

Chapter 12. General Welfare

11.1201 SHORT STATUTE

This Statute may be cited as the “General Welfare Statute,” and it repeals and replaces any prior Statute or Regulation in conflict with this Statute.

(Source: WOS 2017-002, June 2, 2017, Section I)

11.1202 PURPOSE

A. The Tribe provides Assistance to Applicants and desires to affirm its sovereign right to do so on a non-taxable basis, pursuant to the General Welfare Doctrine. Both the United States Congress, through its enactment of the Tribal General Welfare Exclusion Act of 2014, and the Internal Revenue Service, through its traditional application of the general welfare doctrine and subsequent guidance, has recognized the sovereign right of Indian tribal governments to provide financial assistance to its citizens under certain circumstances on a non-taxable basis.

B. The purpose of this Statute is to set forth the guidelines for programs that are used by the Tribe to determine what services or programs are needed to promote public health, safety and other basic need services for the promotion of the general welfare of the Tribe, such as food, utilities, housing, education assistance and other such functions that support the long historical and cultural general welfare of the Tribe.

C. The purpose of this Statute is to establish basic guidelines and procedures for programs to follow in ensuring compliance with the general welfare doctrine and Internal Revenue Code Section 139E for 1) Applicants applying for Assistance and 2) Tribal staff making eligibility determinations for Assistance. Further, it is the intent of the Tribal Council that all Assistance provided under this Statute:

- 1.** Is made under an Approved Program;
- 2.** Is available to any Applicants who satisfy the program policies, subject to budgetary restraints;

3. Is made under an Approved Program that does not discriminate in favor of members of the Tribal Council;
4. Is not provided as compensation for goods and/or services; and
5. Is not lavish or extravagant under the facts and circumstances, as determined by the Tribal Council.

(Source: WOS 2017-002, June 2, 2017, Section II)

11.1203 DEFINITIONS

A. “Administrative Entity(s)” means a department or program of the Tribal government that is authorized and funded, through a Tribal Council approved budget, to administer and provide Assistance under an Approved Program under this Statute.

B. “Applicant(s)” means an enrolled Tribal citizen or qualified non-citizen who has applied for Assistance under this Statute. It also includes an Identified Group, as defined in subsection M, below;

C. “Approved Program(s)” means any program or programs approved by the Tribal Council to provide general welfare assistance to Applicants that is intended to qualify for treatment under the General Welfare Doctrine, as defined herein. It includes, for example, the payment of benefits related to housing, education, elder or disabled status, cultural and religious programs or for other qualifying assistance, such as transportation costs, etc.

D. “Assistance” means any Program benefits or payments that qualify for tax free treatment under the General Welfare Exclusion.

E. “Beneficiary” means any person or persons entitled to receive Assistance in accordance with specific Program policies and are exempted under Internal Revenue Code, Section 139E and may benefit, including: Tribal Citizens, spouses of a Tribal Citizen, and/or dependents of a Tribal Citizen.

F. “Citizen” or “Tribal citizen” means an enrolled member of Little Traverse Bay Bands of Odawa Indians.

G. “Code” means the Internal Revenue Code of 1986, as amended.

H. “Compensation” for services should reflect that qualifying Programs are not disguised employment. However, this shall not prevent the Tribe from structuring Programs with community service ties so long as such ties are consistent with the General Welfare Exclusion.

I. “Constitution” means the Constitution of the Little Traverse Bay Bands of Odawa Indians.

J. “Executive” means the Executive Branch of government under Article VIII of the Constitution the power of which is vested in the Tribal Chairperson and the Vice-Chairperson.

K. “General Welfare Exclusion” means any assistance shall be treated as non- taxable so long as it satisfies the requirements for exclusion under Code Section 139E, it is provided under a Safe Harbor Program, or it meets the General Test.

L. “General Test” means any assistance will be treated as meeting the General Test under the General Welfare Exclusion if the benefits are:

1. Paid by or on behalf of an Indian tribe;
2. Under a social benefit program;
3. Based on either needs of the Indian community itself or upon individual needs of the recipient (which need not be financial in nature);
4. Are not Compensation for services;
5. Are not gaming per capita payments as referenced in the Indian Gaming Regulatory Act.

M. “Identified Group” means Tribal citizens and qualified non-citizens who are members of an identified group, such as Elders.

N. "Lavish" or "Extravagant" shall have the meaning determined by the Tribal Council in its sole discretion based on all facts and circumstances, taking into account needs unique to the Tribe as well as the social purpose being served by the particular Assistance at hand, except as

otherwise may be required for compliance with final guidance issued under IRS Code Section 139E following consultation between the Tribe and the IRS;

O. “Indian Gaming Regulatory Act”, “IGRA” means the United States federal law that establishes the jurisdictional framework that governs Indian gaming, Federal Act (Pub.L. 100–497, 25 U.S.C. § 2701 et seq.

P. “Reservation” in accordance with Little Traverse Bay Bands of Odawa Indians Constitution, Article III, Section H, *means the lands within the boundaries of the reservations for the Little Traverse Bay Bands of Odawa Indians as set out in Art I, paragraphs third and fourth of the Treaty of 1855, 11 Stat. 621, plus any lands set out in Articles Second and Third of the Treaty of March 28, 1836, 7 Stat. 491, in the event that the 1836 reservation is determined to include lands which are not included within the 1855 reservation, plus any lands outside of those boundaries which are now or in the future declared to be Little Traverse Bay Bands of Odawa Indians reservation by the U.S. Department of Interior.*

Q. "Safe Harbor Program" shall refer to a Program that meets the safe harbor requirements set forth herein and IRS Revenue Procedure 2014-35, as the same may hereafter be amended. Need shall be presumed for Assistance provided under a Safe Harbor Program.

R. "Tribal Council" or "Council" means the Council Members of the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2017-002, June 2, 2017, Section III)

11.1204 RATIFICATION OF PRIOR ACTS; INTENT OF LEGISLATION

A. This Statute does not establish a new program or programs. This Statute is intended to set forth and confirm existing procedures used in the administration of general welfare assistance programs and services and is not to be construed as the creation of new general welfare assistance rights that previously did not exist.

B. Assistance provided prior to the enactment of this Statute is hereby ratified and confirmed as general welfare assistance pursuant to the authority of the Tribal Constitution. It is intended to establish a framework to improve the coordination of general welfare

doctrine compliance. Programs and services, referred to herein, are authorized by the enactment of this statute in conjunction with other applicable laws.

(Source: WOS 2017-002, June 2, 2017, Section IV)

11.1205 GENERAL WELFARE DOCTRINE AND IRS REVENUE PROCEDURE 2014-35/TRIBAL GENERAL WELFARE EXCLUSION OF 2014

A. The Internal Revenue Service recognizes that Assistance to Applicants under a legislatively provided Approved Program for the promotion of the general welfare of the Tribe is excludable from the gross income of those Applicants.

B. In addition, the Service, in IRS Revenue Procedure 2014-35, provided for safe harbor programs under which, if approved and in writing, need would be presumed and qualifying benefits would be excluded.

C. The Assistance authorized by this Statute is intended to qualify for such favorable tax treatment under the General Welfare Doctrine to the fullest extent permitted at law. All amounts budgeted by the Tribe for Assistance shall remain general assets of the Tribe until such payments are disbursed.

D. Assistance authorized by this Statute shall be an unfunded arrangement and shall be limited to funds appropriated, at the discretion of the Council.

E. Assistance is not subject to information reporting by the Tribe to the Internal Revenue Service.

F. Without limitation, the following benefits shall be treated as non-taxable hereunder:

- 1.** Benefits that satisfy the requirements for the exemption under Code Section 139E;
- 2.** Benefits that qualify for exclusion under an IRS Safe Harbor Program;
- 3.** Benefits that qualify for exclusion under the IRS General Test of General Welfare exclusion; or

4. Benefits that meet another express exemption under the Internal Revenues Code, such as the exemption provided for tribal medical expenses under Internal Revenue Code Section 139D, or that meet other recognized exemptions including, for example, resource or land-based exemptions under 25 USC Sections 117a-b, 1407 and 1408.

(Source: WOS 2017-002, June 2, 2017, Section V)

11.1206 NON-RESOURCE DESIGNATION

- A. Assistance to Applicants shall be made from the assets of the Tribal government and all payments are subject to the availability of budgeted Tribal government funds.
- B. The Tribe does not guarantee Assistance under this Statute. Assistance shall not be treated as a resource of an Applicant for any purpose.

(Source: WOS 2017-002, June 2, 2017, Section VI)

11.1207 GOVERNING LAW; SOVEREIGNTY

- A. All the rights and liabilities associated with the enactment of this Statute, or the Assistance made hereunder, shall be construed and enforced according to the laws of the Tribe and applicable federal law.
- B. Nothing in this Statute or the related policies or procedures adopted for its implementation, if any, shall be construed to make applicable to the Tribe any laws or regulations 1) which are otherwise inapplicable to the Tribe, or 2) from which the Tribe is entitled to exemption because of its sovereign status.

(Source: WOS 2017-002, June 2, 2017, Section VII)

11.1208 FEDERAL TRUST OBLIGATIONS

- A. The Tribe reserves the right to provide Assistance in circumstances where federal funding is insufficient to operate federal programs designed to benefit Applicants and when federal funding is insufficient to adequately and consistently fulfill federal trust obligations.

B. The Tribe's adoption of its Approved Programs is not intended to relieve or diminish the federal government of its funding and trust responsibilities. Nothing herein shall waive the Tribe's right to seek funding shortfalls or to enforce the trust rights of the Tribe and its citizens. The Tribe shall be entitled to government-to-government consultation and coordination rights in regard to this Statute with the federal government.

(Source: WOS 2017-002, June 2, 2017, Section VIII)

11.1209 TRIBAL COUNCIL APPROVED PROGRAMS

A. The Tribal Council shall designate Approved Programs for which funds will be budgeted each fiscal year, consistent with the purposes of this Statute. Each Approved Program shall be consistent with the General Welfare Doctrine as to purpose, eligibility, and funding.

B. Tribal Council reserves the right to cancel, adjust, modify or revoke any Assistance provided by the Tribe in accordance with the Budget Formulation Statute, including *Allocation of General Fund Balance, Supplemental Funding Process, Budget Modifications, Emergency budgets/Recessions, and Systematic Reductions of Budgets.*

(Source: WOS 2017-002, June 2, 2017, Section IX)

11.1210 PURPOSE OF APPROVED PROGRAMS

Each Approved Program shall be limited to purposes consistent with treatment under the General Welfare Doctrine. An Approved Program must be established and operated to promote the general welfare of the Tribe, including programs designed to enhance the promotion of health, education, self-sufficiency, self-determination, Tribal character and the maintenance of culture and tradition, entrepreneurship, and employment.

(Source: WOS 2017-002, June 2, 2017, Section X)

11.1211 ELIGIBILITY AND APPLICATION PROCEDURES

Assistance intended to qualify for General Welfare Doctrine treatment shall be limited to enrolled citizens of the Tribe and qualified non-citizens. Each Approved Program shall set forth the specific

eligibility rules and limitations applied to that program. The Executive shall present program descriptions and policies, which include eligibility rules and limitations, to the Tribal Council for approval in accordance with this Statute. Only those descriptions and policies that are so approved by the Council shall be considered to be in force and effect.

(Source: WOS 2017-002, June 2, 2017, Section XI)

11.1212 LIMITED USE OF ASSISTANCE PAYMENTS

All Assistance must be used for the purpose stated in the Approved Program description and policy. In the event that Assistance is used or pledged for a purpose inconsistent with the purpose set forth in an Approved Program or the Applicant's application, the payment will be deemed forfeited. The Administrative Entity responsible for the Approved Program under which the misused Assistance was made shall secure repayment from the Applicant. The Administrative Entity is also authorized to offset any other payments owed to such an Applicant, if an offset is necessary to secure repayment of Assistance under this Statute.

(Source: WOS 2017-002, June 2, 2017, Section XII)

11.1213 PROGRAMS NOT LIMITED TO MEANS TESTING

Programs that qualify under Code Section 139E or the IRS Safe Harbor shall not require a showing of individual need or means testing in order to achieve non-taxable treatment under the General Welfare exclusion. The Tribe also reserves the right to provide community-based Programs and programs based on non-financial needs under the General test so that no individual means testing is needed. The Tribe recognizes that means testing can distort certain tribal cultural and community values. However, the Tribe can have some programs which are financial need based in order to help those most in need of the assistance.

(Source: WOS 2017-002, June 2, 2017, Section XIII)

11.1215 ANNUAL BUDGETING: UNFUNDED PROGRAM

When applicable per program requirements, the Council shall annually designate those funding sources that are available for Approved Programs as part of the annual budgeting process. Notwithstanding anything to the contrary, the Assistance authorized hereunder shall be

“unfunded” for tax purposes and no Applicant shall have an interest in or right to any funds budgeted for or set aside for Approved Programs until paid. Assistance funds shall remain assets of the Tribe until distributed and the Approved Programs shall be administered at all times to avoid triggering of the doctrines of “constructive receipt” and/or “economic benefit.”

(Source: WOS 2017-002, June 2, 2017, Section XV)

11.1216 FORFEITURE

Notwithstanding anything herein to the contrary, the Executive, acting on behalf of the Council, may forfeit Assistance to any Applicant who is found to have violated the terms of this Statute, or the policies and procedures for any Approved Program. The Executive may also forfeit Assistance should said Assistance be treated as a resource detrimental to the Tribe or an Applicant. In the event of any such forfeiture, all Assistance provided to the Applicant pursuant to this Statute shall be deemed a loan and shall be enforceable as such. Such loans may be subject to taxation, including any amount for the forgiveness of a loan.

(Source: WOS 2017-002, June 2, 2017, Section XVI)

11.1217 ANTI-ALIENATION

An Applicant’s right to apply for Assistance is not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment by creditors of the Applicant.

(Source: WOS 2017-002, June 2, 2017, Section XVII)

11.1218 GENERAL

Each Approved Program shall be administered by the Administrative Entity. All the powers and duties conferred on each respective Administrative Entity shall be exercised or performed by it in the exercise of its discretion regardless of whether the provision conferring such power or imposing such duty specifically refers to its discretion. All decisions of a given Administrative Entity regarding an Approved Program, within the scope of its authority, shall be binding and conclusive upon all Applicants under the Approved Program.

(Source: WOS 2017-002, June 2, 2017, Section XVIII)

11.1219 PROGRAM POLICIES

A. Policies for Approved Programs shall be developed by the respective Department staff responsible for a given Assistance Program, coordinated through the Executive, if applicable, and approved by the Tribal Council. At a minimum, such policies shall satisfy the requirements of this Statute including the following:

B. Indian General Welfare Benefits (Code Section 139E) Programs that meet the following criteria for exemption under Code Section 139E shall be treated as non-taxable Assistance under the General Welfare exclusion without the applicant having to demonstrate individual need:

1. The program is administered under specified policies and does not discriminate in favor of the members of the Tribal Council;
2. Program benefits are available to any Tribal citizen who meets such policy requirements;
3. Program benefits are for the promotion of the general welfare;
4. Program benefits are not lavish or extravagant; and
5. Program benefits are not compensation for services.

C. Ceremonial Activities: Any items of cultural significance, reimbursement of costs or cash honorarium for participation in cultural or ceremonial activities for the transmission of tribal culture shall not be treated as compensation for services.

D. Safe Harbor programs: Programs that meet the following general criteria for safe harbor treatment, and provide qualifying safe harbor benefits, shall be treated as non-taxable Assistance under the General Welfare Exclusion without the applicant having to demonstrate individual need:

1. General Criteria for Safe Harbor Treatment:
 - a. The benefit is provided under a specific approved program of the Tribe;

- b.** The program has written policies specifying how individuals may qualify for the benefit;
- c.** The benefit is available to any Tribal citizen, identified group of Tribal citizens, or qualified non-citizen who satisfy the program policies, subject to budgetary restraints;
- d.** The distribution of benefits from the program does not discriminate in favor of the governing body of the Tribe;
- e.** The benefit is not compensation for goods or services; and
- f.** The benefit is not lavish or extravagant under the facts and circumstances, as determined by the Tribal Council.

2. Specific Safe Harbors: The following benefits may be provided under a Safe Harbor program. The benefits listed in the parenthetical language herein are illustrative only, rather than an exhaustive list. Thus, a benefit may qualify for exclusion from gross income as a Safe Harbor Program even though the benefit is not expressly described in the parenthetical language herein, provided that it meets all other requirements of the Internal Revenue Service, and Revenue Procedure 2014-35 (as may be amended):

- 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—
 - i.** Pay mortgage payments, down payments, or rent payments (including but not limited to security deposits) for principal residences;
 - ii.** Enhance habitability of housing, such as by remedying water, sewage, or sanitation service, safety issues (including, but not limited to, mold remediation), or heating or cooling issues;
 - iii.** Provide basic housing repairs or rehabilitation (including, but not limited to, roof repair and replacement);

- iv. Pay utility bills and charges (including, but not limited to, water, electricity, gas, and basic communications services such as phone, internet, and cable); or
- v. Pay property taxes or make payments in lieu of taxes (PILOTs).

b. Educational programs. Programs to –

- i. 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;
- ii. 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;
- iii. 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 to pursue education; and
- iv. Provide job counseling and programs for which the primary objective is job placement or training, including, but not limited to, allowances for expenses for interviewing or training away from home (including, but not limited to, travel, auto expenses, lodging, and food); tutoring; and 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 reached age 55 or are mentally or physically disabled (as defined under applicable law, including, but not limited to, tribal government disability codes or laws) that provide –

- i. Meals through home-delivered meal programs or at a community center or similar facility;

- ii. Home care such as assistance with preparing meals or doing chores, or day care outside the home;
- iii. Local transportation assistance; and
- iv. Improvements to adapt housing to special needs (including but not limited to grab bars and ramps).

d. Cultural and religious programs. Programs to –

- i. Pay expenses (including, but not limited to, admission fees, transportation, food, and lodging) to attend or participate in an Indian tribe's cultural, social, religious, or community activities such as pow-wows, ceremonies, and traditional dances;
- ii. Pay expenses (including, but not limited to, admission fees, transportation, food, and lodging) to visit sites that are culturally or historically significant for the Tribe, including, but not limited to, those on other Indian reservations;
- iii. 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);
- iv. Pay funeral and burial expenses and expenses of hosting or attending wakes, funerals, burials, other bereavement events, and subsequent honoring events; and
- v. 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 to –

- i. Pay transportation costs such as rental cars, substantiated mileage, and fares for bus, taxi, and public transportation between an Indian reservation, service area, or service unit area and facilities that provide essential services to the public (such as medical facilities and grocery stores);
- ii. Pay for the cost of transportation, temporary meals, and lodging of a Tribal citizen or Qualified Non-citizen while the individual is receiving medical care away from home;

- iii. 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;
- iv. Pay costs for temporary relocation and shelter for individuals displaced from their homes (including, but not limited to, situations in which a home is destroyed by a fire or natural disaster);
- v. Provide assistance for transportation emergencies (for example, when stranded away from home) in the form of transportation costs, a hotel room, and meals; and
- vi. Pay the cost of nonprescription drugs (including but not limited to traditional Indian tribal medicines).

3. Compensation Safe Harbor: For Safe Harbor Programs, and subject to amendments to Revenue Procedure 2014-35 hereafter, the Tribe will presume that individual need is met for religious leaders or spiritual officials or leaders (including but not limited to Pipe-carriers, Firekeepers, Traditional Healers, the Drum and Singers, Flag-carriers, and other cultural or spiritual and religious officiants.)) receiving the following benefits, and that the benefits do not represent Compensation for services: benefits provided under an Indian tribal governmental Program that are items of cultural significance that are not lavish or extravagant under the facts and circumstances, as determined by the Tribal Council, or nominal cash honoraria provided to religious or spiritual officials or leaders (including, but not limited to, Pipe-carriers, Firekeepers, Traditional Healers, the Drum and Singers, Flag-carriers, and other cultural or spiritual and religious officiants.) to recognize their participation in cultural, religious, and social events (including, but not limited to, pow-wows, rite of passage ceremonies, funerals, wakes, burials, other bereavement events, and subsequent honoring events).

In accordance with 26 U.S. Code § 139E - Indian General Welfare Benefits, “deference shall be given to Indian tribal governments for the programs administered and authorized by the tribe to benefit the general welfare of the tribal community.”

Non-Safe Harbor Programs: Nothing in this Statute or the IRS safe harbor guidance shall limit the Tribe's right to provide Assistance outside of the safe harbor rules.

Any changes to the Safe Harbor programs as a result of the Indian General Welfare Exclusion Act of 2014 will be immediately incorporated, by reference, into this Statute.

(Source: WOS 2017-002, June 2, 2017, Section XIX)

11.1220 FEDERAL GOVERNMENT TRIBAL ADVISORY COMMITTEE

The Tribe may utilize the Treasury Tribal Advisory Committee (TTAC) to assist in making determinations of criteria for general welfare exclusion. In accordance with the Federal Law, Tribal General Welfare Exclusion Act of 2014, TTAC members will advise the United States Department of Treasury Secretary on matters related to the taxation of Indians, the training of Internal Revenue Service field agents, and the provision of training and technical assistance to Native American financial officers.

(Source: WOS 2017-002, June 2, 2017, Section XX)

11.1221 SEVERABILITY

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Source: WOS 2017-002, June 2, 2017, Section XXI)

11.1222 EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2017-002, June 2, 2017, Section XXII)

11.1223 OTHER RELATED STATUTES

See WOS 2015-016 Tribal Government Budget Formulation and Modification Statute, WOS

#2015-019 Administrative Procedures Statute, or as may be amended.

(Source: WOS 2017-002, June 2, 2017, Section XXIII)