

American Indian Law and Policy Alert

IRS Issues Important Guidance Regarding Tribal Governmental Welfare Programs

December 6, 2012

On December 5, 2012, the Internal Revenue Service (IRS) and the Department of the Treasury issued [Notice 2012-75](#), “Application of the General Welfare Exclusion to Indian Tribal Government Programs That Provide Benefits to Tribal Members.” This long-awaited guidance greatly expands the scope of the General Welfare Exclusion for tribes and their members.

The IRS and Treasury Department developed a proposed revenue procedure in consultation with tribal leaders and governments. As a result of the consultative process and the more than 85 comments received, under the new application the IRS would presume that the individual need requirement of the general welfare exclusion is met for benefits provided under certain tribal government programs to tribal members, spouses and dependents.

The general welfare exclusion applies to specified benefits under housing programs, education programs, elder and disabled programs, cultural and religious programs and certain other qualifying assistance programs. Under the proposed revenue procedure, the specified benefits provided under qualifying programs would neither be treated as taxable income to the recipients nor be subject to information reporting by the tribal government.

To qualify for the general welfare exclusion, all of the following general criteria must be met:

- The benefit is provided pursuant to a specific Indian tribal government program.
- The program has written guidelines that specify how individuals may qualify for the benefit.
- The benefit is available to any tribal member who satisfies the program guidelines.
- The distribution of benefits from the program does not discriminate in favor of members of the governing body of the tribe.
- The benefit is not compensation for services.
- The benefit is not lavish or extravagant.

Housing programs eligible for this favorable treatment include mortgage or rent assistance, certain repairs and improvements and utility bills assistance. Education programs include tuition (including room and board), transportation, tutors, supplies (including computers) and job counseling, placement and training. Elder and disabled programs include meals, home care, local transportation, certain travel expenses and residence improvements to accommodate special needs. Cultural and religious programs include expenses for a tribe’s cultural, social or



community activities, or those of other Indian reservations or sites of importance to the tribe; instruction on a tribe's culture, history and traditions; and funeral and burial expenses and associated bereavement event costs.

There is an open comment period for the proposed revenue procedure. Comments may be submitted in writing to the IRS on or before June 3, 2013. While the revenue procedure is still in proposed form individuals can rely on this guidance, not only prospectively, but also for years in which the statute of limitations has not expired, to obtain a refund or credit.

CONTACT INFORMATION

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