

CHAPTER 2-5 DEBT SET-OFF

2-5-1 General Provisions

(a) Name: This Chapter shall be known as the Colville Debt Set-Off Code.

(b) Findings: The Colville Business Council finds that because of the expanded economic development of the Colville Indian Reservation, the number of Tribal programs and enterprises providing services and products to members of the Tribes has increased greatly. As a result, the indebtedness of the Colville Tribal members, employees, and contractors to these programs and enterprises has also increased.

The increase has resulted in a large number of accounts receivable owed to the Tribes by members, contractors, and employees. The effect of this large amount of accounts receivable is to restrict the availability of program services and products to other Tribal members, employees, and contractors. The Business Council finds that it is its duty to find ways to expedite the repayment of debts to the Colville Confederated Tribes so that these programs and enterprises can best provide services and products for more Colville Tribal members, employees, and contractors.

Lack of payment to the Tribes for services rendered constitutes an undesired distribution of Tribal resources to particular parties. Such distributions drain the communal resources of the Tribes without equitable treatment. Therefore, the Colville Business Council finds that it must foster expeditious payment of debts through an administrative process. All Tribal programs, enterprises, and entities covered under this Chapter are considered to be the original debt owner for the limited purpose of any debt collection, bankruptcy, fraudulent transfer, or civil rights actions.

(Amended 2/24/12, Certified 3/8/12, Resolution 2012-80)
(Amended 8/2/12, Certified 8/8/12, Resolution 2012-488)

(c) Debt Collection Contractor: When the Confederated Tribes of the Colville Reservation (Tribes) enters into a contract with a third party debt collection company, the company shall be considered a designee of the Tribes who has authority to collect debts pursuant to this Chapter. All notice and collection requirements of this Chapter will apply to the company in the same manner that they apply to the Tribes itself. All confidentiality requirements of this Chapter will continue to apply. In addition to the other provisions of this Chapter, the following applies when a debt collection contractor is utilized:

- (1) A reasonable collection fee may be added to a debt to be collected payable by the debtor.
- (2) The amount to be paid for collection services will be subject to the terms in the Contract between the Tribes and the Debt Collection Contractor.
- (3) A fee up to thirty-five percent (35%) is presumed reasonable.
- (4) All debt collection proceedings and actions required to enforce this Chapter will be filed in the Colville Tribal Court and are subject to the laws of the Confederated Tribes of the Colville Reservation.
- (5) Should any provision of this section conflict with any other provision of this Chapter, the provisions in this section will govern and control.

Amended 3/04/12, Certified 3/8/12, Resolution 2020-96

2-5-2 Debtor Master List

(a) The Colville Tribes' Comptroller or designee shall keep and maintain a debtor master list. Tribal programs, enterprises, and entities, including by way of example and not limitation, the Tribal Court, Tribal Credit, Colville Indian Housing Authority, and Public Works program, shall submit names of individuals, business entities, and other debtors to the Comptroller or designee for inclusion on a debtor master list.

(b) The debtor master list shall be treated as confidential. Only relevant Tribal officials and employees shall be entitled access to the debtor master list. Employees entitled to access or copies of the debtor master list include by way of example and not limitation: Contracting Officer, Executive Director, Office of the Reservation Attorney, TERO Director, Enrollment Officer, Debt Collection Contractors hired for purposes of collecting debt pursuant to this Chapter. Employees and officials of Tribal entities and enterprises shall arrange access to the debtor master list through authorized Tribal officials and employees. This in no way creates a right of action, of any sort, pertaining to this confidentiality duty.

(c) The Comptroller or designee may create policies and procedures to carry out any duties pertaining to the debtor master list and this Chapter.

- (1) The Comptroller or designee may include in these policies and procedures a process for distributing debt set-off funds to multiple Tribal programs, enterprises, or entities, in situations where a single debtor owes debts to multiple Tribal programs, enterprises, or entities.
- (2) Absent Comptroller or designee policies and procedures for multiple Tribal debtors distribution (2-5-2(c)(1)) the Comptroller or designee shall set-off the debts subsequently, in the order in which they were filed.

(Amended 2/24/12, Certified 3/8/12, Resolution 2012-80)

(d) Information from the Debtor Master List may be shared with Debt Collection Contractors who have a contract approved by Colville Business Council Resolution.

Amended 3/04/12, Certified 3/8/12, Resolution 2020-96

2-5-3

Dividend Payment

(a) Debtor List: Within ten (10) days after the official date of entitlement cutoff for a dividend payment, the director or executive of every Tribal program or enterprise, shall forward to the Tribal Enrollment Officer a list of Tribal members currently indebted to such program or enterprise, including the amount of such indebtedness.

(b) Notice: Within ten (10) days after receiving debtor lists from Tribal programs and enterprises, the Tribal Enrollment Officer or designee shall cause a notice to be sent out to each Tribal member on the debtor master list, which notice shall be substantially in the following form:

"Tribal records show that you owe the (name of Tribal program) the sum of \$_____ as of (date). Unless it is paid in full, immediately, it will be withheld from your share of the next Tribal dividend payment. The amount withheld will then be credited towards your debt. If you believe the amount of the debt shown to be incorrect or if you have any other reason to question the debt, you must file an action in Tribal Court to contest this matter within fifteen (15) days after the date of this notice. If you do not bring such an action, the amount of debt will be withheld from your dividend payment."

(c) Tribal Court Action: If an action is commenced in the Tribal Court within the time period set out above, a hearing shall be held within fifteen (15) days after the filing of the action to determine the validity of the debtor's claim. The decision of the Tribal Court shall be final.

(d) Debt Credit: The Tribal Enrollment Officer shall be responsible for informing the officer who issues dividend payment checks of the names of debtors and the amounts of debt so that these amounts may be withheld from the next dividend payment. The Tribal Enrollment Officer shall also have the duty of notifying the respective Tribal programs and enterprises of the amounts to be credited to each debtor after funds are withheld from the Tribal dividend payment.

(Amended 2/24/12, Certified 3/8/12, Resolution 2012-80)

(Amended 3/2/12, Certified 8/8/12, Resolution 2012-488)

2-5-4

Wages and Salaries

(a) Debtor List: No less than ten (10) days before wage, salary, and stipend checks are to be distributed by the Tribes or any of its entities and enterprises, the director or executive of every Tribal program or enterprise including, by way of example and not limitation, the Tribal Court, Tribal Credit, Colville Indian Housing Authority, Public Works, Environmental Trust, shall forward to the Comptroller or designee (or chief financial officer of the applicable Tribal entity or enterprise) a list of Tribal employees currently indebted to such program or enterprise, including the amount of such indebtedness.

(b) Notice: The Comptroller or designee (or chief financial officer of the applicable Tribal entity or

enterprise) shall cause a notice to be sent along with the next salary, wage, or stipend check to each person shown on the debtor lists, which notice shall be substantially in the following form:

"Tribal records show that you owe the (name of Tribal program) the sum of \$ _____ as of (date). Unless this amount is paid in full immediately, (1) the amount agreed to in the attached writing, or, (2) if there is no such attachment, the amount of the debt, or 25% of your gross salary, wages or payment, or \$50.00, whichever is less, will be deducted from your next paycheck, and all subsequent paychecks, until the amount due is paid in full or a settlement amount is agreed to in writing. The amount withheld will then be credited towards your debt. If you believe the amount of the debt shown to be incorrect or if you have any other reason to question the debt, you must file an action in Tribal Court within fifteen (15) days of the date of this notice. If you do not bring such an action, the amount specified above will be withheld from your next paycheck."

(Amended 3/04/12, Certified 3/8/12, Resolution 2020-96)

(c) Tribal Court Action: If an action is commenced in the Tribal Court within the time period set out above, a hearing shall be held within fifteen (15) days after the filing of the action to determine the validity of the debtor's claim. The decision of the Tribal Court shall be final.

(d) Debt Credit: The Comptroller or designee (or chief financial officer of the applicable Tribal entity or enterprise) shall withhold from the next paycheck of the debtor the proper amount as determined in accordance with the above notice. The Comptroller or designee (or chief financial officer of the applicable Tribal entity) shall have the duty of notifying the respective Tribal programs and enterprises of the amounts to be credited to each debtor after funds are withheld from wages, salaries, and stipends. The Comptroller or designee shall cause all withheld funds to be credited to the respective Tribal programs, entities, and/or enterprises and make all necessary transfers of funds to said programs, entities, and/or enterprises.

(Amended 2/24/12, Certified 3/8/12, Resolution 2012-80)

2-5-5

Contractors

(a) All individuals and business entities indebted to the Tribes entering into contracts with the Colville Tribes, its programs, entities, and enterprises shall have any and all payments to said contractor in the amount of the debt owed withheld by the Colville Tribes. The withholding shall be credited to the debtor's debt.

(b) Notice: Indebted contractors shall be notified that payment under the contract will be off-set by the debt owed to the Tribes in the following form:

"Tribal records show that you owe the (name of Tribal program) the sum of \$ _____ as of (date). Unless this amount is paid in full immediately, the amount of the debt will be deducted from payment under your contract with the Tribes. The amount withheld will then be credited towards your debt. If you believe the amount of the debt shown to be incorrect or if you have any other reason to question the debt, you must file an action in Tribal Court within fifteen (15) days of the date of this notice. If you do not bring such an action, the amount specified above will be withheld from payment under your contract with the Tribes."

(c) Tribal Court Action: if an action is commenced in the Tribal Court within the time period set out in 2-5-5 (b), a hearing shall be held within fifteen (15) days after the filing of the action to determine the validity of the debtor's claim. The decision of the Tribal Court shall be final.

(d) Debt Credit: The Comptroller or designee shall withhold from the next payment under the terms of the contract the proper amount as determined in accordance with the above notice. The Comptroller or designee shall have the duty of notifying the respective Tribal programs, entities, and/or enterprises of the amounts to be credited to each debtor after the funds are withheld from contract payment. The Comptroller or designee shall cause all withheld funds to be credited to the respective Tribal programs, entities, and/or enterprises and make all necessary transfers of funds to said programs, entities, and/or enterprises.

(Amended 2/24/12, Certified 3/8/12, Resolution 2012-80)

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Garnishment from Contractor Employees or Sub-Contractors

(a) Contractors with the Colville Tribes shall, as a condition of contracting with the Colville Tribes, garnish wages, salaries, or payments from the contractors’ employees or sub-contractors owing debt to the Tribes, its programs, entities, or enterprises, in accordance with terms described in the contract.

(b) Notice to Contractor: The Comptroller or designee, following review of the Contractor’s Compliance and Utilization plan (or other relevant documents or information) shall cause a notice to be sent to the Contractor employing or subcontracting with the individual debtor shown on the debtor lists, which notice shall be substantially in the following forms:

For debt-owing employees:

"Tribal records show that your employee, *(name of debtor)* owes the *(name of Tribal program)* the sum of \$_____ as of *(date)*. Until this amount is paid in full (1) the amount agreed to in the attached writing, or, (2) if there is no such attachment, the amount of the debt, or 25% of your employee’s gross salary, wages or payment, or \$50.00, whichever is less shall be deducted from your employee’s next paycheck, and all subsequent paychecks, until the amount due is paid in full or a settlement amount is agreed to in writing. The amount withheld will then be credited towards your employee’s debt. If you or your employee believe the amount of the debt shown to be incorrect or if you have any other reason to question the debt, you or your employee must file an action in Tribal Court within fifteen (15) days of the date of this notice. If you do not garnish these wages, the amount eligible for garnishment will be deducted from payment under your contract with the Colville Tribes”

Amended 3/04/12, Certified 3/8/12, Resolution 2020-96 For debt-owing sub-contractors:

"Tribal records show that your sub-contractor, *(name of debtor)* owes the *(name of Tribal program)* the sum of \$_____ as of *(date)*. Until this amount is paid in full you shall deduct, (1) the amount agreed to in the attached writing, or, (2) if there is no such attachment, the amount of the debt, or 25% of your employee’s gross salary, wages or payment, or \$50.00, whichever is less, from your employee’s next paycheck, and all subsequent paychecks, until the amount due is paid in full or a settlement amount is agreed to in writing. The amount withheld will then be credited towards your sub-contractor’s debt. If you believe the amount of the debt shown to be incorrect or if you have any other reason to question the debt, you must file an action in Tribal Court within fifteen (15) days of the date of this notice. If you do not garnish this payment, the amount eligible for garnishment will be deducted from payment under your contract with the Colville Tribes

Amended 3/04/12, Certified 3/8/12, Resolution 2020-96

(c) Notice to employee or sub-contractor: The Comptroller or designee, following review of the Contractor’s Compliance and Utilization plan (or other relevant documents or information) shall cause a notice to be sent to the Contractor’s employee or sub-contractor with the individual or entity along with the next salary, wage, or stipend check to each person shown on the debtor lists, which notice shall be substantially in the following form:

"Tribal records show that you owe the *(name of Tribal program)* the sum of \$_____ as of *(date)*. Unless this amount is paid in full immediately, (1) the amount agreed to in the attached writing, or, (2) if there is no such attachment, the amount of the debt, or 25% of your gross salary, wages or payment, or \$50.00, whichever is less, will be deducted from your next paycheck, and all subsequent paychecks, until the amount due is paid in full or a settlement amount is agreed to in writing. The amount withheld will then be credited towards your debt. If you believe the amount of the debt shown to be incorrect or if you have any other reason to question the debt, you must file an action in Tribal Court within fifteen (15) days of the date of this notice. If you do not bring such an action, the amount specified above will be withheld from your next paycheck."

Amended 3/04/12, Certified 3/8/12, Resolution 2020-96

(d) Tribal Court Action: if an action is commenced in the Tribal Court within the time period set out in 2-

5-5 (b), a hearing shall be held within fifteen (15) days after the filing of the action to determine the validity of the debtor's claim. The decision of the Tribal Court shall be final.

(e) Debt Credit: The Comptroller or designee shall withhold from the next payment under the terms of the contract the proper amount as determined in accordance with the above notice. The Comptroller or designee shall have the duty of notifying the respective Tribal programs, entities, and/or enterprises of the amounts to be credited to each debtor after the funds are withheld from contract payment. The Comptroller or designee shall cause all withheld funds to be credited to the respective Tribal programs, entities, and/or enterprises and make all necessary transfers of funds to said programs, entities, and/or enterprises.

(f) TERO Compliance and Utilization Plan Forms: The TERO Director or designee shall forward a copy of all completed TERO Compliance and Utilization Plan Forms made pursuant to CTC 10-1 or 10-3 to the Comptroller.

(g) Other evidence of a debtee working under a contract with the Colville Tribes as an employee or sub-contractor may be used to demonstrate that an individual owes debt to the Tribes. Such evidence may include documentary evidence. Testimonial evidence shall be in the form of a signed affidavit under penalty of perjury.

(Amended 2/24/12, Certified 3/8/12, Resolution 2012-80)

2-5-7 **Fronts**

(a) A Front is a person or entity doing business on behalf of a person or entity that would otherwise be subject to a debt set-off under this Chapter with the intent of avoiding a debt set-off. Persons or entities that are a Front can include by way of example, but in no way exclusively, family members conducting business on behalf of family members that have debt with the Tribes and corporations conducting business on behalf of individuals that have debt with the Tribes.

(b) Investigation: In the event there is probable cause to suspect that a contractor with the Colville Tribes is a Front, the Comptroller or designee shall cause an investigation to be conducted to determine whether a Front exists.

(c) Finding a Front: Upon completion of the investigation, if a Front is found by a preponderance of the evidence, the Comptroller or designee shall commence a debt set-off procedure as described in this Chapter.

(d) Reviewable by Tribal Court: The finding of a Front may be challenged as part of a Tribal Court action taken pursuant to this Chapter. The plaintiff-appellant must raise objections to the finding of a Front in the plaintiff's initial pleading. In the event the finding of a Front is raised by the plaintiff, the Tribal Court shall make a de novo review with a preponderance of the evidence standard.

(Amended 2/24/12, Certified 3/8/12, Resolution 2012-80)

2-5-8 **Notice**

All notices required by this Chapter shall be served via certified mail, and considered received three (3) days after mailing.

(Amended 2/24/12, Certified 3/8/12, Resolution 2012-80)

2-5-9 **Unreasonable Challenges**

(a) If the Tribal Court determines that an action brought in Tribal Court challenging a debt is unreasonable, the individual or entity that brought the action shall be fined \$150, to be garnished from wages, dividend payments, or contracts in accordance with this Chapter.

(b) If the Tribal Court finds three (3) consecutive debt challenges from the same individual or entity to be unreasonable, the Tribal Court shall presume that any further debt challenges brought within the next five (5) years against the same debtor to be presumptively unreasonable.

(Amended 2/24/12, Certified 3/8/12, Resolution 2012-80)

2-5-10 **Perfectured Security Interests in Dividend Payments**

Independent of the rights herein, for any debt or monetary obligation due and owing by a tribal member to a Tribal Program or enterprise and evidenced by a written agreement signed by the tribal member whereby the tribal member agrees the debt or monetary obligation to the Tribal Program or enterprise may be recovered from his or her dividend payment(s), the Tribal Program or enterprise shall have a perfected lien and security interest attaching to all future dividend payments to which such member may be entitled.

(Amended 8/2/12, Certified 8/8/12, Resolution 2012-488)

2-5-11 No Other Claims on Dividends

Except as provided for in this chapter and except for orders issued by the Colville Tribal Court and any federal income tax levies, the Colville Tribes shall not recognize or enforce any claim, garnishment, levy, attachment, assignment or other right or interest in a dividend payment.

(Amended 8/2/12, Certified 8/8/12, Resolution 2012-488)

2-5-12 Severability

If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of the Chapter or the application of the provision to other persons or circumstances is not affected.

(Amended 2/24/12, Certified 3/8/12, Resolution 2012-80)

2-5-13 Effective Date

This Chapter shall be effective from the date of its adoption by the Colville Business Council.

(Amended 2/24/12, Certified 3/8/12, Resolution 2012-80)
(Chapter 2-5 Adopted 8/31/78, Resolution 1978-638)