

CHAPTER 3 – USE OF TRIBAL GAMING NET REVENUES – INDIVIDUAL PER CAPITA PAYMENTS; MINORS’ TRUST FUND

Section 19-3-1. Individual Per Capita Payments.

The Executive Committee hereby allocates henceforth, in order to advance the personal health, safety and welfare of qualified tribal members, FORTY PERCENT (40%) of all net gaming business revenues to be divided and distributed on a monthly basis in equal shares and paid as per capita payments to all qualified tribal members as defined in Section 19-1-1.1.

A. Uniform Monthly Per Capita Payments. Upon the majority vote of the Executive Committee, the per capita payment schedule for all persons entitled to receive such payments may be adjusted to provide for uniform monthly per capita payments. All monies of the stipulated monthly net proceeds of Tribal gaming businesses that are set aside for per capita payments in excess of the uniform monthly amount shall be deposited into a low-risk interest bearing reserve bank account, the principal and interest of which shall be available and shall be drawn upon to supplement individual per capita payments in any month or months during which the available proceeds do not permit distribution at the previously budgeted uniform amount. All monies, if any, remaining in the reserve account described herein shall be distributed to all qualified Tribal members in equal payments near the end of the calendar year.

B. Compulsory Payment of Per Capita Reserve. In no event shall the principal placed in the uniform payments per capita reserve account be held for more than 12 calendar months from the date of deposit into the reserve. Interest on the per capita reserve may be retained or uniformly distributed hereunder at the discretion of the Executive Committee.

Section 19-3-2. Qualification for Per Capita Payments.

In accordance with the policy set forth in Section 19-1-1 of this Title, to fairly satisfy the needs of tribal members who contribute to the advancement and self-determination of the Tribe by residing within the Reservation community, to provide incentives to members to return to the Reservation community to further the advancement of tribal self-determination, and to enhance the Reservation community socially, economically and culturally, the Tribe adopts the policy that limits monthly disbursements of per capita payments to qualified tribal members who have physically resided for a period of one (1) year within the Reservation community, as those terms are defined in Section 19-1-1.1 of this Title.

Section 19-3-3. Exemption from Physical Residency.

A. General. Members who are physically residing within the Reservation community immediately prior to pursuing an approved exemption that requires the individual to reside temporarily outside the Reservation community may request an exemption from the physical residence requirement. Members who request an exemption, must have been residing within the Reservation community for one (1) continuous year immediately prior to requesting such exemption.

B. Exemption Application; Appeal. A request for exemption under this Section shall be subject to approval by the Per Capita Committee. When a request for exemption is made, the Per Capita Committee or its designee shall consider the request at its next regularly scheduled meeting. If the request is denied, the member making the request shall be notified of the reasons thereof and of the right to an appeal pursuant to Section 19-1-10 of this Title. If a request for exemption is granted, the member shall be notified and required to comply with any requests to verify the continuing eligibility for the exemption as required by this Title.

If a person loses his/her exemption and qualified member status, he/she will thereafter be required to re-establish residency and qualified member status in accordance with Section 19-3-2 of this Title.

C. Allowable Exemptions. The following exemptions shall be allowed in accordance with the rules set forth herewith:

1. Military service exemption – In order to qualify for the military service exemption, a member must be on active duty in any U.S. armed forces and must have been ordered to move his/her residence to some location outside of the Reservation community. Such exemption shall be valid for a period not to exceed seven (7) years from the commencement of said exemption. Upon completion of military service, the member shall have thirty days to resume physical residence within the Reservation community. Failure to resume physical residency shall result in loss of exempt status and the member shall no longer be deemed to have qualified member status.
2. Higher education exemption - In order to qualify for student exemption, the member must be enrolled as a full-time student as determined by the school's registrar. Vocational education or certificate programs are eligible for the higher education exemption if the student meets all other factors.

Students shall be required to submit adequate proof to the Per Capita Committee or its designee of their continuing eligibility to receive this exemption, and students must authorize the Per Capita Office to obtain any information needed from the school in order to verify the student's full time student status. Failure to do so may result in loss of exempt status.

Enrollment in online, general education degree courses, correspondence courses, or other types of distance learning classes do not allow a member to qualify for the student exemption. Any student who is placed on funding suspension through the tribe's higher education program for failing to maintain the minimum credit hour requirements shall lose his or her exempt status. The student shall thereafter be required to renew his or her residency in accordance with this Title to be eligible for the per capita payment.

Because degree programs have different credit and time requirements, there will be no time limitation on this exemption, so long as the student is enrolled full-time. Upon completion or termination of the student's higher education program, the member shall resume physical residence within the Reservation community within

ninety (90) days. Failure to resume physical residence shall result in loss of exempt status and the member will no longer be deemed a qualified tribal member for per capita purposes.

If the student's higher education exemption expires or terminates and the student wishes to continue receiving the per capita benefits via the higher education exemption, he or she may apply to the Per Capita Committee for a continuation of their exemption. An extension may be granted at the discretion of the Per Capita Committee and is a non-appealable decision.

Students who have qualified for the higher education exemption in the spring semester, and who are enrolled in classes full time in the fall semester immediately following will be allowed to maintain their higher education exemption throughout the summer. Students must furnish proof to the Per Capita Committee that they are actually enrolled in the fall semester full time to be eligible. Students will still be required to apply for the higher education exemption for the upcoming academic year.

Student who have an internship, externship, or student-teaching requirement to obtain their degree will be allowed to continue to receive the higher education exemption during that internship, externship, or student-teaching and will not need to maintain a full-time course load.

3. Temporary Employment Exemption - In order to qualify for an exemption for temporary employment, the member must have been physically residing within the Reservation community for a period of one continuous year prior to the granting of the exemption, and the nature of the member's employment or profession must be such that short term absence from the Reservation community is required to fulfill job duties. The types of employment covered by this provision shall include but not be limited to construction work, truck driving, sales work, and other types of seasonal employment. Temporary absence for employment under this section shall not exceed ninety (90) days.
4. In-patient Treatment Exemption - In order to qualify for an exemption for in-patient treatment, the member must have been physically residing within the Reservation community for a period of one continuous year prior to the granting of the exemption. Before leaving the Reservation Community, the member must notify the Per Capita Office in writing, include a letter regarding which treatment facility they are attending and how long treatment will last, and sign a HIPAA Release for any and all medical information provided to the Tribe. Within fourteen (14) calendar days of successful completion or other program termination, the member will be required to notify the Per Capita Committee that they are living within the Reservation community, and provide Confirmation of Residency and other paperwork as required.

Section 19-3-4. Primary Residence.

Where a member occupies a second residence for a portion of a year a determination must be made regarding which residence is his/her primary residence.

Such determination shall be based upon whether the member meets at least four (4) of the following five (5) criteria:

1. Whether the member's spouse and children reside in the residence.
2. Whether member is registered to vote in Moody or Minnehaha Counties.
3. Whether the member's driver's license carries the address of the primary residence.
4. Whether member is actually physically present within the Reservation community not less than 75 percent of the year.
5. Whether the member can produce documentation of payment of rent, mortgage, utilities, taxes, or verification of employment for his/her residence within the Reservation community.

In making a determination under this section, the fact that the Reservation community residence which is being claimed as a primary residence is a shared residence shall create a presumption that this residence is not the primary residence.

Section 19-3-5. Applying for Per Capita Payments – General; Process.

A. General. Any enrolled member of the Flandreau Santee Sioux Tribe may apply to participate in the per capita distribution of gaming revenues. The applicant must provide documentation of his/her enrollment, his/her age, his/her address. A member who has reached the age of majority shall be required to apply to participate in per capita distribution. The member must provide clear and convincing evidence that he/she is a bona fide resident of the Reservation community. The burden of proof in establishing physical residence within the Reservation community shall rest with the applicant. The applicant shall show by clear and convincing evidence that he/she satisfies residency and other requirements and is therefore entitled to qualified member status. Any falsification of information provided on the application, Release of Information, Confirmation of Residency, or any other documents related to the per capita benefit application process is a violation of tribal law and will be prosecuted in Tribal Court.

As part of the application process, the applicant agrees to sign a “Release of Information” form provided by the Per Capita Office, which the Office will use to verify the applicant’s age, tribal membership, residency, or other criteria needed for per capita eligibility. The applicant further agrees to cooperate with the Per Capita Office in requesting or releasing any other information needed to verify per capita eligibility. Failure to cooperate with the Per Capita Office in obtaining necessary information about the applicant will deem him/her ineligible for benefits.

B. Application Process. Any enrolled Tribal member who so desires must notify the Per Capita Committee or its designee of his/her desire to establish or re-establish residency. The member shall file an application, which shall provide the following information to the Per Capita Committee or its designee: Name, physical address, date of establishing residence within the Reservation community, the sworn affidavit of two qualified tribal members who shall verify the applicant's residence and date of commencement of residency, a Confirmation of Residency Form, and a Release of Information form. Filing a false affidavit by any qualified tribal member in support of an application for per capita benefits is punishable by the loss of the affiant's per capita benefits.

Failure to provide necessary evidence shall result in the non-issuance of a Confirmation of Residency and the denial of qualified tribal member status.

Subsequent to the receipt of the completed application to establish residency, including all required evidence of residency and the Confirmation of Residency form, the Per Capita Committee or its designee shall review the documentation to determine whether the applicant is entitled to qualified tribal member status and should therefore be issued a Confirmation of Residency.

At its discretion, the Per Capita Committee or its designee may hold evidentiary hearings to determine whether the applicant is entitled to qualified member status and should be issued a Confirmation of Residency. No such hearing shall take place unless the applicant shall have been notified at least five (5) business days in advance.

The notice of hearing shall contain the following information:

1. Date, time and location of the hearing;
2. Person(s) designated as Hearing Officer;
3. Statement as to which portion(s) of his/her application is in question, if any;
4. Statement that applicant is entitled to representation;
5. List of documents or other evidence required by the Committee.

Applicants shall be notified of the denial of qualified member status within ten (10) business days of the decision to deny the Confirmation of Residency. If an adverse decision is issued by the Per Capita Committee concerning an application for per capita benefits, the applicant may appeal such decision as authorized in Section 19-1-10 of this Title.

Upon receipt of said Confirmation of Residency, the applicant may request the Per Capita Committee or its designee for final authorization to receive per capita payments as a qualified tribal member. Payments shall commence on the first date of a regularly scheduled payment after he/she has been granted a Confirmation of Residency.

Section 19-3-6. Maintaining Residency.

Persons who have been granted a Confirmation of Residency shall maintain physical residency within the Reservation community. Failure to do so shall result in the loss of qualified tribal member status.

Qualified tribal members must notify the Executive Committee or its designee of any change of residency status, including the following:

1. Moving out of the Reservation community, whether temporary or permanent.
2. Leaving the Reservation community for an extended period of thirty (30) days or more.
3. Leaving the Reservation community to attend school, work for the government, serve in the military, or to receive services relating to illness or physical disability where such services are not available within the Reservation community.
4. Leaving the Reservation community to be incarcerated for thirty (30) days or more. Any qualified member who is incarcerated in a penal institution or otherwise pursuant to a conviction under any criminal law for more than thirty (30) days shall lose qualified member status unless the appropriate procedures within this title are followed.
5. Failure to notify the Executive Committee or its designee of such changes shall result in a loss of qualified member status.

If a member who has been granted qualified member status notifies the Executive Committee or its designee that he or she is moving out of the Reservation community and would like to discontinue receiving per capita payments, the Chairperson of the Per Capita Committee shall be authorized to do so. The Chairperson shall request that the member sign a statement verifying his or her request. If the member fails to provide such a statement, then the Chairperson shall document the request and change in the member's per capita file by verifying the request via certified mail to the member's last known address. The Chairperson shall keep the Per Capita Committee informed of all actions and shall ensure that such actions are recorded in the minutes of the Committee.

Each member who has been granted a Confirmation of Residency shall be required, on a semi-annual basis, to update his/her per capita payment file by providing proof that he/she is still a resident of the Reservation community and is otherwise qualified to receive per capita payments. Additionally, the Per Capita Office is authorized to require members to provide proof of residency more frequently if, in the discretion of the Office, supplemental documentation is needed prior to the next regularly scheduled semi-annual update.

Section 19-3-7. Challenging a Member's Residency.

Any qualified tribal member may notify the Per Capita Committee or its designee - or the Tribe may act upon its own information - when there is reason to believe that a member is not qualified to receive per capita payments. Filing a false statement by any qualified tribal member

challenging another member's eligibility for per capita benefits is punishable by the loss of the maker's per capita benefits.

A. Evidence. When the Per Capita Committee or its designee receives such information, an investigation shall be initiated to determine the truth or falsity of such an allegation. Said investigation may include the following information:

1. A sworn statement of the member whose residency is questioned as to the truth or falsity of the allegation.
2. Verification of whether the member whose residency is being challenged is or is not in physical residence within the Reservation community. Such verification may include but shall not be limited to: copies of utility bills, rent receipts, voter registration, automobile registration, or driver's license.
3. Sworn statement(s) of neighbors or others who have reason to know the circumstances of the member's residency.

B. Determination of Residency. Upon completion of the investigation, the Per Capita Committee or its designee shall:

1. Make a determination of whether the subject has maintained his or her physical residency within the Reservation community and is therefore entitled to retain his or her qualified member status; or
2. At its discretion, the Per Capita Committee or its designee may hold evidentiary hearings to determine whether the applicant has maintained his or her qualified member status. No such hearing shall take place unless the applicant shall have been notified at least five (5) business days in advance.

The notice of hearing shall contain the following information:

1. Date, time and location of the hearing;
2. Person(s) designated as Hearing Officer;
3. Statement as to which portion(s) of his/her Confirmation of Residency or qualified member status is in question;
4. Statement that applicant is entitled to representation;
5. List of documents or other evidence required by the Committee.

Upon a determination that a hearing shall be held, the Per Capita Committee or its designee shall place the per capita payment(s) due to the member in an escrow account pending a final decision on the member's qualified member status.

C. Decision and Notification; Default; Right to Appeal. After a hearing has been conducted, the Per Capita Committee or its designee shall make a determination supported by clear and convincing evidence of whether the member being challenged meets the residency requirements of this Title. The member shall be notified in writing within three (3) business days of the final decision. If a determination is made that the member does not meet the residency requirements, he or she shall be further notified that he or she has the right to appeal the decision to the tribal court as provided in Section 19-1-1.

The member's payment shall continue to be held in escrow until the appeals process is complete. If a member fails to appear for a scheduled hearing, the member's residency eligibility shall be terminated, provided that the member shall be notified and shall have the opportunity to appeal to the tribal court as provided in Section 19-1-1.

Section 19-3-8. Incompetent Persons.

The Flandreau Santee Sioux Tribe Executive Committee has the inherent authority to place into trust, in a low-risk interest bearing account in a federally insured financial institution it finds satisfactory, the per capita payments, or any portion or percentage thereof, of any individual who is declared incompetent by a court of competent jurisdiction.

A. Petition to Place into Trust. The Per Capita Committee shall consider placing into trust the per capita payment of any individual declared legally incompetent upon a Flandreau Santee Sioux Tribal Court Order or the petition of at least two qualified tribal members, one of which must be a family member. The Per Capita Committee or its appointed agent shall conduct hearings as it sees fit to gather testimony and evidence as to the reasons petitioners feel it should place into trust the per capita payments of the individual declared incompetent. The Per Capita Committee or its appointed agent retains the authority to place into trust any per capita payment of an individual declared incompetent before holding a hearing, however, the Per Capita Committee or its appointed agent must conduct a hearing and make a decision thereafter within thirty (30) calendar days from the date it has placed into trust the per capita payment.

B. Authority to Distribute Living Allowance. The Per Capita Committee or its appointed agent shall consider paying a monthly living allowance from the proceeds of any per capita payment placed into trust upon the petition of the legal guardian of any individual declared legally incompetent. Such petition shall include a detailed budget of monies necessary for the health, education and welfare of the individual declared incompetent.

C. Account Statements of Trust Account. The Executive Committee or its appointed agent shall make available a monthly bank statement of any monies placed into trust for an individual declared legally incompetent to the legal guardian of such person.

D. Power of Executive Committee to Delegate Authority. The Flandreau Santee Sioux Tribe Executive Committee has the inherent power to delegate authority to make determinations regarding the per capita payments on behalf of persons declared incompetent. It shall be up to the Executive Committee to determine to whom they will delegate this authority, if

to anyone. Any such appointment of an agent with delegated authority shall be documented by Executive Committee resolution

E. Right of Judicial Review. Any qualified tribal member adversely affected by this paragraph shall have the right of judicial review as outlined in Section 19-1-10.

Section 19-3-9. Minors' Trust Fund.

In order to provide for the future safety and well-being of the children of the Flandreau Santee Sioux Tribe, while taking the position that the immediate needs and daily living expenses of such minors are the responsibility of the parent, parents or legal guardian and that such minors are not faced with the same financial obligation as are adults, the Executive Committee hereby allocates FIVE PERCENT (5%) of net gaming business revenues to be placed into a "Minors' Trust Fund" to be established in an account which seeks current income, capital appreciation and conservation of capital. Payments into the Minors' Trust Fund shall be divided equally among all enrolled tribal members who are not eighteen years of age and who are participating in the Minors' Trust Fund.

Such equally divided payments shall be deposited into the minors' trust fund and into respective accounts of each individual participant. Account balance statements shall be available to participants or the parent, parents or legal guardian of the participants. Participation in the Minors' Trust Fund shall be limited to those members who apply to participate. Newborn tribal members shall be eligible to participate in the minors' trust fund upon being duly enrolled in the Tribe provided that such newborn's parents or legal guardian shall apply on behalf of the newborn to participate in the Minors' Trust Fund.

A. Maturity Payments. Those participating members shall receive one trust account maturity payment of the monies accumulated in the trust fund, including interest, for the eligible minor participant, made to the participant upon reaching his/her 18th birthday, provided however, that all applicable federal income taxes shall be withheld from the maturity payment. Application for maturity shall be approved upon sufficient evidence showing eligibility by the Executive Committee or its designee.

B. Distribution for Special Education, Medical, Terminal Illness. The Executive Committee or its designee shall have the authority to disburse proceeds of any funds placed into trust on behalf of an individual under the terms of this Section, upon the request of the parent, parents or legal guardian of such individual minor, provided the funds shall be used for special educational needs, medical necessities, or where there is clear proof that the minor is suffering from a terminal illness.

The request shall include a detailed justification of the parents' or legal guardian's inability to provide the minor with the requested service or product. In addition, the request shall set out in detail the reasons the service or product is required by the minor and must include a Doctor's statement if the request is in connection with medical necessities or terminal illness. The statement of a trained professional shall be required for any requests in connection with special educational needs. The Executive Committee or its designee shall make direct payments to the

provider of the service or product requested. Upon proof, including a doctor's statement, that a minor is suffering from disease or bodily injury which will result in death within 3 to 6 months, the Executive Committee or its designee may release all funds currently held in trust for said minor. A request for release of such funds must be made by the minor's parent(s) or legal guardian.

C. One-time Annual Release of Minors Trust Not To Exceed Ten Percent of Earnings. The custodial parent of a minor who is a participant in the minors trust fund shall be allowed to withdraw ten percent of the minors average yearly trust earnings, based upon the previous twelve months, provided that such funds shall be used for the health, education, or welfare of the minor, and provided further that the custodial parent making the request shall provide a written explanation of the circumstances which justify the release and shall account for all expenditures by submitting receipts to the Tribal Treasurer. Failure to account for expenditures shall result in denial of any future releases. This shall be an annual one-time release. Application shall be made to the Tribal Treasurer and subject to approval of the Executive Committee. The custodial parent making the request shall provide proof that he or she is the legal custodial parent of the minor. Non-custodial parents shall not be allowed to withdraw funds.

D. Application to Participate in Minors' Trust Fund. Any parent whose minor child is an enrolled Tribal member may complete an application for the child to participate in the Minors' Trust Fund. Such application shall be submitted to the Executive Committee or its designee. The month following completion of the application and approval thereof, the applicant shall be enrolled in the Minors' Trust Fund.

E. Withdrawing from Minors' Trust Fund. Any parent or legal guardian of an enrolled tribal member may withdraw the minor's participation in the Minors' Trust Fund at any time, provided a request is made to the Executive Committee in writing. Withdrawal from the Minors' Trust Fund shall be permanent and the minor may not re-apply until he/she reaches the age of 18 years.

Section 19-3-10. No Retroactive Payments.

Any person enrolling in the Flandreau Santee Sioux Tribe shall not be entitled to any back payments of per capita proceeds.

Section 19-3-11. Death of Participant.

Upon the death of a member, said member's eligibility or participation in per capita payments or the Minors' Trust Fund ends immediately. Upon the death of a minor, the entire balance of the minor's fund shall be transferred to the minor's estate and distributed in accordance with uniform probate law. The Flandreau Santee Sioux Tribe shall be entitled to immediate reimbursement of any monies distributed to a deceased member after the date of death.

Section 19-3-12. Federal Income Tax.

The Tribal Treasurer shall insure that notification of the application of federal tax laws to tribal per capita payments be made when such payments are made. The Treasurer shall also implement a procedure by which applicable taxes are automatically deducted from the per capita payments received by qualified tribal members. To ensure that these requirements are met, prior to approving a member for the per capita payment or for participation in the Minors Trust Fund, the member or his/her parent or legal guardian shall complete an Internal Revenue Service form W-9 and return it to the Executive Committee or its designee.

Section 19-3-13. Incarcerated Persons.

Any qualified member who is incarcerated in a penal institution or otherwise pursuant to a conviction under any criminal law for more than thirty (30) days shall lose qualified status. However, such member shall regain qualified status ninety (90) days after his/her release and reapplication for qualified member status, provided he/she immediately satisfies the definition of physical residence within the Reservation Community. Upon release from incarceration, the member shall complete an application and provide documentation for Confirmation of Residency. Failure to provide such documentation, or to notify the Executive Committee or its designee of any change in sentencing which effects residency status within fourteen (14) days of release, will result in denial of confirmation of residency. Incarceration shall include living in a half-way house, court-ordered treatment, house arrest, or any other type of living situation in which the individual is not free to leave on their own will at any time.