

## TITLE 31 GENERAL WELFARE PROGRAMS

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## **TITLE 31 GENERAL WELFARE PROGRAMS**

### **Chapter 31.01 Purpose and Definitions**

#### 31.01.01 Purpose

The purpose of this code is to ensure tribal agencies meet federal guidelines for tax-exemption, in order to help tribal benefit recipients minimize their tax burden and avoid potential taxation pitfalls.

Federal law and regulations permit Tribal Members, and certain nonmembers, to exclude certain tribally-distributed benefits from their federal income tax calculation. Normally, an individual has to include anything of value that they receive as part of their gross income when filing their taxes. However, these exemptions allow eligible individuals to exclude certain tribal benefits from their gross income calculation. Thus, if an individual receives qualified funds or other resources from a Tribal Program, the individual does not have to pay income tax on that benefit.

There is a federal statute as well as federal regulations which cover this subject matter, and the multiple sets of regulations have great deal of overlap but also important differences. If a Tribal Program cannot qualify its benefits under one set of guidelines, it should look to the others to see if the benefits could qualify.

This code is focused on four different, but related, tax exemptions:

- a) United States Code 139E – A federal law that creates a tax exemption for benefits that meet certain criteria, as long as the benefit is for the general welfare or is a specific type of listed benefit. This exemption only applies to Tribal members or their spouses or dependents.
- b) Internal Revenue Service Safe Harbor Program – A regulatory scheme that creates a tax exemption for benefits that meet certain criteria, as long as the program is one of the listed types of “safe harbor” programs. This exemption can apply to Tribal Members or Qualified Nonmembers (defined below).
- c) General Internal Revenue Service General Welfare Exclusion – A regulatory scheme that creates a tax exemption for benefits that are means tested and do not represent compensation for services. This can apply to any person.
- d) Ceremonial Activities – There two types of exemptions for ceremonial objects or reimbursement or honoraria connected to cultural or ceremonial activities, depending on the person receiving the benefit.

[HIST: Source - Port Gamble S’Klallam Law and Order Code. Resolution No. 21-A 022, passed 03/08/21, created this title.]

#### 31.01.02 Definitions

The following definitions apply throughout this Title unless otherwise specified or the context clearly indicates otherwise:

- a) “Benefit” means any cash, other property, and services, whether provided directly or indirectly, and whether by payment, distribution, or reimbursement.
- b) “Dependent” means a qualifying child or relative as defined in IRC § 152.
- c) “General Welfare Exclusion” means a federal income tax exclusion which allows individuals to exclude certain tribally-distributed benefits from their gross income when calculating federal income tax. For the purposes of this Title, General Welfare Exclusion only refers to the four exemptions described in Chapter 31.02.
- d) “Qualified Nonmember” means a spouse, former spouse, legally recognized domestic partner or former domestic partner, ancestor, descendant, or dependent of a member of the Tribe.
- e) “Tribe” means the Port Gamble S’Klallam Tribe.
- f) “Tribal Member” means an enrolled member of the Port Gamble S’Klallam Tribe.
- g) “Tribal Program” means any program operated by a governmental entity under the authority of the Port Gamble S’Klallam Tribe, or by tribal custom overseen by the tribal government or an instrumentality thereof, which distributes Benefits to any individuals.

[HIST: Source - Resolution No. 21-A 022, passed 03/08/21.]

### 31.01.03 Benefit Criteria

The following criteria will be used to determine whether a Benefit distribution qualifies for certain General Welfare Exclusions in place at the time of publication of this Title:

- a) The Benefit is provided pursuant to a specific Tribal Program;
- b) The Tribal Program has written guidelines specifying how individuals may qualify for the Benefit;
- c) The Benefits are available to any individual who meets such guidelines, subject to budgetary constraints;
- d) The distribution of the Benefit from the Tribal Program does not discriminate in favor of members of the governing body of the Tribe;
- e) The Benefit is not compensation for services;
- f) The Benefit is not lavish or extravagant under the facts and circumstances;

Benefit guidelines may limit distribution of Benefits based on tribal membership or affiliation, or some other identifiable distinction, including but not limited to veteran status, age, people in a certain geographic area, or people affected by a natural disaster. However, in order to meet these criteria, the guidelines must be written and applied consistently.

[HIST: Source - Resolution No. 21-A 022, passed 03/08/21.]

### 31.01.04 Safe Harbor Distributions

“Safe Harbor Distributions” will refer to those distribution programs that have been designated as Safe Harbor Programs by the IRS with respect to general welfare benefit

exclusions. As of the enactment of this code, those programs include the following. The specific programs described in parentheses are illustrative and not exhaustive.

- a) Housing Programs. Programs relating to principal residences and ancillary structures that are not used in any trade or business, or for investment purposes that:
  1. Pay mortgage payments, down payments, or rent payments (including but not limited to security deposits) for principal residences;
  2. Enhance habitability of housing, such as by remedying water, sewage, sanitation service, safety (including but not limited to mold remediation), or heating or cooling issues;
  3. Provide basic housing repairs or rehabilitation (including but not limited to roof repair and replacement); or
  4. Pay utility bills and charges (including but not limited to water, electricity, gas, and basic communications services such as phone, internet, and cable).
- b) Education and Employment Programs. Programs that:
  1. Provide students (including but not limited to post-secondary students) transportation to and from school, tutors, and supplies (including but not limited to clothing, backpacks, laptop computers, musical instruments, and sports equipment) for use in school activities and extracurricular activities;
  2. Provide tuition payments for students (including but not limited to allowances for room and board on or off campus for the student, spouse, domestic partner, and dependents) to attend preschool, school, college or university, online school, educational seminars, vocational education, technical education, adult education, continuing education, or alternative education.
  3. Provide for the care of children away from their homes to help their parents or other relatives responsible for their care to be gainfully employed or pursue education; or
  4. Provide job counseling and programs for which the primary objective is job placement or training, including but not limited to allowances for:
    - i. Expenses for interviewing or training away from home (including but not limited to travel, auto expenses, lodging, and food);
    - ii. Tutoring;
    - iii. Appropriate clothing for a job interview or training (including but not limited to an interview suit or a uniform required during a period of training).
- c) Elder and Disabled Programs. Programs for individuals who have attained age 55 or are mentally or physically disabled (as defined under applicable law, including tribal government disability codes) that provide:
  1. Meals through home-delivered meals programs or at a community center or similar facility;
  2. Home care such as assistance with preparing meals or doing chores, or day care outside the home;
  3. Local transportation assistance; or

4. Improvements to adapt housing to special needs (including but not limited to grab bars and ramps).
- d) Cultural and Religious Programs. Programs that:
1. Pay expenses to attend or participate in an Indian tribe's cultural, social, religious, or community activities, such as pow-wows, ceremonies, and traditional dances (this includes but is not limited to admission fees, transportation, food, and lodging);
  2. Pay expenses to visit sites that are culturally or historically significant for the Tribe, including but not limited to other Indian reservations (this includes but is not limited to admission fees, transportation, food, and lodging);
  3. Pay the costs of receiving instruction about an Indian tribe's culture, history, and traditions (including but not limited to traditional language, music, and dances);
  4. Pay funeral and burial expenses and expenses of hosting or attending wakes, funerals, burials, other bereavement events, and subsequent honoring events; or
  5. Pay transportation costs and admission fees to attend educational, social, or cultural programs offered or supported by the Tribe or another tribe.
- e) Other Qualifying Assistance Programs. Programs that:
1. Pay transportation costs such as rental cars, substantiated mileage, and fares for bus, taxi, and public transportation between an Indian reservation, service area (as defined in 25 C.F.R. § 20.100), or service unit area (an area designated for purposes of administration of Indian Health Service programs under 42 C.F.R. § 136.21(l)) and facilities that provide essential services to the public (such as medical facilities and grocery stores);
  2. Pay for the cost of transportation, temporary meals, and lodging of a tribal member or qualified nonmember while the individual is receiving medical care away from home;
  3. Provide assistance to individuals in exigent circumstances (including but not limited to victims of abuse), including but not limited to the costs of food, clothing, shelter, transportation, auto repair bills, and similar expenses;
  4. Pay costs for temporary relocation and shelter for individuals involuntarily displaced from their homes (including but not limited to situations in which a home is destroyed by a fire or natural disaster);
  5. Provide assistance for transportation emergencies (for example, when stranded away from home) in the form of transportation costs, a hotel room, and meals; or
  6. Pay the cost of nonprescription drugs (including but not limited to traditional Indian tribal medicines).

[HIST: Source - Resolution No. 21-A 022, passed 03/08/21.]

### 31.01.05 Gaming Distributions Excluded

Per capita payments made directly or indirectly using revenue from tribal gaming operations are not subject to the provisions of this Title. If the United States Supreme Court, Ninth Circuit Court of Appeals, or Federal District Court for the Western District of Washington holds or a federal law or regulation specifically states that gaming per capita payments can be subject to the General Welfare Exclusion, gaming per capita payments will become subject to this Title to the extent permitted by federal case, statutory, or regulatory law.

[HIST: Source - Resolution No. 21-A 022, passed 03/08/21.]

## **Chapter 31.02 General Welfare Exclusions**

### 31.02.01 Types of General Welfare Exclusions

Federal law and the Internal Revenue Service treat a number of different types of payments or distributions as non-taxable, including, without limitation:

- a) Benefits that satisfy the requirements of the exemption under U.S.C. Section 139E;
- b) Benefits that are provided under an IRS Safe Harbor Program;
- c) Benefits that qualify for exclusion under the IRS General Test of General Welfare Exclusion; and
- d) Ceremonial Activities.

There are other express exemptions under the Internal Revenue Code, such as the exemption provided for tribal medical expenses under Internal Revenue Code 139D, or that meet other recognized exemptions including, for example, resource or land-based exemptions under 25 USC Sections 117a-b, 1407, and 1408. These exemptions are not included under the heading of General Welfare Exemptions in this Title.

[HIST: Source - Resolution No. 21-A 022, passed 03/08/21.]

### 31.02.02 U.S.C. Section 139E

This includes any distribution of Benefits that:

- a) Meets all of the criteria in 31.01.03;
- b) Is either a Safe Harbor Distribution described in 31.01.04 or is for the general welfare; and
- c) Is made to a Tribal Member or their spouse or dependent.

[HIST: Source - Resolution No. 21-A 022, passed 03/08/21.]

### 31.02.03 IRS Safe Harbor Program

This includes any distribution of Benefits that:

- a) Meets all of the criteria in 31.01.03;
- b) Is a Safe Harbor Distribution; and
- c) Is made to a Tribal Member or Qualified Nonmember.

[HIST: Source - Resolution No. 21-A 022, passed 03/08/21.]

#### 31.02.04 General IRS General Welfare Exclusion

This includes any distribution of Benefits that:

- a) Is made pursuant to a governmental program;
- b) Is means-tested; and
- c) Does not represent compensation for services.

[HIST: Source - Resolution No. 21-A 022, passed 03/08/21.]

#### 31.02.05 Ceremonial Activities

There are two categories of ceremonial activities exemptions, depending on who receives the Benefit:

- a) A Tribal Member or the spouse or dependent of a Tribal Member, who receives any items of cultural significance, reimbursement of costs, or cash honorarium for participation in cultural or ceremonial activities for the transmission of tribal culture.
- b) A religious or spiritual official or leader, who receives any items of cultural significance that are not lavish or extravagant under the facts and circumstances, or nominal cash honoraria to recognize their participation in cultural, religious, and social events.

[HIST: Source - Resolution No. 21-A 022, passed 03/08/21.]

### **Chapter 31.03 Responsibilities of Tribal Programs**

#### 31.03.01 General Welfare Exclusion Compliance

When a Tribal Program distributes any Benefit that could be considered as income for federal income tax purposes, the official administering the Tribal Program will determine whether any planned distribution of Benefits qualifies for any General Welfare Exclusion. If a planned Benefit distribution can be modified to meet the requirements of a General Welfare Exclusion described in Chapter 31.02 without compromising or fundamentally altering the planned distribution, the distribution shall be so modified.

[HIST: Source - Resolution No. 21-A 022, passed 03/08/21.]

#### 31.03.02 Notification of Ineligibility

When a Tribal Program makes a distribution that it believes does not meet the requirements of any of the three General Welfare Exclusions, the Tribal Program will notify the recipient that the distribution is possibly subject to federal income taxation.

[HIST: Source - Resolution No. 21-A 022, passed 03/08/21.]

### 31.03.03 Documentation

- a) The Tribe's accounting department shall prepare a form that Tribal Programs will use to document compliance with the General Welfare Exclusion requirements. Each Tribal Program will complete the form for any distribution made after the effective date of this Title. This documentation will be maintained permanently by the Tribal Program and a copy will be available to Benefit recipients upon request.
- b) Recipients of any Benefit distributed by a Tribal Program for a specific purpose agree to use the Benefit solely for the purpose for which the Benefit is designated. Tribal Programs shall require each Benefit recipient to certify that the recipient agrees to use the Benefit solely for its designated purpose, and return any remaining, unused, or unspent portion of the Benefit to the Tribal Program. The Tribe's Managing Attorney, or designee, shall promulgate procedures and forms, as appropriate, for Tribal Programs to follow and use to ensure compliance with these requirements.

[HIST: Source - Resolution No. 21-A 022, passed 03/08/21.]

### 31.03.04 No Waiver of Sovereign Immunity

Nothing in this Title is to be interpreted as a waiver of the sovereign immunity of the Port Gamble S'Klallam Tribe, its agencies, instrumentalities, or affiliated entities, its employees, or its officials.

[HIST: Source - Resolution No. 21-A 022, passed 03/08/21.]

### 31.03.05 Savings

Nothing herein shall be interpreted as requiring any Tribal Program or official to act in a way that contradicts federal tax law. This Title shall be automatically updated to reflect any changes to the federal laws or regulations incorporated by this Title.