

Public Law 96-318
96th Congress

An Act

Aug. 1, 1980

[S. 1466]

Delaware Tribe
of Indians;
judgment
funds,
distribution
25 USC 1401.

To provide for the distribution of certain funds appropriated to pay judgments in favor of the Delaware Tribe of Indians and the absentee Delaware Tribe of Western Oklahoma in Indian Claims Commission dockets 27-A and 241, 289, and 27-B and 338, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any provision of the Act of October 19, 1973 (87 Stat. 466), or any other law, or any regulation or plan promulgated pursuant thereto, the funds appropriated by the Act of December 15, 1971 (85 Stat. 627) for the award in docket 289; by the Act of March 21, 1972 (86 Stat. 86) for the award in dockets 27-A and 241; by the Act of March 7, 1978 (92 Stat. 107) for the award in dockets 27-B and 338; on October 31, 1978, in accordance with section 1302 of the Act of July 27, 1956 (70 Stat. 694), as amended (31 U.S.C. 724a), for the award in dockets 27-E and 202; and on August 6, 1979, in accordance with section 1302 of such Act of July 27, 1956, for the award in docket 27; including all interest and investment income accrued thereon, less attorney fees and litigation expenses incurred in connection with such awards, shall be used and distributed as provided in this Act.

SEC. 2. The Secretary of the Interior (hereinafter the "Secretary") shall prepare a roll of all persons who were born on or prior to October 3, 1972, and who are living on the date of the enactment of this Act who are citizens of the United States and who are descended from a lineal ancestor whose name appears on the "Registry" filed in the Office of the Commissioner of Indian Affairs pursuant to article 9 of the treaty with the Delaware Indians of July 4, 1866 (14 Stat. 793) or who are descended from a lineal ancestor whose name appears on the "Register" prepared pursuant to the agreement dated April 8, 1867, between the Delaware Tribe of Indians and the Cherokee Nation. No person shall be eligible for enrollment under this section who was paid, or was eligible to be paid, pursuant to the Act of October 3, 1972 (82 Stat. 762).

SEC. 3. (a) Upon completion of the roll provided for in section 2 of this Act, the Secretary shall segregate and establish a separate fund from the funds described in the first section of this Act. Such separate fund shall be in an amount equal to \$1,488.22 multiplied by the number of persons whose names appear on the roll prepared in accordance with section 2 of this Act: *Provided*, That said separate fund shall not in any event exceed the maximum amount of \$1,488,220 regardless of the number of such enrollees.

(b) The Secretary shall pay 10 per centum of the fund established by subsection (a) of this section to the Kansas Delaware Tribe of Indians, Incorporated, and to the Delawares of Idaho, Incorporated, in a ratio proportionate to their respective number of members enrolled under section 2 of this Act, for the sole purpose of enabling such corporations to pay attorneys' fees for the representation of such members in connection with their efforts to achieve participation in the distribution of funds under the Act of October 3, 1972, and in addition thereto,

25 USC 1291.
Separate fund.

Attorneys' fees.

shall pay to such corporations from the fund established by subsection (a) of this section all expenses in connection therewith which the Secretary finds to be reasonable.

(c) After payments made pursuant to subsection (b) of this section, the Secretary shall distribute the balance of the separate fund established pursuant to subsection (a) of this section on a per capita basis to those who have been enrolled by the Secretary under section 2 of this Act.

SEC. 4. After the establishment of the separate fund prescribed in section 3(a) of this Act, 17 per centum of all of the then remaining funds described in the first section of this Act shall be apportioned by the Secretary to the Delaware Tribe of Western Oklahoma. The Secretary shall prepare a roll of all persons born on or before, and living on, the date of the enactment of this Act who are citizens of the United States and whose names appear on the membership roll of the Delaware Tribe of Western Oklahoma, brought current as of the date of the enactment of this Act. No more than 60 per centum of the funds apportioned to the Delaware Tribe of Western Oklahoma shall be distributed on a per capita basis, in amounts as equal as possible, to all tribal members enrolled in accordance with this section. No less than 40 per centum of said funds, including any amounts remaining from the aforementioned per capita distribution, shall be invested by the Secretary for tribal social and economic programing purposes, including periodic dividend payments: *Provided*, That the voting membership of the tribe may elect to designate more than 40 per centum of the total funds apportioned to the tribe for such programing purposes. Said programing funds, including all interest and investment income accrued, shall be utilized by the tribal governing body on an annual budgetary basis, subject to the approval of the Secretary.

SEC. 5. (a) After the establishment of the fund prescribed in section 3(a) and the apportionment of funds to the Delaware Tribe of Western Oklahoma as prescribed in section 4 of this Act, the remaining balance of the funds described in the first section of this Act shall be divided and distributed per capita, in accordance with the provisions of this section, among all persons whose names appear on a roll prepared by the Secretary, which roll shall include all persons born on or prior to and living on the date of the enactment of this Act who are citizens of the United States and whose names or whose lineal ancestors' names appear on any of the following rolls or records:

(1) the "Registry", filed in the Office of the Commissioner of Indian Affairs pursuant to article 9 of the treaty with the Delaware Indians of July 4, 1866 (14 Stat. 793);

(2) the Delaware (Cherokee Delaware) Indian per capita payroll approved by the Secretary of the Interior on April 20, 1906; or

(3) the "Register" prepared pursuant to the agreement of April 8, 1867, between the Delaware Tribe of Indians and the Cherokee Nation.

(b) The per capita amount determined pursuant to subsection (a) of this section with respect to any person (except a person enrolled pursuant to section 2 of this Act) who was born after October 3, 1972, shall not be less than the amount of per capita payment such person would otherwise receive if no separate fund had been established pursuant to section 3(a) and if the total funds described in the first section of this Act were reduced only by the amount of funds apportioned to the Delaware Tribe of Western Oklahoma pursuant to section 4 of this Act.

(c) The Secretary shall identify those persons who qualify and are enrolled under section 5(a) (1) and (3) of this Act exclusive of those persons who qualify under section 5(a)(2) of this Act. The amount of their individual shares shall be multiplied by the number of such enrollees. The Secretary shall pay 10 per centum of this total amount to the Kansas Delaware Tribe of Indians, Incorporated, and to the Delawares of Idaho, Incorporated, in a ratio proportionate to their respective number of members enrolled under subsection (a) of this section for the sole purpose of the payment of their attorneys' fees in connection with their efforts to achieve participation in the funds set forth in subsection (a) of this section. The Secretary shall distribute the balance of said total amount on a per capita basis to those persons enrolled under section 5(a) (1) and (3) of this Act subject to the requirement of section 5(b) of this Act.

(d) No person shall be entitled to more than one per capita share under subsection (a) of this section, nor shall any person who received a per capita share under section 4 of this Act be eligible to receive any share under this section.

SEC. 6. The per capita shares of living competent adults shall be paid directly to them. Per capita shares of deceased individual beneficiaries shall be determined and distributed pursuant to regulations prescribed by the Secretary. Per capita shares of legal incompetents and per capita shares of persons under age eighteen shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary determines to be necessary to protect the interests of such persons.

SEC. 7. (a) Except for funds to be held in escrow as provided hereinafter in this section, the Secretary shall pay and distribute all funds, as provided in this Act, forthwith upon completion of the enrollment process to be established by the rules and regulations to be promulgated under section 10 of this Act, which enrollment process period shall not be deemed to include the period of time for action upon enrollment appeals.

Escrow account.

(b) The Secretary, in arranging for the per capita payments under sections 3, 4, and 5 of this Act, shall hold at interest in an escrow account the apportioned shares, including any attorneys fees applicable thereto as provided in sections 3 and 5, of all applicants whose entitlements are the subjects of enrollment appeals, pending determinations of all enrollment appeals.

(c) The aggregate amount of any apportioned shares applicable to unsuccessful applicants for enrollment under section 3 of this Act, including the attorneys fees attributable to such apportioned shares as provided in such section, shall be paid and distributed by the Secretary, 17 per centum to the Delaware Tribe of Western Oklahoma for programing purposes as provided in section 4 of this Act, and the remaining 83 per centum shall be paid and distributed as provided in section 5 of this Act: *Provided*, That per capita payments which would be payable under section 5 of this Act of less than \$5 shall be aggregated and paid 19 per centum to the Delaware Tribe of Western Oklahoma and 81 per centum to the Delaware Tribe of Indians, both for programing purposes.

(d) The amount of any apportioned shares applicable to unsuccessful applicants for enrollment who claimed entitlement through membership in the Delaware Tribe of Western Oklahoma shall be added to the programing portion of that tribe's share of these awards.

(e) The amount of any apportioned shares applicable to unsuccessful applicants who claimed entitlement under section 5(a)(2) of this Act shall be added to the programing portion of the Delaware Tribe of

Indians' share of awards provided for in the Act of October 3, 1972 (86 Stat. 762).

25 USC 1291.

(f) The total amount of any apportioned shares applicable to unsuccessful applicants who claimed entitlement through section 5(a)(1) or section 5(a)(3) shall be paid and distributed as provided in section 5(c): *Provided*, That per capita payments which would be payable under section 5(c) of this Act of less than \$5 shall be aggregated and paid 19 per centum to the Delaware Tribe of Western Oklahoma and 81 per centum to the Delaware Tribe of Indians, both for the programing purposes of said tribes.

SEC. 8. None of the funds distributed per capita or made available for programing purposes under this Act shall be subject to Federal or State income taxes or be considered income or resources in determining eligibility for assistance under Federal, State, or local programs.

Tax exemption.

SEC. 9. Nothing contained in this Act shall be construed as recognizing the Kansas Delaware Indians, the Kansas Delaware Tribe of Indians, Incorporated, the Idaho Delaware Indians or the Delawares of Idaho, Incorporated, as federally recognized Indian tribes.

SEC. 10. The Secretary is authorized and directed, within sixty days from the date of enactment of this Act, to promulgate rules and regulations to implement this Act, including the establishment of enrollment procedures and a deadline for the filing of enrollment applications on a date not more than one hundred and twenty days after publication of said regulations.

Rules and regulations.

Approved August 1, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-1136 (Comm. on Interior and Insular Affairs).

SENATE REPORT No. 96-628 (Comm. on Indian Affairs).

CONGRESSIONAL RECORD, Vol. 126 (1980):

Mar. 18, considered and passed Senate.

July 21, considered and passed House.