H. R. 3043

To amend the Internal Revenue Code of 1986 to clarify the treatment of general welfare benefits provided by Indian tribes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 2013

Mr. Nunes (for himself, Ms. Jenkins, Mr. Kind, Mr. Gerlach, Mr. Reichert, Mr. Boustany, Mr. Cole, Ms. Moore, Ms. DelBene, Mr. Cárdenas, Mr. Kilmer, Mr. Valadao, Ms. McCollum, Mr. Mullin, and Mr. Gosar) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to clarify the treatment of general welfare benefits provided by Indian tribes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Tribal General Welfare Exclusion Act of 2013”.

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SEC. 2. INDIAN GENERAL WELFARE BENEFITS.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting before section 140 the following new section:

“SEC. 139E. INDIAN GENERAL WELFARE BENEFITS.

“(a) IN GENERAL.—Gross income does not include the value of any Indian general welfare benefit.

“(b) INDIAN GENERAL WELFARE BENEFIT.—For purposes of this section, the term ‘Indian general welfare benefit’ includes any payment made or services provided to or on behalf of a member of an Indian tribe (or any spouse or dependent of such a member) pursuant to an Indian tribal government program, but only if—

“(1) the program is administered under specified guidelines and does not discriminate in favor of members of the governing body of the tribe, and

“(2) the benefits provided under such program—

“(A) are available to any tribal member who meets such guidelines,

“(B) are for the promotion of general welfare,

“(C) are not lavish or extravagant, and

“(D) are not compensation for services.

“(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—
“(1) INDIAN TRIBAL GOVERNMENT.—For purposes of this section, the term ‘Indian tribal government’ includes any agencies or instrumentalities of an Indian tribal government and any Alaska Native regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.).

“(2) DEPENDENT.—The term ‘dependent’ has the meaning given such term by section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B).

“(3) LAVISH OR EXTRAVAGANT.—The Secretary shall, in consultation with the Tribal Advisory Committee (as established under section 3(a) of the Tribal General Welfare Exclusion Act of 2013), establish guidelines for what constitutes lavish or extravagant benefits with respect to Indian tribal government programs.

“(4) ESTABLISHMENT OF TRIBAL GOVERNMENT PROGRAM.—A program shall not fail to be treated as an Indian tribal government program solely by reason of the program being established by tribal custom or government practice.

“(5) CEREMONIAL ACTIVITIES.—Any items of cultural significance, reimbursement of costs, or
cash honorarium for participation in cultural or cer-
emonial activities for the transmission of tribal cul-
ture shall not be treated as compensation for serv-
ices.’’.

(b) CONFORMING AMENDMENT.—The table of sec-
tions for part III of subchapter B of chapter 1 of such 
Code is amended by inserting before the item relating to 
section 140 the following new item:

“Sec. 139E. Indian general welfare benefits.”.

(e) STATUTORY CONSTRUCTION.—Ambiguities in 
section 139E of such Code, as added by this Act, shall 
be resolved in favor of Indian tribal governments and def-
ference shall be given to Indian tribal governments for the 
programs administered and authorized by the tribe to ben-
efit the general welfare of the tribal community.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by 
this section shall apply to taxable years for which 
the period of limitation on refund or credit under 
section 6511 of the Internal Revenue Code of 1986 
has not expired.

(2) ONE-YEAR WAIVER OF STATUTE OF LIMITA-
tions.—If the period of limitation on a credit or re-
fund resulting from the amendments made by sub-
section (a) expires before the end of the 1-year pe-
riod beginning on the date of the enactment of this
Act, refund or credit of such overpayment (to the extent attributable to such amendments) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period.

SEC. 3. TRIBAL ADVISORY COMMITTEE.

(a) Establishment.—The Secretary of the Treasury shall establish a Tribal Advisory Committee (hereinafter in this subsection referred to as the “Committee”).

(b) Duties.—

(1) Implementation.—The Committee shall advise the Secretary on matters relating to the taxation of Indians.

(2) Education and Training.—The Secretary shall, in consultation with the Committee, establish and require—

(A) training and education for internal revenue field agents who administer and enforce internal revenue laws with respect to Indian tribes on Federal Indian law and the Federal Government’s unique legal treaty and trust relationship with Indian tribal governments, and

(B) training of such internal revenue field agents, and provision of training and technical assistance to tribal financial officers, about im-
plementation of this Act and the amendments made thereby.

(c) Membership.—

(1) In general.—The Committee shall be composed of 7 members appointed as follows:

(A) Three members appointed by the Secretary of the Treasury.

(B) One member appointed by the Chairman, and one member appointed by the Ranking Member, of the Committee on Ways and Means of the House of Representatives.

(C) One member appointed by the Chairman, and one member appointed by the Ranking Member, of the Committee on Finance of the Senate.

(2) Term.—

(A) In general.—Except as provided in subparagraph (B), each member’s term shall be 4 years.

(B) Initial staggering.—The first appointments made by the Secretary under paragraph (1)(A) shall be for a term of 2 years.

SEC. 4. OTHER RELIEF FOR INDIAN TRIBES.

(a) Temporary Suspension of Examinations.—The Secretary of the Treasury shall suspend all audits and
examinations of Indian tribal governments and members
of Indian tribes (or any spouse or dependent of such a
member), to the extent such an audit or examination re-
lates to the exclusion of a payment or benefit from an In-
dian tribal government under the general welfare exclu-
sion, until the education and training prescribed by section
3(b)(2) of this Act is completed. The running of any pe-
riod of limitations under section 6501 of the Internal Rev-
enue Code of 1986 with respect to Indian tribal govern-
ments and members of Indian tribes shall be suspended
during the period during which audits and examinations
are suspended under the preceding sentence.

(b) WAIVER OF PENALTIES AND INTEREST.—The
Secretary of the Treasury may waive any interest and pen-
alties imposed under such Code on any Indian tribal gov-
ernment or member of an Indian tribe (or any spouse or
dependent of such a member) to the extent such interest
and penalties relate to excluding a payment or benefit
from gross income under the general welfare exclusion.

(c) DEFINITIONS.—For purposes of this subsection—

(1) INDIAN TRIBAL GOVERNMENT.—The term
“Indian tribal government” shall have the meaning
given such term by section 139E of such Code, as
added by this Act.
(2) INDIAN TRIBE.—The term “Indian tribe” shall have the meaning given such term by section 45A(c)(6) of such Code.