributions necessary for the care of the legally incompetent adult.

(b) Regular distributions may be authorized on a monthly, quarterly, semi-annual, or other schedule.

1.6-3. The petition filed by the guardian of a legally incompetent adult, which shall be made available upon request by the Department, shall contain, at a minimum, the following information:

(a) Name, address, date of birth, and social security number of the legally incompetent adult individual.

(b) An explanation for the request for a disbursement from the trust account (i.e. proposed use of the funds).

(c) The amount of money requested and any instructions for making the disbursement (e.g. to whom the money will be paid).

(d) If the petition requests a regular distribution it should state the justification that funds need to be disbursed on a regular basis and should state the requested method and frequency of payment.

1.6-4. The Trust Enrollment Department Director or his/her designee shall either grant or deny the request within ten (10) business days of the date the petition was filed. If the request is denied, the Department shall send a written copy of the decision to the guardian by first class mail.

1.6-5. A guardian that is dissatisfied with the Trust Enrollment Department Director's decision may appeal to the Judiciary's Court of Appeals in accordance with any applicable rules and procedures.

1.7. Distribution of a Decedent's Trust Account

1.7-1. Upon receipt of an obituary or death certificate to validate a Tribal member's death:

(a) The Department will change the membership record to deceased.

(b) The Department will perform a search of the trust account records to identify if the deceased has a trust account with a remaining balance. The findings of the search shall be documented on the member record.

(1) If the deceased Tribal member is found to have a trust account with a remaining balance, a documented accounting of the funds shall be recorded and the Department will continue processing in accordance with section 1.7-2 of this rule.

(2) If the deceased Tribal member is found to have a trust account with no remaining balance or no trust account, a documented accounting shall be maintained for the record with no further action under this rule.

1.7-2. Any notices pursuant to this section of the rule shall be sent to the last known address on file by first class mail.

(a) When there is a beneficiary designated, refer to section 123.5-3(b)(1) of the Per Capita law.

(b) Within thirty (30) calendar days of receiving an obituary or death certificate of a Tribal member with a trust account balance for which no beneficiary has been named, the Department shall send notice to any known potentially interested party(s) with information about how trust account balances may be claimed. The Department shall copy the Division of Land Management's Probate Department on all notices sent to potentially interested parties.

(1) If the deceased Tribal member is eighteen (18) years of age or older, interested parties that shall receive notice include:

- (A) spouse (widow or widower);
- (B) adult children or the legal guardian/custodian of minor children (natural or legally adopted);
- (C) grandchild or grandchildren;
- (D) parent(s); and
- (E) brother(s) and/or sister(s).

(2) If the deceased Tribal member is younger than eighteen (18) years of age, interested parties that shall receive notice include:

- (A) spouse (widow or widower);
- (B) legal guardian/custodian of minor children (natural or legally adopted);
- (C) parent(s) or legal guardian/custodian;
- (D) brother(s) and/or sister(s); and
- (E) grandparent(s).

1.7-3. The Department shall process trust account disbursement under the following circumstances:

(a) The decedent designated a trust account beneficiary which is on file with the Department and the Department has received the following within one (1) year from the date of the Department's notice pursuant to section 123.5-3(b)(1) of the Per Capita law:

(1) A complete and notarized Release for Deceased Trust Account form.

(b) The decedent did not designate a trust account beneficiary and the Department has received the following from an interested party or personal representative within one (1) year from the date of the Department's notice pursuant to section 1.7-2(b) of this rule:

(1) An original domiciliary letter or other legal document allowing an interested party or personal representative to sign on behalf of an estate or receive the money. The Department shall photocopy the document for recordkeeping purposes; and

(2) A complete and notarized Release for Deceased Trust Account form.

1.7-4. The Department shall liquidate any remaining trust account balance when the following has occurred:

(a) When the designated beneficiaries fail to comply with section 1.7-3(a) of this rule within one (1) year from the date of the Department's notice, the Department shall liquidate the trust account and deposit the funds in accordance with the Per Capita law.

(b) When an interested party or personal representative fails to submit the items in section 1.7-3(b) of this rule within one (1) year from the date of the Department's notice, the Department shall liquidate the trust account and deposit the funds in accordance with the Per Capita law.

(1) The Department may grant an extension to an interested party or personal representative upon a showing of good cause submitted prior to the expiration of the one (1) year time limit.

1.8 Per Capita Actions

1.8-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this rule.

1.8-2. No administrative hearing body, including a board, committee or commission, is authorized to hear a complaint regarding actions taken pursuant to this rule.

1.8-3. In regards to taking actions authorized under this law, complaints filed with the Oneida Judiciary shall name the Trust Enrollment Department.

End.

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