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.