HO-CHUNK NATION LEGISLATURE
Governing Body of the Ho-Chunk Nation

Minor's Trust/IGRA Trust Frequently Asked Questions (FAQ)

Why did we make the change for all minors when it affected a small number of people? *The issues with the minors' trust affect* <u>*all*</u> *beneficiaries of the trust. Disabled beneficiaries are impacted because the assets in the minors' trust may disqualify them from federal disability benefits. Other beneficiaries are impacted because they may be subject to penalties for failing to file tax returns. But even beneficiaries who are not disabled and who are current on their tax filing obligations are affected. This is because they are currently paying taxes (and filing tax returns) on amounts that can be tax-deferred.*

Does the current trust stay in a taxed situation? *No. The current trust will be amended so that it is a tax-deferred trust.*

Since we've paid taxes for what we have now that shouldn't be switched to the new trust, or will the trust be reimbursed for all the taxes already paid? *The Nation will not be switching to a new trust. It is amending its existing trust agreement so that it qualifies under IRS and Social Security Administration guidelines. The trustee will track amounts in the trust to ensure that amounts that have already been taxed will not be taxed again.*

How are we going to handle the 18 year olds that haven't graduated? *This issue is still under consideration. What is clear, though, is that per capita distributions for such individuals will not be going into the minors' trust after May 4.*

We also need to explain that the trust is in the Nations name therefore if anything happens it reverts to the Nation. Do the parents receive the portion that is in the current trust if anything happens to the child? *The IRS and Social Security Administration do not require assets of deceased beneficiaries to revert to the Nation. That is only the default rule. The Nation is exploring other options, such as making distributions in accordance with the deceased beneficiary's will or pursuant to intestacy laws.*

Who is affected? *All current and future beneficiaries of the minors' trust will benefit from the switch from a taxable trust to a tax-deferred trust.*

What is changed? *The Trust will be changing to an IGRA Trust. It will change from being an asset of the tribal members to an asset of the Ho-Chunk Nation.*

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Why did this happen? *There were several tribal members that were being denied social security assistance and benefits due to their Minors Trust. In addition, the Nation's Trust & Investment Committee recommended an IGRA Trust for the tax benefits to beneficiaries.*

How does this change remedy the incompetent adult tribal members? Can you explain? *It helps them qualify for disability benefits because the assets in the minors' trust will no longer be treated as assets of the beneficiaries.*

Are there plans to modify the distribution payments back to age 25 or will it remain at 18? *This issue is under consideration.*

What is Phase 1? *Creating the IGRA Trust.*

What is Phase 2? *Staggering distributions, considering the 2nd Trust, and various options that might provide more flexibility and security to tribal member families.*

What is a minor? *A minor is defined as an individual who is under the age of 18.*

What is a legal incompetent? *A legal incompetent is an individual who has been declared to be under a legal disability, other than being a minor, by a court of competent jurisdiction, including tribal justice systems or as established by the tribe.*

What is tax-deferred growth? *Tax-deferred growth means that per capita payments contributed to the minors' trust will not be taxed until distribution (generally not until age 18-25). Currently, the Nation's per capita payments are taxed 1) when they are contributed to the minors' trust, and 2) annually on the income generated in the trust (capital gain, interest, dividends, etc.). That is current taxation as opposed to tax-deferred growth.*

Deferring tax allows assets in the trust to grow faster over time. For example, assume $100,000 is contributed to the trust. If that amount is taxed on its way into the trust, only around $70,000 will actually end up in the trust. But if tax is deferred, the entire $100,000 will end up in the trust. Further, the taxable trust's income from the $70,000 will be taxed each year, while the tax-deferred trust's income from the $100,000 will not be taxed until distribution. And that growth will be compounded tax-free over the course of 18-25 years until distribution. One example of a tax-deferred investment vehicle members may be familiar with is a 401(k) plan. The tax treatment of the amended minors' trust and a 401(k) plan are similar.

Will tribal members pay more for taxes when they turn 18 with these new changes versus what they pay before the changes? *The intention is for beneficiaries of the trust to pay less in taxes over the life of the trust. See the example in response to Question #1.*

What is an IGRA Trust? *An "IGRA trust" is a trust that an Indian tribe establishes under IGRA (Indian Gaming Regulatory Act 25 U.S.C. sections 2701-2721) to receive and invest per* *capita payments for its members who are minors or legal incompetents pending distribution of the trust assets to those members after they attain the age of majority or cease to be legal incompetents.*

A tribe will be treated as a grantor and owner of a trust under IRC sections 671-678 for any period the IGRA trust meets the requirements of Revenue Procedure 2003-14

(8) The governing trust instrument provides that –
(a) trust assets are not available to a beneficiary until the beneficiary attains a specified age or ceases to be a legal incompetent, except for distributions for the health, education, or welfare of the beneficiary made at the sole discretion of the trustee pursuant to the governing trust instrument;
(b) beneficiaries shall have no preferred claim on, or any beneficial ownership interest in, any assets of the trust; any rights created under the trust instrument shall be mere unsecured contractual rights of beneficiaries against the Indian tribe; and at all times during the continuance of the trust, the principal and income of the trust shall be subject to claims of general creditors of the Indian tribe under applicable federal, state, local and tribal laws

How is the IGRA Trust different from the trust we had before? *Tax-deferred growth is also the main difference between the current trust and the IGRA trust. So, the response to question #1 above is equally applicable here. Another benefit of a tax-deferred trust is that there is not an annual tax filing obligation. Currently, all beneficiaries of the minors' trust have an annual tax filing obligation – but only about half of the beneficiaries are fully compliant.*

Could creditors collect on the IGRA funds? *Technically yes, but only if the Nation is insolvent. Furthermore, the Nation has taken steps and will continue to take steps to wall off the minors' trust from the reach of creditors to the extent possible.*

If gaming is no longer, what happens to those funds? *If the Nation can no longer conduct gaming and remains solvent, the amounts in the minors' trust will remain there until distributed under the terms of the Trust Agreement. Because the trust has already been funded, the distributions will be made as contemplated in the Trust Agreement. Before the Nation conducted gaming, it was very much solvent, so the likelihood of a hypothetical like this happening appears very remote.*

When will this happen? *The effective date of the changes will be May 4, 2018.*

Where are the funds maintained or be maintained? *The funds will be maintained as before – with Providence as the trustee, as well as an investment manager and custodian.*

Who will be the contact person/point of contact person that we can send questions to? *Jason Fuller and Stephen Fuller of Providence (the trustee) can help with questions related to trust administration. They can be reached at JMF@providencefirst.com and SF@providencefirst.com, respectively.*

Will anyone from the Nation be available to discuss this at upcoming District Meetings? *Jason and Stephen Fuller, from Providence, are coordinating with the Legislature to make themselves available. They will make every effort to help the Nation's members understand the changes to the trust.*

Anything else? *The change was mainly to make it an IGRA Trust that protects the minor's trust funds. The fact that the SSA was denying benefits was the critical issue that prompted us to act fast (the Executive Session with immediate ratification and then released to OPEN immediately satisfied the emergency situation), but this has been a necessary change that was years in the making with extensive research, review, verifiable assurance, legal support, undeniable benefits, it's a wise investment for our minors and is the intelligent choice among Indian Country for Minor Trust Funds. Under the IGRA Trust, it is against IRS regulations and federal laws to continue to place per capita into a Minor Trust Funds after they are no longer a minor, which occurs at the age of 18 years of age. Therefore, we are also satisfying that, as well. The 20+years that our investment professionals and experts, and all the highly-qualified legal counsel advised us, and they are unaware of any Minors Trust Funds that was targeted or affected negatively by this change. A scenario of how the investment funds are now going to increase distributions by $40-$60+K, and more with new trusts being tax-deferred and growth will now be tax-deferred, will show positive gains for our Ho-Chunk minors.*