

GENERAL WELFARE EXCLUSION

General Welfare Exclusion: IRS doctrine which recognizes that payments made under legislatively provided social benefit programs for promotion of the general welfare are excludable from gross income. Payments cannot be compensation for services.

3 Part Analysis: (1) Process (“legislatively provided”); (2) Purpose (“promotion of the general welfare”); and (3) Payments must not be compensation for services.

Tribal Themes:

- Tribal programs, which benefit the general welfare of the tribe, should be excluded from taxation regardless of whether the recipient demonstrates ‘financial need’, *i.e.*, means testing should not be a requirement for programs to qualify as general welfare programs.
- The tribe, as a sovereign government, is best situated to determine: (a) the needs of the community; and (b) how best to address those needs.
 - Often times, tribal programs seek to supplement the federal trust responsibility, such as in the areas of education, cultural preservation, healthcare, housing, and elder programs.
 - Deference must be given to tribal governments to develop their own unique programs – there are 566 federally-recognized tribes with diverse histories, needs, and policy approaches.
- Maintaining and promoting culture, including language preservation, intercultural exchanges between tribes, and heritage education is a profound community need.
- Exception for rule against compensation for services: Tribes should be allowed to offer nominal stipends or benefits for bona fide programs with community service ties, without the recipient of the stipend or benefit incurring tax liability.

Suggestions:

- IRS & Treasury should consult with tribes through each process of developing written guidance, including the circulation of a discussion draft for comment
- IRS & Treasury should target those areas where tribes are clearly providing community benefits and take them off the table for IRS scrutiny, such as education programs, funeral assistance programs, elder care & assistance programs, and winter heating/summer cooling assistance.
- Any guidance should make clear that Section 3402 (r) (*i.e.*, withholding of per capita payments) applies only to per capita distributions of gaming revenue and does not apply to government program benefits that are merely funded by gaming revenue
- IRS & Treasury should enlist the support of a Tribal Advisory Work Group