HO-CHUNK NATION CODE (HCC)
TITLE 2 – GOVERNMENT CODE
SECTION 8 – CLAIMS AGAINST PER CAPITA ORDINANCE

ENACTED BY LEGISLATURE: JUNE 9, 2004

CITE AS: 2 HCC § 8

This Ordinance supersedes the Ho-Chunk Nation Claims Against Per Capita Ordinance enacted September 6, 1996 and last amended January 8, 2002.

1. **Authority**. Article V, Section 2(a) of the Constitution grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

2. **Purpose**. This Ordinance establishes policy and rules for permitted claims against a Tribal member's per capita distribution.

3. **Definitions**. For the purposes of this Ordinance the following meanings are used.

a. "Elder" means any person who is sixty (60) years of age or more and has been an enrolled member of the Ho-Chunk Nation for a minimum of five (5) years.

b. "Elder Abuse" means the failure of a tribal member to fail to repay a loan made to them by an Elder.

c. "Nation" means the Ho-Chunk Nation.

d. "Payment of a Per Capita Share" means the time at which preparation of checks and all preparatory activity concerning a Per Capita Distribution is complete and checks for some of all Per Capita Shares, other than those which may be affected by claims hereunder, are placed in the U.S. Mail or delivered to another independent delivery service.

e. "Per Capita Distribution" means a distribution made by the Nation to its Members on an equal per capita basis pursuant to its Per Capita Distribution Ordinance then in effect, and in accordance with Section 11(b)(3) of the Indian Gaming Regulatory Act, 25 U.S.C. Sec 2710(b)(3), or any successor statute, or any other distribution of Tribal assets or earnings on a per capita basis to Members.

f. "Per Capita Share" means each Member's equal pro rata share of a Per Capita Distribution, without reduction for any withholding, garnishment or levy permitted by this Ordinance, but after withholding at the source required by federal income tax law.

g. "Tribal Member" means a person duly enrolled as a Member of the Nation in accordance with the Constitution and laws of the Nation.

4. **Character of Per Capita Distribution / No Right to Compel**. Per Capita Distributions shall be made, when and as determined or declared in accordance with Per Capita Distribution Ordinance and any and all other applicable laws of the Nation, out of assets and earnings of the Nation, and such assets and earnings shall retain their character as property of the Nation until Payment of Per Capita Shares is actually made therefrom. No Tribal Member, nor any person claiming any right derived from a Tribal Member, including creditors of a Tribal Member, shall be entitled to compel the making of any Per Capita Distribution prior to the time of Payment thereof, and making each Per Capita Distribution, and the amount and timing thereof, shall at all times prior to Payment be subject to elimination or modification pursuant to any amendment to the then effective Per Capita Distribution Ordinance adopted in accordance with the Constitution and laws of the Nation; provided that nothing contained herein shall preclude an action in the Trial Court of the Nation seeking to require any official or body of the Nation to perform any administrative or ministerial duty required of him, her or them under the then effective Per Capita Distribution Ordinance. No Tribal Member, nor any person claiming any right derived from a Tribal Member, including creditors of a Tribal Member, shall have any right, title, interest or entitlements in any Per Capita Share unless and until Payment of Per Capita Distribution to which it relates occurs, and any right, title interest and / or entitlement accruing at Payment shall be subject to Section 5 hereof.

5. **Permitted Claims Against Per Capita Shares**.

a. The following claims shall be recognized and enforced by the Nation against a Per Capita Share at the time of Payment of the Per Capita Distribution of which it is a part and prior to the distribution of such Per Capita Share to a Tribal Member:

(1) Any debt or monetary obligation then due and owing by the Tribal Member to the Nation, whether by acceleration or otherwise, which (i) has been established by a judgement of the Trial Court permitting recovery from such Tribal Member's Per Capita Share, or (ii) is stated in writing signed by the Tribal Member and in which the Tribal Member has agreed in writing may be recovered from his Per Capita Share upon delinquency, default, or other event;

(2) Any order of garnishment issued by the Trial Court for purposes of child support pursuant to the *Recognition of Foreign Child Support Orders Ordinance,* the Children's Code or other applicable law of the Nation;

(3) Any federal income tax levy issued against the income or property of the Tribal Member held by the Nation; and

(4) Any debt or monetary obligation then due and owing by the Tribal Member to Hocak Federal, a division of Citizens Community Federal, which is stated in writing signed by the Tribal Member and which the Tribal Member has agreed in writing may be recovered from his Per Capita Share (i) upon delinquency, default or other event or (ii) as periodic payments for obligations incurred by the Tribal Member. Any authorized

lending institution with a certifying resolution and or agreement from the Ho-Chunk Nation Legislature. A lending institution must be approved, by resolution, by the Ho-Chunk Nation Legislature to be deemed "authorized."

(5) Any debt owed to an Elder, when the payment period for the debt has passed, or when it appears unlikely that the debtor intends to repay the obligation to the Elder. The penalty for Elder Abuse should be consistent with Tribal law and customs.

b. In the event that multiple claims described above are made against the same Per Capita Share: (i) federal tax levies described in paragraph a(3), above, shall have the first priority, except to the extent they allow prior payment of child support, (ii) child support payable under paragraph a(2), above, shall the next priority, (iii) recovery of debts and obligations to the Nation shall have the next priority, and (iv) debts owing to Hocak Federal, a division of Citizens Community Federal shall have the lowest priority, provided that nothing in this Ordinance shall restrict the Nation from obtaining security for and enforcing the debts of Tribal Members to the Nation through mortgages, liens, foreclosures, attachments, and other remedies.

6. **No Other Claims**. Except as specifically provided in Section 5, the Nation shall not recognize or enforce any claim, garnishment, levy, attachment, assignment or other right or interest in a Per Capita Share. The Nation shall pay the full amount of the Per Capita Share, less any claim recognized under Section 5, to the Tribal member whose interest in the Per Capita Distribution is represented thereby at the time of Payment, unless the Per Capita Distribution Ordinance shall otherwise required the payment of such Tribal Member's Per Capita Share to a trustee or other fiduciary pursuant to an arrangement established to protect such Tribal Member's interests.

Legislative History:

7/12/96	Referred to the full Legislature by the Health and Social Services Committee.
7/16/96	Referred by full Legislature to the Health and Social Services Committee for further review.
9/6/96	Legislature adopts the Claims Against Per Capita Ordinance.
12/7/99	Claims Against Per Capita Ordinance amended by Legislative Resolution 12/7/99D.
1/8/02	Claims Against Per Capita Ordinance amended by Legislative Resolution 1/8/02A.
3/3/04	Legislature places amended Ordinance out for 45-day Public Review.
6/9/04	Amended and restated as Claims Against Per Capita Ordinance (2 HCC § 8) by Legislative Resolution 6/9/04B providing a remedy for Elders to make claims against the per capita distribution of a Tribal member who fails to repay a loan to an Elder.