

to be bound by the order and subject-matter jurisdiction over the matter, proper service of process under the law of the issuing jurisdiction was made on such person, and the order was issued pursuant to the laws of that jurisdiction and does not violate the laws of the Band.

(b) An order described in paragraph (a) of this section must be authenticated by reasonable proof that the document tendered to the Clerk of the Court is a true copy of the order as it is recorded in the agency or court of the issuing jurisdiction. An authentication stamp issued by a clerk of court or custodian of records, or a court seal, is sufficient evidence of authenticity.

(a) Unless defects in jurisdiction are apparent on the face of an order described in paragraph (a) of this section, the person contesting enforcement of the order has the burden of showing the order is not valid. Upon a failure to respond to a notice of the order and to timely contest it, the Court shall enforce it as a Band Court Order.

(b) Where an order described in paragraph (a) of this section is invalid by reason of a lack of personal jurisdiction in the agency or court of the issuing jurisdiction, the Court may adopt some or all of its provisions as an original order of the Court to the extent that it does not violate the laws of the Band.

(c) An order described in paragraph (a) of this section does not automatically establish paternity for Band enrollment purposes.

#### **Historical and Statutory Notes**

Source: Ordinance 06-10, T. II.

### **SUBCHAPTER III**

### **ENFORCEMENT**

#### **Section**

2051. Withholding

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#### **Cross References**

Orders for child support, notice of provisions of this subchapter see 8 MLBSA § 2018.

### **§ 2051. Withholding**

Court-ordered child support shall be withheld from the obligor's income, regardless of the source, in accordance with this subchapter.

#### **Historical and Statutory Notes**

Source: Ordinance 26-94, ch. 29. T. II, § 1; Ordinance 06-10, T. III.

### **§ 2052. Withholding upon notice from obligee or public authority**

(a) Except as provided in paragraph (c) of this section, an employer or other payer of funds must withhold income or other payments from an obligor upon notice from an obligee or public authority when the following conditions are met:

- (1) the obligor is at least 30 days in arrears in making Court-ordered child support payments to the obligee; and
- (2) the obligee or a public authority serves written notice of income withholding, showing the current child support obligation and the amount of the arrearage, on the obligor at least 20 days before serving the notice of income withholding and a copy of the Court's order establishing the child support obligation on the employer or other payer of funds; and
- (3) within the 20 day period, the obligor fails to move the Court for an order denying or changing the amount of withholding on the grounds that an arrearage of at least 30 days did not exist as of the date of the notice of income withholding, or that the notice contains a mistake or fact with respect to the amount of the current child support obligation or the amount of the arrearage; and
- (4) the obligee or public authority serves a copy of the notice of income withholding, showing the current child support obligation and the amount of the arrearage, a copy of the Court's order, and the provisions of this subchapter on the employer or other payer of funds.

(b) The obligor may, at any time, waive the written notice required by subparagraph (a)(2) of this section.

(c) Income or other payments shall not be subject to withholding where:

(1) Either the custodial or noncustodial parent demonstrates, and the Court enters a finding, that there is good cause not to require withholding of income or other payments; or

(2) A signed written agreement is reached between the noncustodial and custodial parent, which provides for an alternative to withholding, and the agreement is reviewed and entered into the record by the Court.

#### **Historical and Statutory Notes**

**Source:** Ordinance 26-94, Ch. 29, T. II, §§ 2.01, 2.03; Ordinance 06-10, T. III.

#### **§ 2053. Withholding hearing; service of withholding order**

(a) Within 30 days from the date an obligor files a motion with the Court to deny or change the amount of withholding under subparagraph (a)(3) of § 2052 of this Title, the Court shall hold a hearing on the motion and notify the parties of its decision. If the Court finds an arrearage of at least 30 days did not exist as of the date of the notice of income withholding, the Court shall enter an order denying withholding. If the Court finds that an arrearage of at least 30 days existed as of the date of the notice of income withholding, but that there was a mistake in the amount of the current support obligation or the amount of the arrearage, the Court shall order income withholding in the corrected amount. If the Court finds there was no mistake of fact, the Court shall order income withholding in the amount specified in the notice. If the Court orders income withholding, it shall order withholding to begin no later than the first pay period that occurs after 14 days following the date of the hearing.

(b) The only basis for a motion to deny or change withholding under subparagraph (a)(3) of § 2052 of this Title is a mistake of fact. A mistake of fact means an error with respect to whether there has been an arrearage of at least 30 days as of the date of the notice of income withholding (which may include a mistake as to the identity of the obligor or obligee) or with respect to the amount of the current support obligation or the amount of the arrearage.

(c) If the Court issues an order for withholding under paragraph (a) of this section, it shall provide a copy of the order to the Band Authority. The Band Authority shall serve notice of the order on the obligor's employer or other payer of funds using the standard Federal withholding form together with a copy of the order. The Band Authority must allocate amounts across multiple withholding orders to ensure that in no case shall allocation result in a withholding for one of the support obligations not being implemented.

#### **Historical and Statutory Notes**

Source: Ordinance 26-94, Ch. 29, T. II, § 3; Ordinance 06-10, T. III.

**§ 2054. Effect of notice or order for withholding; commencement and amount of withholding; orders from other jurisdictions**

- (a) Notwithstanding any law to the contrary, a notice of withholding served in accordance with paragraph (a) of § 2052 of this Title or a withholding order issued and served in accordance with § 2053 of this Title, is binding on an employer or other payer of funds who is subject to the jurisdiction of the Band.
- (b) Withholding shall begin no later than the first pay period that occurs after 14 days following the date of service of the notice to the obligor's employer or other payer of funds under subparagraph (a)(4) of § 2052 of this Title or paragraph (c) of § 2053 of this Title. An employer shall not discharge, refuse to hire or otherwise discipline an employee as a result of a wage or salary withholding authorized by this subchapter. An employer who is found to have violated this provision shall be subject to a fine of \$500.00.
- (c) Except as provided in paragraph (d) of this section, an employer or other payer of funds shall withhold and pay to the obligee or public authority, as specified in the notice served on the employer or other payer of funds:
- (1) the obligor's current child support obligation; and
  - (2) an additional amount not to exceed 20 percent of the current monthly obligation until the arrearage is paid.
- (d) An employer or other payer of funds shall not withhold from an obligor's earnings more than the maximum amount permitted under the Consumer Credit Protection Act, 15 U.S.C. §1673(b)(2).
- (e) If an employer or other payer of funds fails to withhold income or other payments in accordance with this subchapter, the employer or other payer of funds will be liable for the accumulated amount the employer or other payer of funds should have withheld from the obligor.
- (f) The Band Authority is responsible for receiving and processing income withholding orders from States, Tribes, and other entities, and ensuring such orders are properly and promptly served on employers and other payers of funds within the Band's jurisdiction. The Band Authority will extend the full range of services available to respond to all requests from, and cooperate with, State and Tribal IV-D agencies.
- (g) The Band, the Court and the Band Authority will recognize child support orders issued by other Tribes and Tribal organizations and by States, in accordance with the

requirements under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. 1738B.

#### Historical and Statutory Notes

Source: Ordinance 26-94, Ch. 29, T. II, §§ 2.02, 4, 5.02; Ordinance 06-10, T. III.

### § 2055. Priority

(a) A notice or order for withholding under this subchapter or execution or garnishment upon a judgment for child support arrears shall have priority over any other attachment, execution, garnishment, or wage assignment and shall not be subject to the statutory limitations on amounts levied against the income of the obligor, except as provided for in this subchapter. Amounts withheld from an employee's income shall not exceed the maximum permitted by law.

(b) In the event that there is more than one withholding order for child support for an obligor, the employer or other payer of funds shall put the orders into effect, giving priority first to amounts currently due and not in arrears up to the maximum amount allowed by law. If there are two or more orders for child support which cumulatively exceed the maximum allowed by law, the amount each obligee receives from the withholding shall be determined as the amount equal to the number of each obligee's children for whom support payments are due as a percentage of the total number of children for whom support payments are due. This paragraph pertains to withholding only and shall not affect the actual amount of support ordered.

#### Historical and Statutory Notes

Source: Ordinance 26-94, Ch. 29, T. II, § 5; Ordinance 06-10, T. III.

### § 2056. Employer expenses

An employer or other payer of funds may deduct two dollars from the obligor's remaining income or other payments for each payment made pursuant to a withholding order under this subchapter to cover the expenses involved in the withholding.

#### Historical and Statutory Notes

Source: Ordinance 2-94, Ch. 29, T. II, § 6; Ordinance 06-10, T. III.

### § 2057. Notice from obligor to employer

When an individual is hired for employment, the employer shall request that the individual disclose whether or not the individual has Court-ordered child support

obligations that are required by law to be withheld from income and the terms of the Court order. The individual shall disclose this information at the time of hiring. When an individual discloses that the individual owes child support that is required to be withheld, the employer shall begin withholding according to the terms of the order and under this subchapter.

#### **Historical and Statutory Notes**

**Source:** Ordinance 26-94, Ch. 29, T. II, § 7; Ordinance 06-10, T. III.

### **§ 2058. Notice to Court upon termination of employment**

When withholding is in effect and the obligor's employment is terminated, the obligor and the obligor's employer or other payer of funds shall notify the Court and the obligee or public authority responsible for child support enforcement of the termination within ten days of the termination date. The notice shall include the obligor's home address and the name and address of the obligor's new employer or payer of funds, if known. Information disclosed under this subchapter shall not be divulged except to the extent necessary for the administration of child support or when authorized by law.

#### **Historical and Statutory Notes**

**Source:** Ordinance 26-94, Ch. 29, T. II, § 7.01; Ordinance 06-10, T. III.

### **§ 2059. Order terminating income withholding**

Whenever an obligation for child support terminates under the terms of the order or this chapter, and where the obligation is enforced by income withholding from the obligor, the Court shall enter an order directed to the obligor's employer or other payer of funds, which terminates the income withholding. The order terminating income withholding must specify the effective date of the order, referencing the initial order or decree establishing the support obligation.

#### **Historical and Statutory Notes**

**Source:** Ordinance 26-94, ch. 29, T. II, § 8; Ordinance 06-10, T. III.



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



