

FOND DU LAC RESERVATION BUSINESS COMMITTEE

ORDINANCE #02/99

GARNISHMENT PROCEDURES, AS AMENDED

Adopted by the Fond du Lac Reservation Business Committee pursuant to Resolution #1122/99 on May 4, 1999.
Amended by the Fond du Lac Reservation Business Committee pursuant to Resolution #1305/08 on October 7, 2008.
Amended by the Fond du Lac Reservation Business Committee pursuant to Resolution #1032/09 on January 28, 2009.
Amended by the Fond du Lac Reservation Business Committee pursuant to Resolution #1350/09 on August 27, 2009.

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CHAPTER 1

AUTHORITY, PURPOSE AND INTERPRETATION

Section 101 Authority

This Ordinance is enacted pursuant to the inherent sovereign authority of the Fond du Lac Reservation Business Committee, as the governing body of the Fond du Lac Band of Lake Superior Chippewa, as recognized under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476, Section 201(2) of the Indian Civil Rights Act of 1968, 25 U.S.C. § 1301(2), Article VI of the Revised Constitution of the Minnesota Chippewa Tribe, and under the common law of the United States of America.

Section 102 Findings, Purpose and Scope

The Reservation Business Committee finds that it is in the best interests of the Fond du Lac Band to promote personal economic responsibility on the part of the employees of the Band by giving effect to the garnishment and support orders of any court of competent jurisdiction as provided under this Ordinance. Towards that objective, the standards and procedures established under this Ordinance shall be observed in the determination of lawful withholding from the wages or salary of any employee pursuant to a lawfully issued court order.

Section 103 Reservation of Rights; Interpretation

Nothing in this Ordinance, nor any action in pursuit thereof, shall operate as, or authorize, a waiver of the sovereign immunity of the Fond du Lac Band or as a consent to jurisdiction by any court or agency for any matter arising under law or equity with respect to the subject matter herein. The provisions of this Ordinance shall be construed and implemented in a manner which is consistent with the laws, regulations and procedures of the Fond du Lac Band as established by the Reservation Business Committee.

CHAPTER 2

DEFINITIONS

The following definitions shall apply in the meanings and interpretation of the provisions of this Ordinance:

Section 201 "Aggregate disposable weekly earnings"

"Aggregate disposable weekly earnings" (ADWE) shall mean the disposable earnings of an employee for a particular work week, as defined by the policies of the Fond du Lac Band.

Section 202 "Band"

"Band" shall mean the Fond du Lac Band of Lake Superior Chippewa.

Section 203 "Child support order"

"Child support order" shall mean any order for child support issued by a court of competent jurisdiction.

Section 204 "Court of competent jurisdiction"

"Court of competent jurisdiction" shall mean any court which establishes subject matter and personal jurisdiction over an employee for purposes of collection under this Ordinance.

Section 205 "Disposable earnings"

"Disposable earnings" shall mean that part of an employee's earnings remaining after deductions which are required by law to be withheld. Voluntary deductions initiated by an employee, such as employee retirement contributions and rent deductions, are a part of the employee's disposable earnings.

Section 206 "Earnings"

"Earnings" shall mean compensation paid or payable to an employee for services performed for the Fond du Lac Band or any political subdivision or enterprise of the Band.

Section 207 "Employee"

"Employee" shall mean any person employed by the Fond du Lac Band or any political subdivision or enterprise of the Band, and shall not include independent contractors.

Section 208 "Garnishment order"

"Garnishment order" shall mean any order issued by a court of competent jurisdiction ordering the involuntary withholding and transfer of any part of an employee's earnings, other than child support orders, personal support orders, or federal tax levies, which are separately addressed and authorized under this Ordinance.

Section 209 "Order"

"Order" shall mean any order or writ of execution or sequestration issued by a court of competent jurisdiction against the earnings of an employee.

Section 210 "Payday"

"Payday" shall mean the day upon which earnings are paid to an employee in the ordinary course of business.

Section 211 "Personal support order"

"Personal support order" shall mean any order of alimony or support for any person issued by a court of competent jurisdiction.

Section 212 "Reservation Business Committee"

"Reservation Business Committee" shall mean the duly elected governing body of the Fond du Lac Band.

CHAPTER 3

TREATMENT OF GARNISHMENT AND SUPPORT ORDERS

Section 301 Effect Given to Garnishment and Support Orders

A garnishment or support order issued by a court of competent jurisdiction shall be given effect by the Fond du Lac Band, subject to the limits and prioritization set forth under this Chapter.

Section 302 Limits on Involuntary Deductions From Disposable Income

The following limits shall apply to the aggregate amount of which can be involuntarily withheld from the disposable earnings of any employee of the Fond du Lac Band:

- a. Garnishment orders. (1) No more than 25 percent of an employee's aggregate disposable weekly earnings shall be withheld towards the satisfaction of a single garnishment order against such employee.

(2) Where an employee is subject to multiple garnishment and/or support orders, no more than 50 percent of the employee's aggregate disposable weekly earnings shall be withheld towards the satisfaction of such orders.

- b. Child Support and Personal Support Orders. (1) No more than 50 percent of an employee's aggregate disposable weekly earnings shall be withheld towards the satisfaction of any single child support or personal support order against such employee.

(2) Where an employee is subject to multiple support orders, no more than 50 percent of the employee's aggregate disposable weekly earnings shall be withheld towards the satisfaction of all such orders, in the priority specified under Section 303 of this Ordinance.

- c. Tax levies. (1) Federal tax levies against an employee shall be given effect in accordance with the Internal Revenue Code, 26 U.S.C. §§ 6331-34.

(2) State tax levies shall be treated as general garnishments under subsection (a) of this Section. No state tax levy shall be executed against a member of the Fond du Lac Band when the Band has documentary evidence that the Band member lived and worked on the Reservation during the tax period at issue. In such circumstances, the levy and documentation supporting the tax-exempt status of the Band member shall be forwarded to the Band's Legal Department for appropriate correspondence with the state department of revenue.

- d. Fraud, Misappropriation or Willful Destruction of Band Property. Amounts owed to the Fond du Lac Band for losses due to fraud, misappropriation or willful and wanton destruction of Band property shall not be subject to the limitations imposed under this section.
- e. Collections from Employees of the Fond du Lac Day Labor Program. Collections from employees of the Fond du Lac Day Labor Program under this Ordinance shall be limited to 15 percent of net income and shall be applicable only to debts owed to the Fond du Lac Band.

Section 303 Priority Assigned to Multiple Orders

Where an employee is subject to multiple orders for involuntary withholding of wages or salary which cumulatively exceed 50 percent of the employee's aggregate disposable weekly earnings, in no event shall the total amount of the aggregate disposable weekly earnings withheld from the employee exceed 50 percent, and the following descending priority shall be observed by the Fond du Lac Band in giving effect to such orders:

- a. Child support orders affecting Fond du Lac children. When one or more children who are subject to a child support order are enrolled in the Fond du Lac Band, or are demonstrated to the Reservation Business Committee by the recipient parent or caretaker of such child to be eligible for enrollment in the Fond du Lac Band or a descendant in the first or second degree of an enrolled member of the Fond du Lac Band, that child support order shall be given priority over any other involuntary withholding order.
- b. Other child support orders. Any other child support order shall be given priority over competing involuntary withholding orders, and the orders within this subsection which are filed first with the Fond du Lac Band shall be given priority over subsequently filed orders.

- c. Other personal support orders. Other personal support orders shall be given priority over competing involuntary withholding orders, and the orders within this subsection which are filed first with the Fond du Lac Band shall be given priority over subsequently filed orders.
- d. All other garnishments. All other garnishments shall be given effect in the order that they are filed with the Fond du Lac Band.

Section 304 Federal Tax Levies

Notwithstanding Section 303, federal tax levies shall be given effect in accordance with Sections 6331-34 of the Internal Revenue Code of 1986.

Section 305 Modification of Orders

Whenever a court of competent jurisdiction modifies an involuntary withholding order, any prior order with regard to the same subject which is administered by the Fond du Lac Band shall be deemed to be modified, and such modification shall be given effect upon being filed with the Fond du Lac Band, subject to the limits and priorities set forth in this Chapter.

CHAPTER 4

ADMINISTRATIVE COMPLIANCE

Section 401 Responsibility of the Fond du Lac Payroll Services Department

It shall be the responsibility of the Fond du Lac Payroll Services Department to administer the provisions of this Ordinance in a manner which is consistent with the applicable policies and procedures of the Fond du Lac Band. Except as provided under this Ordinance, the law of no other jurisdiction shall be interpreted to preempt or supersede the provisions of this Ordinance. In the event that another jurisdiction asserts authority over any particular collection matter governed by this Ordinance, the Payroll Services Department shall refer the matter to the Fond du Lac Legal Affairs Office.

Section 402 Filing of Order

An order shall be deemed to be filed with the Fond du Lac Band under this Ordinance when it is received by the Fond du Lac Payroll Services Department.

Section 403 Adjustments

In the event that the amount withheld from an employee's aggregate disposable weekly earnings exceeds 50 percent (except under Section 304) on any particular payday, the Fond du Lac Payroll Services Department shall adjust by reduction such withholding dollar-for-dollar with respect to the affected order on the next payday.

Section 404 No Retroactive Effect

No retroactive effect shall be given to any order for involuntary withholding; nor shall any retroactive correction be required where an underestimation has temporarily occurred as to the appropriate withholding amount under a particular order.

CHAPTER 5

AMENDMENT & RESCISSION

Section 501 Amendment and Rescission


The standards and procedures set forth in this Ordinance may only be amended by adoption of a separate ordinance by the affirmative vote of at least four members of the Reservation Business Committee, the Chairman participating in such vote, and the terms of such amendment shall then be included herein. This Ordinance may be rescinded by resolution adopted by the affirmative vote of at least four members of the Reservation Business Committee, the Chairman participating in such vote.

CERTIFICATION

We do hereby certify that the foregoing Ordinance #02/99 was duly presented and adopted by Resolution #1122/99 by a vote of 3 for, 0 against, 0 silent, with a quorum of 4 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on May 4, 1999 on the Fond du Lac Reservation; and subsequently amended by Resolution #1305/08 on October 7, 2008; Resolution #1032/09 on January 28, 2009; and Resolution #1350/09 on August 27, 2009.



Karen R. Diver
Chairwoman



Ferdinand Martineau Jr.
Secretary/Treasurer