

Cherokee Nation Code Annotated

Title 18: Corporations

Chapter 2: Cherokee Nation Limited Liability Company Act

Article 4: Form of contribution of member

§ 229. Allocation of profits and losses—Distributions

Cite as: 18 CNCA § 229

A. A distribution may not be made if, after giving effect to the distribution:

1. the limited liability company would not be able to pay its debts as they become due in the ordinary course of business; or
2. the company's total assets would be less than the sum of its total liabilities plus, unless the operating agreement permits otherwise, the amount that would be needed, if the company were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of members whose preferential rights are superior to those receiving the distribution.

B. A limited liability company may base a determination that a distribution is not prohibited under subsection (A) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

C. Except as otherwise provided in subsection (E), the effect of a distribution under subsection (A) is measured as of:

1. the date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization; or
2. the date the payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

D. A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the company's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

E. If the terms of the indebtedness provide that payment of principal and interest is to be made only if, and to the extent that, payment of a distribution to members could then be made under this section indebtedness of a limited liability company, including indebtedness issued as distribution, is not a liability for purposes of determinations under subsection (B) of this section. If the indebtedness is issued as a distribution, each payment

of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

Historical Data

LA 32-04, eff. July 16, 2004.