

Ordinance Number 4.100. Amended by Resolution No. 2001-322, dated October 20, 2001; Resolution No. 2002-447, dated December 20, 2002; Resolution No. 2004-271, dated June 18, 2004; Resolution No. 2005-361, dated September 16, 2005; Resolution No. 2005-409, dated October 23, 2005; Resolution No. 2005-361; Resolution No. 2007-125, dated March 16, 2007; Resolution No. 2008-175, dated April 18, 2008; Resolution No. 2009-196, dated May 8, 2009; Resolution No. 2009-259, dated June 19, 2009; Resolution No. 2010-213, dated June 11, 2010; Resolution No. 2018-066, dated February 16, 2018.

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§ 4.100 INTRODUCTION

From time to time the Siletz Tribal Council may authorize the distribution of monies to enrolled members or all enrolled members of the Siletz Tribe, and not in response to individual applications for services or financial assistance. These monies may derive from a variety of sources of funds. The Tribal Council enacts this Distribution Ordinance to ensure that such distributions occur in a fair, timely, and equitable manner.

§ 4.101 SCOPE

(a) **Source of Monies.** This Ordinance covers distributions of monies to enrolled tribal members. Per capita distributions of gaming revenues will be governed by the provisions

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of the Indian Gaming Regulatory Act, this Ordinance, and the Tribe's Distribution of Net Revenues Ordinance, Ordinance No.99-224, approved on July 6, 1999.

[Amended by Resolution No. 2009-259, 6/19/09]

(b) **Size of Distribution.** This Ordinance covers "per capita" distributions of monies to enrolled tribal members. Such per capita distributions may be made to all enrolled members of the Tribe or may, at the discretion of the Tribal Council, be made to identifiable classes of the Siletz Tribe, for example, elders or minors.

(c) **Exclusions.** This Ordinance does not cover distributions of monies to tribal members which are subject to restrictions in use, or tribal monies which are distributed to individual tribal members or groups of tribal members in response to an application for services or financial assistance, or in response to an assessment of need for a particular service or program. This Ordinance is intended to cover monies which are distributed by the Tribe to enrolled tribal members for no specified purpose.

§ 4.102 PROCEDURE

(a) **Tribal Council Action.** The Tribal Council shall commence the process of approving and distributing tribal monies to enrolled tribal members by passage of a resolution. Proposed distribution of tribal monies under this ordinance shall be announced to the tribal membership through notice in the posted Tribal Council Agenda, by publication in the tribal newsletter, or otherwise. Passage of a distribution resolution shall be set as a separate agenda item, and tribal members shall be given the opportunity to provide public comment on the proposed distribution at the time the resolution is considered by the Tribal Council.

Adopted 7/18/99, Reso. No. 99-249

Amended: 10/20/01; 12/20/02;
6/18/04; 9/16/05; 10/23/05; 03/16/07;
4/18/08; 5/8/09; 6/19/09; 6/11/10; 2/16/18

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(b) **Contents of Resolution.** A Tribal Council resolution to distribute tribal monies to enrolled tribal members shall not be effective unless the following items are specifically addressed in the resolution:

- (1) the source of tribal funds which will fund the distribution to enrolled tribal members;
- (2) the amount of money that will be distributed to enrolled tribal members included within the distribution;
- (3) to whom the distribution will be made - to all tribal members or to a particular, identifiable class of tribal members. If the distribution is being made to less than all enrolled tribal members, the resolution shall include a justification for making the distribution to the smaller group of enrolled tribal members;
- (4) The cut-off date for enrollment to qualify for the distribution;
- (5) the date when the distribution will be made;
- (6) an opinion by an attorney employed or retained by the Tribe on the taxable nature of the distribution.

(c) **Enrollment Office Action.**

- (1) Preparation of Distribution List. Distributions of monies under this Ordinance shall be limited to enrolled members of the Siletz Tribe as of a specified cut-off date. Tribal enrollment must be final, with no

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relinquishment or removal actions pending, as of that date to qualify for a distribution. Upon passage of a Tribal Council distribution resolution, the resolution shall be forwarded to the Tribal Enrollment Office for preparation of a distribution enrollment list. Such list shall consist of all enrolled tribal members who are eligible for the distribution and who have not disclaimed their right to distribution as provided in subsection (4) below.

- (2) Notice of Proposed Distribution. The Enrollment Officer shall provide thirty days notice of the proposed distribution to the tribal membership, by any appropriate means.
- (3) Distribution Requirements. In order to receive a distribution, a tribal member must have on file with the Enrollment Office:
- i. a current address; and
 - ii. a valid Social Security number.
 - iii. If a tribal member does not already have a valid Social Security number on file with the Enrollment Office, the tribal member must provide a copy of a valid Social Security card to the Enrollment Office.
 - iv. If a tribal member provides evidence to the Enrollment Office that the member is not a U.S. citizen and is not eligible to receive a

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valid Social Security card, the Enrollment Office shall, within 45 days of receipt of such evidence, provide the Trust Officer with the information necessary to petition Tribal Council for a waiver of the Social Security card requirement, which shall be narrowly construed and available only to persons who are not eligible to obtain a valid U.S. Social Security card.

[Amended by Resolution No. 2009-196, 5/8/09]

- (4) Right to Disclaim Distribution(s). If a Tribal Member, or the Tribal Member's court-approved Guardian, Conservator, or other Trustee, does not want to receive a distribution, for any reason, the Tribal Member or their Guardian, Conservator or other Trustee must obtain a Disclaimer form from the Trust Officer. The Disclaimer must be completed and signed before a Notary Public, then returned to the Trust Officer. The Trust Officer will route copies of the Disclaimer to the Enrollment Clerk, the Accounting Department, and to Tribal Court, if a guardianship is involved. The Trust Officer will maintain a list of Tribal Members who have disclaimed future distribution funds. After a Disclaimer has been filed, the member will not receive any more distribution checks, and will only receive a 1099 Tax Form for any distribution funds actually received during that tax year. If the Tribal Member or their guardian changes their mind and decides to accept distribution funds again, a

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request must be made in writing to the Trust Officer to receive any future distributions, although the request will not be made retroactive. Funds disclaimed after Tribal Council has approved a distribution resolution will be deposited into the Excess Pledge Revenues member distribution funds for redistribution at the next regular distribution.

- (5) Forwarding of Distribution List. Within two weeks of the distribution cut-off date, a list of the enrolled tribal members eligible for the distribution shall be forwarded by the Enrollment Office to the Tribal Council (without addresses) for informational purposes and to the Tribal Accounting Office (with addresses) for processing of distribution checks.

(d) **Accounting Office Action.** Upon receipt of the distribution list from the Enrollment Office, the Accounting Office shall prepare checks for distribution to enrolled tribal members on the distribution list. The checks shall be issued and mailed on the last business day before the distribution date specified in any Tribal Council Resolution enacted pursuant to § 4.102 of this Ordinance.

[Amended by Resolution No. 2010-213, 6/11/10]

§ 4.103 **DISTRIBUTIONS TO MINORS, ADULTS UNDER A LEGAL DISABILITY, AND TO DECEASED TRIBAL MEMBERS**

(a) **Appointment of Trust Officer.** The Tribal Council shall appoint a Trust Officer, for a specified term, to be responsible for distributions of monies to enrolled tribal members. The Trust Officer may be a designated tribal employee, a financial or investment institution, or any

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other appropriate person or entity. The Trust Officer shall be bonded to perform his or her duties under this Ordinance, but a Tribal Employee acting as Trust Officer shall not be liable for any action or failure to act, absent proof of bad faith or fraud. Compensation for the performance of such duties shall be decided by the Tribal Council.

(b) **Distributions to Minors.**

- (1) For purposes of this Ordinance, a minor shall be defined as any enrolled tribal member who has not reached the age of eighteen (18) as of the date of distribution of a particular per capita payment. When a distribution occurs pursuant to this Ordinance, all distributions to enrolled tribal members who are minors as of the date of distribution shall not be distributed to the minor; instead, the distribution shall be maintained in trust for the benefit of the minor until he or she reaches the age of majority, except as allowed by sub-section (e) below.

[Amended by Resolution No. 2009-259, 6/19/09]

- (2) The Trust Officer shall be responsible for setting up and managing a trust account or accounts with an appropriate financial or investment institution to maintain distribution funds for minors and adults under a legal disability. The form of the trust account (for example, individual trust accounts for each minor or one trust account for all minors) shall be at the discretion of the Trust Officer, so long as the balance and accumulated earnings can be separately identified and monitored for each individual

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with funds held in trust and the account or accounts meets fiduciary standards.

(3) The Trust Officer shall determine the custodial parent(s) or legal custodian of any minor whose distribution funds are being held in trust, and shall develop regulations, subject to the approval of the Tribal Council, addressing how information about custodial status or changes in custodial status shall be supplied to the Trust Officer and in what form. In the event of a dispute about who is the legal custodian of a minor whose distribution funds are being maintained in trust by the Trust Officer, the Trust Officer may petition the Tribal Court for a determination of the issue.

(4) Reports of trust account status, including accumulated earnings, shall be sent on an annual basis to the parent or legal custodian of the minor whose distribution funds are being held in trust.

(A) The Trust Officer shall coordinate disbursement of a Statement of Account annually, and shall disburse 1099 forms by January 31st of each year.

[Subsection (B) removed by Resolution No. 2009-196, 5/8/09]

(c) **Distributions to Adults Under a Legal Disability.**

(1) A presumption shall exist for any adult enrolled tribal member eligible for a distribution that such member is entitled to receive a distribution on the

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distribution date. Certain adults, however, may have been adjudged non compos mentis by a court of competent jurisdiction or be under some other legal disability which makes it likely that such persons will be unable to receive, preserve or reasonably expend distribution funds if such funds were directly disbursed to such adult. In such event, the Trust Officer shall deposit distribution monies for that adult into a trust account(s) and maintain those funds under the same standards and principles set out for minors in subsection (b) of this section, unless the Tribal Court has ordered payment to a Guardian, Conservator, or Trustee of any other funds to which the tribal member is entitled under any other Tribal ordinance, policy, or program, in which case, the distribution funds may be distributed in the same manner as previously ordered by the Tribal Court and subject to any of the same reporting requirements.

- (2) Status as an adult subject to a legal disability shall be determined by the Trust Officer or by the Tribal Court on a case by case basis. Such status shall normally be shown to the Trust Officer by a court order from a court of competent jurisdiction that has placed an adult in the legal custody of a guardian, conservator or institution because of a legal disability. The Trust Officer may recognize the designation of a guardian, conservator or other form of trustee made by a tribal, federal or state agency for purposes of

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distributing funds for the benefit of an adult who is subject to a legal disability without resorting to Tribal Court. However, the Trust Officer shall have authority to petition the Tribal Court to adjudge an adult tribal member as subject to a legal disability if the Trust Officer determines that the adult requires assistance in preserving his or her distribution funds and that due process requires a Tribal Court hearing. In such case, if the Tribal Court issues an appropriate order, that member's distribution funds shall be placed in a trust account under this section.

- (3) The Trust Officer may petition Tribal Court to allow funds belonging to an adult under a legal disability to be turned over to the tribal member's guardian, conservator or trustee or to be paid directly to a provider or vendor at times and in such amounts as are necessary for the health, education, or welfare of the tribal member, and may disburse such funds upon court approval.

[Amended by Resolution No. 2009-259, 6/19/09]

- (4) For purposes of this Ordinance, incarceration does not constitute a legal disability.

[Added by Resolution No. 2009-196, 5/8/09]

(d) **Deceased Individuals.**

- (1) Any enrolled tribal member who is alive on the cut-off date for a tribal distribution asset set out in a resolution as required at §4.102 (b)(4) is

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entitled to disbursement of the distribution amount. In the event an eligible enrolled tribal member dies between the distribution cut-off date and the date when the distribution funds are to be disbursed, that member's distribution monies shall be disbursed to the member's legal heirs according to applicable probate law, or if all the legal heirs agree in writing on some alternative disbursement, then as agreed.

- (2) It shall be the responsibility of the heirs to provide sufficient proof to the Trust Officer for the Trust Officer to prepare a petition to Tribal Court to determine who should receive the deceased tribal member's distribution monies. The Trust Officer may issue regulations, subject to Tribal Council approval, setting out the documentation necessary to release funds under this subsection.
- (3) The Trust Officer shall petition the Tribal Court for a determination of this issue, and shall disburse the deceased member's distribution monies to the person or persons identified in the Tribal Court's order.
- (4) In the event a deceased tribal member's estate is subject to a probate proceeding or other legal proceedings have been initiated by creditors or other persons or entities seeking to obtain the deceased member's assets, the Trust Officer may pay the distribution monies which would have been

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disbursed to that member into the court for disbursement as the court determines.

(e) **Interim Disbursement of Funds Held in Trust for Minors or Adult Under a Legal Disability.**

- (1) Monies held in trust pursuant to this section on behalf of a minor or adult under a legal disability may be disbursed to a custodial parent or legal guardian only at times and in such amounts as are necessary for the health, education, or welfare of the minor, as determined for extraordinary purposes by the Trust Officer in his or her discretion to a parent, guardian, conservator, or other person or entity with legal custody of the minor or adult to meet specific needs of the minor. The Trust Officer shall develop regulations, subject to approval by the Tribal Council, setting out the purposes for which funds may be disbursed under this subsection, and an application process by which requests for disbursement of funds may be made to the Trust Officer.
- (2) A custodial parent or legal guardian may petition the Trust Officer for disbursement of monies held in trust for that minor tribal member for specific purposes. The Trust Officer shall decide, based on the criteria established in the Tribal Council-approved regulations, whether to approve the disbursement request. The decision of the Trust Officer shall

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be the final decision for the Tribe. The Trust Officer must notify the petitioner in writing of the decision and notify petitioner of the appeal process if the Trust Officer denies the petition. Appeal of the Trust Officer's decision shall be made directly to the Tribal Court within sixty (60) days.

[Amended by Resolution No. 2009-259, 6/19/09]

- (f) **Accounting.** The Trust Officer shall submit an annual accounting of all monies held in trust under this Ordinance to the Tribal Council and to the Tribal Accounting Office. Such accounting shall be completed no later than 270 days after the end of the calendar year.
- (g) **Disbursement of Account Funds Upon Removal of Disability.**
 - (1) **Funds Held for Minors Upon Reaching Majority.** Upon reaching the age of majority (eighteen), a newly adult tribal member may request that any and all amounts (plus accumulated earnings) shall be distributed in a lump sum to the member.
 - (A) The applicant shall submit a notarized application in writing and a copy of the applicant's valid Social Security card (the applicant may obtain a copy from the Enrollment Office, if one has been provided previously) to the Trust Officer, who shall have forty-five (45) days to review and process the application.

[Amended by Resolution No. 2009-196, 5/8/09]

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(B) A tribal member who has reached the age of majority must request disbursement of their account funds within five (5) years of their eighteenth (18th) birthday. If the tribal member does not validly request that disbursement within five (5) years, the existing account funds shall be moved to the Unclaimed Funds Account described in subsection (i) below and will be held subject to the terms of that section.

[Amended by Resolution No. 2009-196, 5/8/09]

(2) **Funds Held for Adults Under Disability.** In the event a court of competent jurisdiction determines that an adult is no longer subject to a legal disability and releases the adult from the custody of a guardian, conservator or institution, the Trust Officer shall disburse all distribution funds held in trust for the benefit of that member.

(A) The applicant shall submit the Order that released the applicant from disability, along with a notarized application in writing to the Trust Officer, who shall have thirty (30) days to review and process the application.

(h) **Incarcerated Individuals.**

(1) A presumption shall exist for any adult enrolled tribal member eligible for a distribution that such member is entitled to receive a distribution on the distribution date, and that the distribution shall be sent to the current address on file for the member. However, incarcerated individuals may require additional or alternative arrangements

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because of the various institutions' regulations and/or policies. The Trust Officer may, in his/her discretion, allow the following:

- (A) Submission of an address and instructions to facilitate the deposit of funds into a state, federal, or local institution's "trust" or similar account for the deposit of funds to be credited to and used by an inmate.
 - (i) This address may be in addition to the incarcerated Tribal Member's regular address (at which the member receives tribal correspondence, election materials, etc.)
 - (ii) The incarcerated member must submit their written request to CTSI Accounting, P.O. Box 549, Siletz, Oregon, in writing with an original signature, on or before July 1 of the distribution year.

- (B) Submission of an original notarized Power of Attorney for CTSI Distributions, in the form approved by the Trust Officer, along with the address for the person named in the Power of Attorney.
 - (i) This address may be in addition to the incarcerated Tribal Member's regular address (at which the member receives tribal correspondence, election materials, etc.)
 - (ii) The incarcerated member must submit, in writing with an

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original signature, a copy of the validly executed Power of Attorney and the member's request to honor the Power of Attorney to CTSI Accounting, P.O. Box 549, Siletz, Oregon, on or before July 1 of the distribution year.

(iii) Once submitted, a Power of Attorney cannot be withdrawn for the distribution year, absent extraordinary good cause (for example, death of the named Power of Attorney Holder) as determined by the Trust Officer.

(C) An incarcerated member may, in writing, inform the Trust Officer of his/her incarceration and request the Trust Officer to hold their distribution funds in the Unclaimed Funds account, subject to the requirements of sub-section "i" below.

(2) In all circumstances, the Siletz Tribe shall have no responsibility for the use or disposition of distribution funds after the Siletz Tribe distributes the funds in accordance with this section.

[Amended by Reso. 2009-196, 5/8/09]

(i) **Unclaimed Account Funds.** The Trust Officer shall establish an Unclaimed Distribution Funds account. If an adult tribal member, not under any disability, fails to claim a disbursement check distributed under this Ordinance within 180 days or if an incarcerated Tribal member requests that his/her distribution check be held pursuant to sub-section (h)(1)(C) above, the funds shall be moved to the Unclaimed Distribution Funds account. The Trust Officer shall

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cause the names of the tribal members with funds in the Unclaimed Distribution Funds account to be published in the Siletz News annually. Upon receipt of a complete notarized application requesting distribution of the funds to the owner, the Trust Officer shall disburse the funds, which will consist of the principal amounts deposited into Unclaimed Funds pursuant to the applicable resolution(s) (and not including any interest thereon) to that tribal member. If such funds are not claimed within five (5) years of the date they were distributed, the funds will be returned to the funding source. If the funds are per capita funds from gaming revenue, the funds will be deposited into the Excess Pledge Revenues member distribution funds for redistribution at the next regular distribution.

[Amended by Reso. 2009-196, 5/8/09; by Reso. 2018-066, 2/16/18]

§ 4.104 ATTACHMENT OF DISTRIBUTION MONIES

(a) Unless otherwise authorized by Siletz Tribal Ordinance(s), monies held by the Tribe or Trust Officer for distribution to eligible enrolled tribal members shall not be subject to attachment (while in possession of the Tribe).

(b) The availability of attachment and/or offset of assets of enrolled tribal members is strictly limited to debts owed to the Tribe, child support orders, or debts owed to the Internal Revenue Service.

(c) The Siletz Tribe shall have first priority if it is exercising offset and child support shall have second priority.

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(d) Offset of Funds for Debts Owed to Tribe: If an enrolled tribal member is not current in his or her payments on a debt owed to the Tribe or Tribal entity, the Tribe may request the Tribal Court to order an offset of his or her per capita distributions to the extent needed to pay the debt.

(1) Upon request for an offset to pay debt owed to the Tribe, the Tribal Court shall send a 14 day Notice of Intent to Offset and any form(s) developed to protest the offset to the tribal member.

(2) A tribal member who contests the validity of any request for an offset to pay debt owed to the Tribe shall file a protest to the Tribal Court to obtain relief.

(3) The Tribe and Trust Officer shall have no responsibility to take any independent action with regard to a tribal member's protest of the request for offset, except that the Department or Tribal entity responsible for the request for offset shall gather and submit a brief explanation and supporting evidence showing the basis for the debt owed to the Tribe.

(4) The Tribal Court shall consider the Tribal member's Protest and the information submitted by the Tribal Department requesting the offset. Based on the information before it, the Tribal Court may, in its discretion:

(A) Grant an offset of up to 100% of the tribal member's total distribution payment as requested by the Tribe; or

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(B) Increase or decrease the amount originally submitted as the requested offset, taking into consideration the facts and argument before the Court.

(e) Attachment of Funds for Debts Owed to Other Entities: Upon request of an entity other than the Tribe for an attachment of assets, the Trust Officer shall first ascertain whether attachment is available pursuant to sub-section (b) above. If it is, the Trust Officer shall refer the request, along with any supporting documentation, to the Tribal Court.

(1) Upon receipt of a request for attachment, the Tribal Court shall send a 14 day Notice of Intent to Attach Per Capita Funds and any form(s) developed to Protest the Attachment to the tribal member.

(2) A tribal member who contests the validity of any Non-Tribal request for an attachment, or who believes that he or she will be unfairly harmed by an attachment and having taken steps to mitigate that harm, shall file a protest to the Tribal Court to obtain relief. The types of harm contemplated by this section include, but are not limited to, tribal members whose public benefits will be severely cut even though the tribal member took steps to mitigate the cuts (for example, some programs will take into account the once-yearly per capita distribution so that each monthly benefit is decreased slightly, instead of being curtailed completely in the distribution month). A tribal member may also request that the Court consider ordering a decreased attachment, even when the tribal member does not contest the validity of the request, where the tribal

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member can show an equitable basis for the request. For example, a tribal member may acknowledge that child support or federal taxes are due, but may show the Court that he or she has made regular payments and has an extraordinary current need for the per capita funds at issue.

(3) The Tribe and Trust Officer shall have no responsibility to take any independent action with regard to a tribal member's protest of the request for attachment from another entity.

(4) The Tribal Court shall consider the Tribal member's Protest and the information submitted by any party at the date and time set by the Tribal Court for hearing, and shall weigh the evidence and argument according to the Court's discretion, and shall make an order taking into account the following:

(A) A tribal member who files a good-faith Protest under sub-section 2 of this section shall receive no less than 25% of their per-capita distribution remaining after off-set of any amounts due to the Tribe under sub-section(d), even if the Court does not otherwise find in favor of their protest.

(f) Upon receipt of a certified court order from a court of competent jurisdiction attaching assets of an enrolled tribal member limited to child support orders, debts owed to the Tribe, or debts owed to the Internal Revenue Service, the Trust Officer shall forward per capita distribution monies belonging to the tribal member subject to such order to the person or entity

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designated therein in an amount, if available, sufficient to satisfy the order.

[Amended by Resolution No. 2008-175, April 18, 2008]

§ 4.105 TAXATION OF DISTRIBUTION MONIES

Certain monies, such as revenues generated by the sale of timber harvested from the Tribe's reservation trust lands, have been determined to be free from federal and state taxation when such revenues are distributed to tribal members. Other monies may be subject to taxation under applicable principles of law. The Tribe shall not deduct taxes -federal, state, tribal or otherwise - when monies are distributed to enrolled tribal members under this Ordinance, except as required by duly-promulgated United States Internal Revenue Service regulations. It shall be the responsibility of each tribal member, and of the Trust Officer in appropriate circumstances, to decide whether to pay taxes on monies distributed to enrolled tribal members under this Ordinance, and to actually pay such taxes, and a statement to this effect shall be included when any monies are disbursed to tribal members pursuant to this Ordinance. When a tribal attorney has concluded, pursuant to § 4.102(b)(6) of this Ordinance, that a specific distribution of monies under this Ordinance may be taxable, notice of the taxable status shall be included with each check distributed to tribal members.

[Amended by Resolution No. 2009-259, 6/19/09]

§ 4.106 ENFORCEMENT

The Trust Officer shall have authority to petition the Tribal Court to determine any dispute or issue which may arise under this Ordinance, in his or her discretion, and the District Tribal Court shall have original jurisdiction over such petitions.

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Except as otherwise specified in this Ordinance, the Siletz Tribal Court shall have exclusive jurisdiction to resolve disputes concerning the allocation of net gaming revenues and the distribution of per capita funds. The Tribal Court may overturn a decision only if it finds that the decision was arbitrary and capricious or an abuse of discretion.

[Paragraph 2 added by Resolution No. 2009-259, 6/19/09]

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