



## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 10040]

RIN 1545-BQ95

#### Tribal General Welfare Benefits

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document contains final regulations regarding the exclusion from gross income of certain Tribal general welfare benefits. The regulations address the requirements that apply to determine whether the benefits an Indian Tribal government program provides qualify as Tribal general welfare benefits. These regulations affect Indian Tribal governments, agencies or instrumentalities of such governments, Federally recognized Tribes, members of such Tribes, such members' spouses and dependents, and other Tribal program participants.

**DATES:** *Effective date:* These final regulations are effective on **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

*Applicability date:* These final regulations apply for taxable years beginning after **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**FOR FURTHER INFORMATION CONTACT:** Jonathan A. Dunlap at (202) 317-4718 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Authority

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 139E and 7872 of the Internal Revenue Code (Code).

Section 139E(c)(3) provides an express delegation of authority for the Secretary of the Treasury or the Secretary's delegate (Secretary), "in consultation with the Tribal Advisory Committee (as established under section 3(a) of the Tribal General Welfare Exclusion Act of 2014), [to] establish guidelines for what constitutes lavish or extravagant benefits with respect to Indian tribal government programs."

The regulations are also issued under the express delegations of authority under sections 7805(a) and 7872(i) of the Code. Section 7805(a) authorizes the Secretary to "prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue." Section 7872(i) authorizes the Secretary to "prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including...regulations exempting from the application of this section any class of transactions the interest arrangements of which have no significant effect on any Federal tax liability of the lender or the borrower."

## **Background**

### **I. The Tribal General Welfare Exclusion Act of 2014**

The Tribal General Welfare Exclusion Act of 2014 (Act), Public Law 113-168, 128 Stat. 1883 (2014), as enacted on September 26, 2014, among other things, amended the Code by adding section 139E. Under section 139E, gross income of an individual does not include the value of any "Indian general welfare benefit." Section 139E(b) defines an Indian general welfare benefit as any payment made or services provided to or on behalf of a member of a Tribe (or any spouse or dependent of such a member) pursuant to an Indian Tribal government program, but only if: (1) the program is administered under specified guidelines and does not discriminate in favor of members of the governing body of the Tribe, and (2) the benefits provided under such program are (A) are available to any Tribal member who meets such guidelines, (B) for the

promotion of general welfare, (C) not lavish or extravagant, and (D) not compensation for services. Further, section 139E(c)(5) provides that 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” for purposes of section 139E. This preamble and the final regulations refer to an Indian general welfare benefit as a “Tribal General Welfare Benefit.”

Section 2(c) of the Act provides that ambiguities in section 139E are to be resolved in favor of Indian Tribal governments. Section 2(c) of the Act also requires that deference be given to Indian Tribal governments for the programs administered and authorized by the Tribe to benefit the general welfare of the Tribal community.

Section 2(d)(1) of the Act provides that section 139E applies to taxable years for which the period of limitation on refund or credit under section 6511 of the Code has not expired. Section 2(d)(2) of the Act provides that if the period of limitation on a credit or refund resulting from the enactment of section 139E expires before the end of the 1-year period beginning on the date of the enactment of the Act, refund or credit of such overpayment (to the extent attributable to such amendments) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period.

Section 3 of the Act requires the Secretary of the Treasury to establish a Tribal Advisory Committee. The Department of the Treasury Tribal Advisory Committee (TTAC) held its inaugural meeting on June 20, 2019. Under section 3(b) of the Act, the TTAC’s mandate is to advise the Secretary of the Treasury on matters relating to the taxation of Indians, and the Secretary of the Treasury is required to consult with the TTAC to establish and require training and education for internal revenue field agents who administer and enforce internal revenue laws. This includes (A) training and education with respect to Federal Indian law and the Federal Government’s unique legal treaty and trust relationship with Indian Tribal governments, and (B) training of such

internal revenue field agents, and provision of training and technical assistance to Tribal financial officers, about implementation of the Act and the amendments made by the Act.

Section 4(a) of the Act requires the Secretary of the Treasury to temporarily suspend “all audits and examinations of Indian tribal governments and members of Tribes (or any spouse or dependent of such a member), to the extent such an audit or examination relates to the exclusion of a payment or benefit from an Indian tribal government under the general welfare exclusion” until the training and education previously described is completed. Section 4(a) further provides that the running of the period of limitation under section 6501 of the Code with respect to Indian Tribal governments and members of Indian Tribes is suspended during the period in which such audits and examinations are suspended.

## II. Prior Guidance

Revenue Procedure 2014-35 (2014-26 I.R.B. 1110), which was issued before section 139E was enacted, provided safe harbors under which the IRS conclusively presumed the individual need requirement of the administrative general welfare exclusion is met for benefits provided under Indian Tribal government programs that meet the safe harbor requirements. In addition, the revenue procedure provided that the IRS will not assert that recipients of benefits under a safe harbor must include the value of those benefits in gross income or that the benefits are subject to the information reporting requirements of section 6041 of the Code.

Following the enactment of section 139E, the Department of Treasury (Treasury Department) and the IRS published Notice 2015-34 (2015-18 I.R.B. 942), providing guidance to taxpayers regarding the effect of section 139E on Revenue Procedure 2014-35. Notice 2015-34 provides that taxpayers can rely on Revenue Procedure 2014-35 for the safe harbors under which certain benefits provided by Indian Tribal

government programs may be excluded from gross income under the administrative general welfare exclusion. Additionally, Notice 2015-34 requested comments on issues that future guidance might address regarding the implementation of section 139E and other parts of the Act.

On June 16, 2021, the TTAC's General Welfare Exclusion Subcommittee (TTAC GWE Subcommittee) submitted to the TTAC a report (TTAC Report) containing the TTAC GWE Subcommittee's interpretation of the core principles underlying section 139E, and an Appendix containing draft proposed regulations interpreting section 139E (TTAC draft proposed regulations), consistent with those core principles. On October 26, 2022, the TTAC formally recommended and approved the TTAC Report to be submitted for the record and published for Tribal comment.

The Treasury Department sent a Tribal consultation letter, dated October 27, 2022 (2022 Dear Tribal Leader Letter), to Tribal leaders to request consultation on the Act and the TTAC Report. The 2022 Dear Tribal Leader Letter announced consultation meetings to be held on December 14, 15, and 16, 2022 (December 2022 Consultations), to discuss the Act and the TTAC Report. In response to the 2022 Dear Tribal Leader Letter, and after the December 2022 Consultations, the Treasury Department received 65 written comments from Tribes and two Tribal organizations (collectively, 2022 Tribal Comments).

On September 17, 2024, following extensive consultation with TTAC, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-106851-21) in the **Federal Register** (89 FR 75990) under section 139E (proposed regulations). The proposed regulations reflect consideration of the TTAC Report, December 2022 Consultations, 2022 Tribal Comments, and consultation with the TTAC and the TTAC GWE Subcommittee.

The Treasury Department sent a Tribal consultation letter, dated September 13,

2024 (2024 Dear Tribal Leader Letter), to Tribal leaders to request consultation on the proposed regulations. The 2024 Dear Tribal Leader Letter announced consultation meetings to be held on November 18, 19, and 20, 2024 (November 2024 Consultations), to discuss the proposed regulations. In response to the 2024 Dear Tribal Leader Letter and after the November 2024 Consultations, the Treasury Department received 103 written comments from Tribes and Tribal organizations (collectively, 2024 Tribal Comments).

A public hearing on the proposed regulations was held on January 13, 2025, at which five speakers provided testimony. The Treasury Department and the IRS received 41 public comments in response to the notice of proposed rulemaking. Copies of the comments are available for public inspection at <http://www.regulations.gov> or upon request.

After considering all of the public comments, 2024 Tribal Comments, speaker outlines, and testimony (collectively, comments) received in response to the proposed regulations, and extensive consultation with the TTAC GWE Subcommittee, the Treasury Department and the IRS adopt the proposed regulations, as revised in response to such comments, as final regulations. The comments and the revisions are discussed in the following Summary of Comments and Explanation of Revisions section of this preamble.

The Treasury Department and the IRS emphasize that the scope of tribal general welfare under section 139E and these regulations is broader than the scope of general welfare under the administrative general welfare doctrine, which is generally limited to governmental programs providing benefits based on need. This broader scope is due both to specific language in section 139E itself, such as the language in section 139E(c)(5) providing that certain benefits for participating in certain cultural or ceremonial activities shall not be treated as compensation, and to the language in

section 2(c) of the Act providing that ambiguities in the Act are to be resolved in favor of Indian Tribal governments and that deference must be given to Indian Tribal governments with respect to the programs they determine are to benefit the general welfare of the tribal community. Accordingly, section 139E and these final regulations do not provide any basis for analyzing the applicability of the administrative general welfare doctrine to any benefit.

## **Summary of Comments and Explanation of Revisions**

### **I. Overview**

This Summary of Comments and Explanation of Revisions summarizes the formal written public comments submitted in response to the proposed regulations; comments made at the public hearing announced in the preamble to the proposed regulations and held on January 13, 2025; written Tribal comments provided in connection with Treasury Tribal consultations; and comments made in connection with the TTAC GWE Subcommittee consultations addressing the proposed regulations. Comments merely summarizing or interpreting the proposed regulations generally are not discussed in this preamble.

Most of the commenters expressed general approval of the proposed regulations and support for the deference provided for Tribal sovereignty; Tribal self-determination; Tribal self-governance; and the diverse traditions, governance structures, cultures, geographies, and economic conditions of Tribal Nations and their citizens. Several commenters appreciated the clarity provided in the proposed regulations, noting that the lack of guidance on this topic has hampered Tribal general welfare programs and that the regulations will enable Tribes to review and update existing Tribal general welfare programs to meet the requirements of section 139E. One commenter underscored the importance of excluding benefit amounts for housing and education, which are designed to address the negative impacts of prior policies, from tax.

A few commenters expressed opposition to all Federal taxation of Tribes; opposition to what a commenter describes as the proposed regulations' "racist, paternalistic, ethnocentric, contrary to international law, and contrary to self-determination" character and the proposed regulations' purported failure to put Tribal general welfare issues under the sole jurisdiction of Tribes; opposition to purported interference with Congressional intent regarding the taxation, self-determination, and self-governance of Tribes; opposition to changes to current regulations; and opposition to the placement of arbitrary barriers on Tribal general welfare.

The Treasury Department and the IRS have engaged in extensive consultation with the TTAC and Tribal leaders, prior to and following the issuance of the proposed regulations. The Treasury Department and the IRS have worked to address all concerns expressed in public comments and consultation to the extent permitted by the Act and section 139E. The comments received are addressed in more detail in parts II through X of this Summary of Comments and Explanation of Revisions.

Many commenters supported the deference provided to Indian Tribal governments in the proposed regulations and the acknowledgment that Tribal governments are best positioned to define, establish, and administer general welfare programs for their citizens, particularly with regard to Tribal determinations of the promotion of the general welfare and the identification of activities as having cultural significance. These commenters further appreciated that this approach recognizes the Indian Tribal governments' inherent sovereignty, right to self-determination, and right to self-governance.

A few commenters referred to section 2(c) of the Act as evincing Congressional intent for deference to be given to Indian Tribal governments in the design and implementation of their general welfare programs without undue interference from the Federal government. Some commenters recommended that section 2(c) of the Act be



specifically included in the final regulations because it is a key foundation of the Act and would be important to understanding section 139E and the regulations in the future.

The Treasury Department and the IRS agree with commenters that section 2(c) of the Act is central to the interpretation of section 139E and that ambiguities in section 139E must be resolved in favor of Indian Tribal governments and deference to Indian Tribal governments must be provided for the programs that are administered and authorized by the Tribe to benefit the general welfare of the Tribal community. The Treasury Department and the IRS applied section 2(c) of the Act when drafting these regulations in a manner that provides deference to Indian Tribal governments and interprets ambiguities in section 139E in favor of the Indian Tribal governments. Notwithstanding that section 2(c) of the Act supplied these central principles that were used when drafting these final regulations, the Treasury Department and the IRS agree with commenters that it is helpful to include the language from section 2(c) of the Act in new §1.139E-1(f) and remaining paragraphs are renumbered accordingly. Section 1.139E-1(f) thus ensures the Congressional intent of deference to Tribes for programs administered and authorized under the Act is preserved when interpreting section 139E.

## II. Section 139E Definitions

### A. Definition of Indian Tribal Government

Under section 7701(a)(40)(A) of the Code, the term “Indian Tribal government” when used in the Code and “where not otherwise distinctly expressed or manifestly incompatible with the intent thereof,”<sup>1</sup> means “the governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is determined by the Secretary, after consultation with the Secretary of the Interior, to exercise governmental functions.” Section 7701(a)(40)(B) further provides that “[n]o

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<sup>1</sup> Per the flush language of section 7701(a), each definition provided therein is generally applicable under provisions of the Code “where not otherwise distinctly expressed or manifestly incompatible with the intent thereof.”

determination under subparagraph (A) with respect to Alaska Natives shall grant or defer any status or powers other than those enumerated in section 7871 [of the Code]. Nothing in the Indian Tribal Governmental Tax Status Act of 1982, or in the amendments made thereby, shall validate or invalidate any claim by Alaska Natives of sovereign authority over lands or people.”

Section 139E(c)(1) of the Code expressly provides a broader meaning of the term “Indian Tribal government” for purposes of section 139E. The broader meaning is arrived at by adding two additional sets of entities to the Code’s general definition of “Indian Tribal government.” The first set of additional entities includes “any agencies or instrumentalities of an Indian Tribal government.” The second set of additional entities includes “any Alaska Native regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).” An entity described in this second set of additional entities is referred to in this preamble as an “Alaska Native regional or village corporation.”

Proposed §1.139E-1(b)(4) addressed only the first set of entities included in the definition of Indian Tribal government in section 139E(c)(1) and clarified that for purposes of proposed §1.139E-1, the term “Indian Tribal Government” has the meaning provided in section 7701(a)(40) of the Code, and, as provided in section 139E(c)(1), also includes agencies and instrumentalities of such Indian Tribal governments. The proposed regulations did not address Alaska Native regional or village corporations in the definition of Indian Tribal government for purposes of the rules in §1.139E-1. Instead, the proposed regulations reserved proposed §1.139E-2 for future rules to clarify the application of section 139E to benefits provided by Alaska Native regional or village corporations.

While one commenter expressed support for the application of the proposed regulations to “Alaska Native Americans,” several commenters objected to the omission

of Alaska Native regional or village corporations from the definition of Indian Tribal government and from consultation prior to the issuance of the proposed regulations. These commenters argued that Alaska Native regional or village corporations should have been included in the definition in proposed §1.139E-1 and invited to participate in the Tribal consultation, and that their omission is contrary to Congressional intent, the statutory language of section 139E, the holding in *Yellen v. Confederated Tribes of the Chehalis Reservation*, 594 U.S. 338 (2021), the Indian Self-Determination and Education Assistance Act (ISDEAA), Public Law 93-638, 88 Stat. 2203 (1975), and Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments* (November 9, 2000).

These commenters expressed concern that the omission of Alaska Native regional or village corporations from this definition may suggest section 139E is not applicable to Alaska Native regional or village corporations, with one commenter suggesting shareholders of Alaska Native regional or village corporations who are not otherwise members of Tribes could be disproportionately impacted.

One commenter requested consultation with Alaska Native regional or village corporations be held immediately and that the Treasury Department and the IRS publish a proposed regulation under §1.139E-2 with notice and comment on such regulation prior to issuing final regulations under §1.139E-1.

The Treasury Department and the IRS understand the concerns raised by these comments and agree with commenters that section 139E(c)(1) includes Alaska Native regional or village corporations in the definition of Indian Tribal government for purposes of section 139E. The omission of Alaska Native regional or village corporations from the definition of Indian Tribal government in proposed §1.139E-1 was never intended to suggest Indian general welfare benefits cannot be provided by an Alaska Native regional or village corporation to or on behalf of its members (or any spouse or

dependent of such members). Thus, the Treasury Department and the IRS agree that section 139E permits Alaska Native regional or village corporations to provide Indian general welfare benefits, and that other provisions of the Act also apply to Alaska Native regional or village corporations.

The Treasury Department and the IRS therefore held consultation with Alaska Native regional or village corporations on section 139E on July 29, 2025. The feedback received during this consultation will help the Treasury Department and the IRS determine what customizations of the rules in §1.139E-1 may be useful in promulgating regulations under §1.139E-2 that will apply specifically to Alaska Native regional or village corporations and make more clear their ability to provide benefits under section 139E. As part of this consultation, the Treasury Department and the IRS asked questions of Alaska Native regional or village corporations, the answers to which will inform the drafting of regulations tailored to the needs of Alaska Native regional or village corporations to implement section 139E more effectively. The Treasury Department and the IRS expect the process of promulgating additional final regulations under §1.139E-2 will be similar to the process used to promulgate §1.139E-1 applicable to Federally recognized Tribes.

Accordingly, these final regulations under §1.139E-1 do not include Alaska Native regional or village corporations in the definition of Indian Tribal government found in §1.139E-1(b)(4). However, see part X.B. of this Summary of Comments and Explanation of Revisions for a discussion of the consultation and the ability of Alaska Native regional or village corporations to choose to apply the rules of §1.139E-1 as included in this Treasury decision pending the promulgation of additional regulations under §1.139E-2.

#### B. Definition of Tribe

Proposed §1.139E-1(b)(7) would define “Tribe” as any Indian Tribe, band, nation,

pueblo, or other organized group or community, including any Alaska Native village as defined in 43 U.S.C. 1602(c), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. Alaska Native regional or village corporations are excluded from this definition of Tribe.

Two commenters requested Alaska Native regional or village corporations be included in the definition of Tribe in §1.139E-1(b)(7) of the final regulations.

The Treasury Department and the IRS decline to modify the definition of Tribe in §1.139E-1(b)(7) of these final regulations because subsequent guidance promulgated at §1.139E-2 will specifically address the application of the requirements of section 139E to Alaska Native regional or village corporations. The Treasury Department and the IRS acknowledge that Alaska Native regional or village corporations can have programs that qualify to provide general welfare benefits that are excludible from gross income under section 139E. However, the Treasury Department and the IRS intend to issue future guidance specific to the unique circumstances of Alaska Native regional or village corporations. See, however, part X.B. of this Summary of Comments and Explanation of Revisions for further discussion of the consultation with Alaska Native regional or village corporations and the ability of an Alaska Native regional or village corporation to choose to apply the rules of §1.139E-1 as included in this Treasury decision pending the promulgation of additional final regulations under §1.139E-2.

### C. Definition of Tribal Program Participant

#### 1. In General

Proposed §1.139E-1(b)(8) would provide that the term “Tribal program participant” means a Tribal member, spouse of a Tribal member within the meaning of §301.7701-18 of the Procedure and Administration Regulations (26 CFR part 301), spouse of a Tribal member under applicable Tribal law, dependent of a Tribal member, or other individual who has been determined by the Indian Tribal government to be

eligible for a Tribal general welfare benefit because such individual is, with respect to a Tribal member, an ancestor, descendant, former spouse, widow or widower, legally recognized domestic partner or former domestic partner.

Most commenters supported the breadth of, and deference provided by, the definition of Tribal program participant in proposed §1.139E-1(b)(8) and supported the use of Tribal law to determine eligible program participants. Some commenters requested that Indian Tribal government programs be able to cover additional categories of recipients, including unenrolled individuals in the community; step-parents, custodians, guardians, and foster parents of an Indian child; and other members of the same household. Commenters broadly requested Tribes be able to define the categories listed in the Tribal program participant definition in the proposed regulations.

The Treasury Department and the IRS generally decline to expand the definition of Tribal program participant in these final regulations to individuals that are unenrolled members of the Tribal community. These individuals are neither members of an Indian Tribe (or any spouse or dependent of such a member) as described under section 139E(b), nor “qualified nonmembers” under Revenue Procedure 2014-35. The Treasury Department and the IRS have determined the statutory language and legislative history generally do not support an extension of section 139E beyond the individuals provided in the definition of Tribal program participant under proposed §1.139E-1(b)(8).

However, the Treasury Department and the IRS have determined the definition of Tribal program participant should be clarified to include an individual for whom a Tribal member is a caregiver authorized under Tribal or State law. The Treasury Department and the IRS understand a Tribal member may be legally authorized or required to be a caregiver for an individual even though such individual is not otherwise eligible to receive payments under the Indian Tribal government program. This definitional

change from the proposed regulations is a clarification of the deference given to Indian Tribal government programs to determine whether providing benefits to a Tribal member to care for such individuals is for the promotion of general welfare.

## 2. Special rule for Ceremonial or Cultural Activities

Proposed §1.139E-1(b)(8)(ii) would provide that, solely for purposes of proposed §1.139E-1(e), the definition of Tribal program participant may include a member or citizen of a Tribe other than the Tribe that establishes or maintains the Indian Tribal government program that provides the Tribal general welfare benefit.

One commenter recommended that proposed §1.139E-1(b)(8)(ii) should be revised to include benefits provided by an Indian Tribal government program, according to the custom of certain Tribes, to the spouse of a member or citizen of a different Tribe. Other commenters requested that final §1.139E-1(b)(8)(ii) apply to indigenous people from outside the United States, including Canada, Mexico, and South America, if these individuals participate in a Tribe's ceremonial and cultural activities for the transmission of Tribal culture.

Accordingly, §1.139E-1(b)(8)(ii) of these final regulations provides that, solely for purposes of §1.139E-1(e), relating to cultural or ceremonial activities, the definition of "Tribal program participant" includes, in addition to a member or citizen of a different Tribe, other individuals described in §1.139E-1(b)(8)(i). For purposes of this addition, in applying paragraph §1.139E-1(b)(8)(i), such member or citizen of another Tribe will be treated as a Tribal Member. The Treasury Department and the IRS understand that a member or citizen of another Tribe, the spouse and certain other family members of the member or citizen of another Tribe, may also participate in another Tribe's cultural or ceremonial activities. As such, these final regulations broaden the special rule of §1.139E-1(b)(8)(ii), which continues to apply solely for purposes of §1.139E-1(e).

However, the Treasury Department and the IRS have determined that the

benefits that section 139E refers to are those provided to or on behalf of members of a Tribe (or any spouse or dependent of such a member). “Tribe” is defined by reference to section 45A(c)(6) of the Code, which generally refers to Federally recognized Tribes. Accordingly, §1.139E-1(b)(8)(ii) of these final regulations does not expand the reference to members or citizens of a different Tribe to include members or citizens of non-Federally recognized Tribes whether located in or outside of the United States.

#### D. Definition of Dependent

Proposed §1.139E-1(b)(10) would define the term “dependent” in accordance with section 139E(c)(2). However, for ease of readability, the proposed regulations would not cite the specific Code sections but instead would describe the rules for determining who is a dependent under section 152(a) of the Code without regard to section 152(b)(1), (b)(2), and (d)(1)(B).

Several commenters recommended that Tribes should be given broad deference, or “sole discretion,” to define the term dependent under Tribal law for purposes of section 139E and the final regulations, or otherwise provide a presumption that the Indian Tribal government’s definition of dependent is valid. These commenters highlighted that dependent may be defined differently under the law of each Indian Tribal government, or that a Tribe may lack sufficient information to determine whether a general welfare program recipient, including a non-member child, is eligible for benefits under section 139E and the proposed regulations.

The Treasury Department and the IRS decline to change the definition of dependent in these final regulations, as this term is expressly defined in section 139E(c)(2). The statute unambiguously defines dependent, as provided in section 152 as modified by section 139E(c)(2). However, these final regulations clarify that for purposes of section 139E the term dependent has the meaning provided in section 152 determined without regard to section 152(b)(1), (b)(2), and (d)(1)(B).



### III. Indian Tribal Government Program

Proposed §1.139E-1(c) would provide certain requirements that a program must meet to constitute an “Indian Tribal government program” for purposes of section 139E and the proposed regulations. These requirements are: (1) the program must be established by an Indian Tribal government, (2) the program must be administered under specified guidelines, and (3) the program cannot discriminate in favor of members of the governing body. Each requirement is discussed in more detail in this part III.

#### A. Program Must be Established

Proposed §1.139E-1(c)(2) would provide that a program must be established by an Indian Tribal government. The program may be established by Tribal custom, government practice, or formal action of the Indian Tribal government under applicable Tribal law. The proposed regulations also would provide that, to the extent permitted by applicable Tribal law, an Indian Tribal government may delegate authority to establish general welfare programs to a designated individual or entity of the Indian Tribal government. Moreover, the proposed regulations would provide that an Indian Tribal government is not required to set forth the program in a written document unless applicable Tribal law requires a writing as part of the formal actions of the Indian Tribal government.

Many commenters approved of the flexible program documentation requirements, noting that this flexibility reflects respect for the diverse traditions and governance structures of Tribal nations by allowing programs to be established through Tribal customs, practices, or formal written policies. These commenters noted that such respect is essential to meaningful self-determination. However, one commenter recommended that the final regulations include guidance on what documentation is necessary for programs established before the documentation standards provided in the proposed regulations, and recommended that Indian Tribal governments be permitted to

affirm or establish multiple existing programs with a single, blanket action. The commenter also requested the final regulations recognize Tribal laws that provide a less formal path to establish programs.

The Treasury Department and the IRS have determined that no modifications are needed in these final regulations to the text used in proposed §1.139E-1(c)(2). Section 139E(c)(4) and §1.139E-1(c)(2) allow a program to be established by Tribal custom or government practice, and defer to Tribal law to determine what formal action, if any, of the Indian Tribal government is necessary to establish a program. Section 1.139E-1(c)(2) provides deference to the Indian Tribal government to determine whether a program is to be established by Tribal custom or government practice, or by formal action of the Indian Tribal government. Thus, in general, the Treasury Department and the IRS would respect an Indian Tribal government's action of affirming or establishing multiple existing programs with a single formal action as satisfying §1.139E-1(c)(2) if such action is permitted by Tribal law.

The Treasury Department and the IRS also decline to depart from the language of the proposed regulation to provide examples of less formal ways that may be used to establish a program because §1.139E-1(c)(2) already provides that "formal action" means authorization of the program pursuant to Tribal law. The Treasury Department and the IRS intend that §1.139E-1(c)(2) provides deference to the Indian Tribal government, subject to the application of its Tribal laws, to determine the process required to establish programs.

#### **B. Program Must be Administered Under Specified Guidelines**

Proposed §1.139E-1(c)(3) would provide the requirements for the administration of the program under specified guidelines. In general, the specified guidelines of the program represent the framework for the program's operations. Under proposed §1.139E-1(c)(3), the specified guidelines of the program must include, at a minimum, a

description of the program to provide Tribal general welfare benefits, the benefits provided by the program (including how the benefits are determined), the eligibility requirements for the program, and the process for receiving benefits under the program. While Indian Tribal governments may choose to set forth the specified guidelines in writing, an Indian Tribal government program is not required to memorialize the specified guidelines in a writing.

Many commenters approved of the flexibility in the proposed regulations to develop program guidelines, which is essential to meaningful self-determination, and recommended that the final regulations not add additional requirements that could negatively impact the deference to Tribes and the recognition of their varied and unique governance structures. To that end, one commenter recommended that the final regulations provide that Indian Tribal governments have the sole discretion to determine the form and content of specified guidelines, consistent with Tribal law.

Section 139E(b)(1) provides that an Indian Tribal government program must be administered under specified guidelines. However, the Treasury Department and the IRS acknowledge that Indian Tribal governments are entitled to deference for the programs they establish and administer. Proposed §1.139E-1(c)(3) would also provide that in addition to the minimum details described above, the Indian Tribal government may provide additional details in the program's specified guidelines and choose to memorialize this information in a writing. However, proposed §1.139E-1(c)(3) would not require the specified guidelines to be in writing.

Several commenters requested clarification or removal of one of the minimum requirements for specified guidelines in proposed §1.139E-1(c)(3). Specifically, these commenters considered the parenthetical phrase, "(including how benefits are determined)," to be ambiguous. The commenters suggested the phrase is either redundant with the requirement for a description of the "eligibility requirements," or

alternatively requires an Indian Tribal government to provide detailed justification of any benefits provided, contrary to the general deference provided to Indian Tribal governments in the proposed regulations.

The parenthetical phrase in proposed §1.139E-1(c)(3), “(including how benefits are determined),” was intended by the Treasury Department and the IRS to require the specified guidelines of a program to include information as to how the type of benefit provided under the program would promote the Indian Tribal government’s general welfare goal. The Treasury Department and the IRS acknowledge many commenters found the language to be unclear and have determined that the language is unnecessary because its intent is adequately addressed by the other specified guidelines. Thus, §1.139E-1(c)(3) of the final regulations states in relevant part that the “specified guidelines must include, at a minimum, a description of the program to provide Tribal General Welfare Benefits, the eligibility requirements for the program, a description of the type of benefits authorized by the program, and the process for receiving benefits under the program.”

One commenter expressed further concern that proposed §1.139E-1(c)(3) is ambiguous in its application or applicability to programs created prior to the issuance of proposed or final regulations under section 139E, or programs for which the requirements are set forth in several documents or actions, as may be required to meet the acute needs of the community.

The specified guidelines provided in §1.139E-1(c)(3) are minimum program guidelines that are fundamental to the operation of a Tribal general welfare program under section 139E. The Treasury Department and the IRS understand that some transition time may be necessary to ensure Indian Tribal government programs meet both the establishment and the administration requirements (including the specified guidelines requirement). Section 1.139E-1(c)(3) does not provide guidance on

transition for existing programs because transitional rules are more broadly provided elsewhere in these regulations. Specifically, §1.139E-1(h) provides that Indian Tribal governments and Tribal program participants will be required to apply the final regulations to taxable years of Tribal program participants that begin on or after January 1, 2027, while also allowing Indian Tribal governments the ability to choose to apply the rules of §1.139E-1, in their entirety, to benefits provided to Tribal program participants in prior taxable years. The Treasury Department and the IRS believe this applicability date provides Indian Tribal governments a reasonable transition period to make any program adjustments or updates that may be necessary for their programs to satisfy the requirements of §1.139E-1.

The Treasury Department and the IRS emphasize that §1.139E-1(c)(3) does not require the specified guidelines to be in writing or otherwise prescribe how the Indian Tribal government program retains its specified guidelines. Thus, the program may satisfy the specified guidelines requirement in §1.139E-1(c)(3) with a single written document, several documents, or non-written guidelines. Section 1.139E-1(c)(3) is intended to provide broad deference to Indian Tribal governments to determine how such specified guidelines are created, maintained, or modified.

C. Program Cannot Discriminate in Favor of Members of the Governing Body of the Tribe

Proposed §1.139E-1(c)(4) would provide that an Indian Tribal government program may not discriminate in favor of members of the governing body of the Tribe (non-discrimination requirement). A governing body is generally the legislative body of the Tribe, such as the Tribal council, or the representative equivalent of the legislative body of the Tribe. However, proposed §1.139E-1(c)(4)(ii) would treat a program as being in compliance with the non-discrimination requirement if the governing body of the Tribe consists of the entire adult membership of the Tribe, referred to as a “general

council Tribe.”

Proposed §1.139E-1(c)(4)(iii) would provide a facts and circumstances test to determine whether a program, either by its terms or in its administration, discriminates in favor of members of the governing body of the Tribe. For example, the administration of a program would discriminate in favor of members of the governing body if, based on the facts and circumstances, the benefits provided during the taxable year disproportionately favor members of the governing body of the Tribe. Thus, for example, a program established to provide benefits solely to the children of members of the governing body of the Tribe (unless the Tribe is a general council Tribe) and thus defrays costs otherwise borne by the members of the governing body would fail to satisfy the non-discrimination requirement.

Commenters indicated that it is unlikely that an Indian Tribal government would differentiate benefits or establish a general welfare program solely for its governing body because it contradicts the intent of a general welfare program to provide for the well-being of Tribal members. In addition, commenters recommended changes from the language of proposed §1.139E-1(c)(4) to prevent potential unintended consequences for situations where a program benefit would be available to any eligible Tribal member but, in a particular point of time, the only eligible beneficiaries of a particular Tribal general welfare benefit are members of the Indian Tribal government or their family members. The commenters provided an example of a tuition assistance program in which one individual beneficiary may qualify for benefits in the taxable year, and such individual is a family member of a Tribal government official. Commenters requested clarification on the application of proposed §1.139E-1(c)(4) where benefit distributions vary annually but may have the appearance in any given year that distributions disproportionately benefit certain Tribal members. These commenters emphasized that §1.139E-1(c)(4) should evaluate an Indian Tribal government program

based on its structure and historical administration, and whether such program is designed and administered to avoid discrimination in favor of a Tribe's governing body. Finally, one commenter requested clarification that benefits provided to former members of Tribal governing bodies to compensate for sacrificing Social Security benefit credits during their terms of service are not considered either compensation for current services or discriminatory in favor of such recipients such that they would fail to satisfy section 139E under the final regulations.

The Treasury Department and the IRS agree with commenters that clarification would be helpful on how the facts and circumstances test in proposed §1.139E-1(c)(4) applies in certain situations. The Treasury Department and the IRS understand that there may be instances when, in a given year, a program distributes benefit payments disproportionately to members of the governing body or their families even though the program does not by its terms disproportionately favor members of the governing body and, in most other years, does not disproportionately favor members of the governing body. The facts and circumstances test provides flexibility to account for an anomalous year where a program otherwise does not disproportionately favor members of the governing body. Nevertheless, the Treasury Department and the IRS agree that clarifying language in §1.139E-1(c)(4) would be helpful. Accordingly, these final regulations revise §1.139E-1(c)(4)(iii) to provide that a program discriminates in favor of members of the governing body of the Tribe if, based on the totality of the facts and circumstances, the benefits provided during the year disproportionately favor members of the governing body of the Tribe because of their status as members of the governing body.

The Treasury Department and the IRS do not provide any clarification in response to the comment regarding a specific fact pattern involving benefits provided to former members of Tribal governing bodies because there are not sufficient facts to

address the comment. However, the Treasury Department and the IRS affirm that section 139E(b)(1) and §1.139E-1(c)(4) provide that an Indian Tribal government program cannot discriminate in favor of members of the governing body.

D. No Limitation on Source of Funds

Proposed §1.139E-1(c)(5) would provide that benefits under the Indian Tribal government program may be funded by any source of revenue or funds, including funds derived from levies, taxes, and service fees; settlements; revenues from Tribally-owned businesses, including casino revenues; funds from Federal, State, or local governments; and funds from other sources, including grants and loans, to provide benefits under an Indian Tribal government program. Proposed §1.139E-1(c)(5)(ii) also specifically would permit the funding of Indian Tribal government programs with net gaming revenues. However, the preamble to the proposed regulations noted that an Indian Tribal government is permitted to restrict the source and amount of funds available to provide benefits under the Indian Tribal government program.

Several commenters appreciated that the enumeration of permissible sources in proposed §1.139E-1(c)(5) was not all-inclusive or limiting but recommended that the list explicitly include “grantor trusts” and deferred benefit accounts as permissible sources of funding. See part III.D.2. of this Summary of Comments and Explanation of Revisions for a discussion of the use of trusts in Tribal general welfare programs.

1. Benefits Funded by Net Gaming Revenues

Proposed §1.139E-1(c)(5)(ii) would provide that benefits under the Indian Tribal government program may be funded by net gaming revenues as permitted under the Indian Gaming Regulatory Act (25 U.S.C. 2701-2721) (IGRA). However, per capita payments, as defined under IGRA, are subject to Federal taxation under IGRA and are not excludable from gross income under section 139E or the regulations. Proposed §1.139E-1(c)(5)(ii) further would provide that, for purposes of section 139E, a payment



is a per capita payment if it is identified by the Indian Tribal government as a per capita payment in a Revenue Allocation Plan (RAP) that is approved by the Department of the Interior (DOI).

Several commenters approved of proposed §1.139E-1(c)(5) providing that Tribes may use any revenue source for general welfare programs, including gaming revenue, because the rule supports Tribal sovereignty regarding the use of a Tribe's financial resources. However, several commenters requested that the final regulations confirm the Treasury Department and the IRS will defer to, or give sole discretion to, Indian Tribal governments with respect to allocations under an approved RAP as between per capita payments and Tribal general welfare programs. Conversely, some commenters expressed concern that DOI may evaluate a program's compliance under section 139E and urged the Treasury Department and the IRS to communicate these concerns with DOI and the National Indian Gaming Commission (NIGC).

In response to the comments received, these final regulations differ from proposed §1.139E-1(c)(5)(ii) in providing that for purposes of section 139E and these regulations, the determination of whether a payment is a per capita payment is based on the RAP that is in effect (that is, approved by DOI) at the time the per capita payment is made to the recipient. The clarification is made because the Treasury Department and the IRS are aware that Indian Tribal governments may modify a RAP and IGRA trusts over the years. As discussed in part III.D.2. of this Summary of Comments and Explanation of Revisions, for purposes of section 139E, whether a distribution from a grantor trust owned by the Indian Tribal government is a general welfare payment is determined when the payment is distributed to the Tribal program participant.

In the view of the Treasury Department and the IRS, the language in proposed §1.139E-1(c)(5)(ii) would provide deference to an Indian Tribal government's determinations of how net gaming revenue is allocated. Specifically, §1.139E-1(c)(5)(ii)

provides that, for purposes of section 139E and these regulations, a payment is a per capita payment if it is identified by the Indian Tribal government as a per capita payment in a RAP that is approved by the DOI. Similarly, for an Indian Tribal government without a RAP, the determination of the Indian Tribal government that the payment is not a per capita payment is controlling for Federal income tax purposes. Thus, for purposes of section 139E and §1.139E-1(c)(5)(ii), the IRS will defer to the Indian Tribal government's determination that the allocation of net gaming revenues is classified as general welfare, or conversely a per capita payment made pursuant to a RAP.

The Treasury Department and the IRS confirm that DOI and NIGC do not have jurisdiction over the determination of whether a program satisfies section 139E and these regulations. The Treasury Department and the IRS have jurisdiction over interpretation of the Internal Revenue Code (26 U.S.C. 1 et seq.), and the IRS is the agency responsible for determining whether a program satisfies the requirements of section 139E and these regulations. The Treasury Department and the IRS plan to communicate the commenters' concerns with DOI and NIGC and ensure open dialogue will continue in the future over jurisdictional responsibilities of the respective agencies.

## 2. Benefits Paid as Distributions from a Grantor Trust

The proposed regulations would not provide guidance on distributions from grantor trusts. In part V.C. of the Explanation of Provisions section of the preamble to the proposed regulations, the Treasury Department and the IRS requested comments on whether additional guidance under section 139E or other Code sections is needed to address the tax treatment of deferred benefits or benefits paid from trust arrangements, and, if so, what specific fact patterns should be addressed.

Most commenters requested that the final regulations include guidance on grantor trusts because many Tribes use grantor trusts and deferred benefit arrangements for flexibility and for the ability to leverage the principal amount of general

welfare benefits over a longer period of time, such as with elder care, mortgage, and education benefits. Commenters generally disagreed that Revenue Procedure 2011-56 (2011-49 I.R.B. 834) adequately addresses the use of grantor trusts for excluded Tribal general welfare benefits because that guidance refers to taxable, but tax-deferred, per capita payments under IGRA.

Several commenters recommended that, for purposes of section 139E, amounts held in grantor trusts owned by the Indian Tribal government should be treated like any other Tribal accounts because the Tribe is the owner of the Tribal general welfare benefits until they are disbursed. Commenters note grantor trusts are a tool that may be used to deliver Tribal general welfare benefits if the trust distributions are administered pursuant to the Indian Tribal government program. Many commenters requested that the final regulations confirm that Tribes may use grantor trusts to fund Indian Tribal government programs, and that any interest and capital gains earned by the trust also are treated as Tribal general welfare payments at the time the program distributes a payment from the grantor trust to the Tribal program participant. For example, one commenter requested clarity on whether distributions from grantor trust accounts that are paid out at the age of majority are Tribal general welfare benefits under section 139E such that distributions of the grantor trust's interest and earnings are also excludable from income at the time of distribution.

Some commenters discussed grantor trusts and IGRA. For example, some commenters suggested that grantor trust distributions should be excluded under section 139E if the grantor trust distributions are Tribal general welfare benefits under section 139E and not otherwise treated as per capita distributions under the Tribe's RAP. The commenter requested that final regulations provide that Tribes may place funds in a grantor trust, identified to specific member subaccounts, that generally conform to existing guidance for IGRA minors' trusts, for future use for general welfare purposes,

without Federal income tax consequence to the beneficiary. One commenter also requested guidance on whether a distribution from such a trust could be excluded under section 139E if made pursuant to a plan under section 529, a medical savings plan, a plan under an Indian Tribal government program, or other similar plan.

One commenter recommended that Revenue Procedure 2011-56 be modified to expand the safe harbor to provide additional provisions that can satisfy the safe harbors for trust programs that provide taxable benefits to minors and certain other individuals. Additionally, many commenters requested guidance on how trusts involving taxable income can be restructured to provide Tribal general welfare benefits.

Finally, some commenters requested that the language of proposed §1.139E-1(c)(5) be expanded to include grantor trusts as a permissible funding source for an Indian Tribal government program. Commenters noted grantor trusts are an important tool used to care for Tribal members, and it is a glaring omission to not include grantor trusts in proposed §1.139E-1(c)(5) that could lead to possible negative inferences. Several commenters described using gaming revenues to fund grantor trusts for minors and members with legal disabilities and being permitted under IGRA to make distributions to their parents or legal guardians to pay health, education, and welfare benefits for the benefits of such minors and certain other individuals. One of these commenters noted that this use of trusts indicates Tribes are free to use trust funds to provide Tribal general welfare benefits just as they are free to use any other revenue source.

The Treasury Department and the IRS agree with commenters that a benefit distributed from certain grantor trusts can be a Tribal general welfare benefit under section 139E if the benefit otherwise satisfies the requirements of §1.139E-1(d), and that additional guidance on the use of grantor trusts would be helpful. Accordingly, these final regulations include express language regarding distributions from grantor

trusts in new §1.139E-1(c)(5)(iii). New §1.139E-1(c)(5)(iii), which applies to a trust or the portion of a trust of which the Indian Tribal government is treated as the owner under sections 671 through 677 of the Code, provides that a benefit distributed by a trust that otherwise satisfies the requirements of §1.139E-1(d) is a Tribal General Welfare Benefit under section 139E. Conversely, a distribution from a grantor trust, or portion thereof, will not be considered a Tribal general welfare benefit to the extent the distribution, or portion thereof, fails to satisfy section 139E and the regulations. Section 1.139E-1(c)(5)(iii) further provides that the determination of whether a benefit distributed by a grantor trust is a Tribal general welfare benefit is made at the time the benefit is distributed from the grantor trust to the Tribal program participant. Thus, for example, a distribution from the grantor trust that is paid to an individual as compensation (determined at the time of distribution) would not be excludible under section 139E (unless the exception relating to cultural or ceremonial activities applies).

The Treasury Department and the IRS have determined that providing additional safe harbors under Revenue Procedure 2011-56 is outside the scope of this regulation. Revenue Procedure 2011-56 provides a safe harbor under which the IRS treats a Tribe as the grantor and owner of a trust for the receipt of Tribal gaming revenues under IGRA for the benefit of minors and certain other individuals. That guidance provides rules addressing trusts under IGRA that are not affected by these final regulations.

Commenters requested clarification on the Federal income tax treatment of grantor trust distributions when the Indian Tribal government has previously set up a minor's trust under IGRA for per capita payments but subsequently distributes general welfare payments from such trust to the Tribal program participant. The Treasury Department and the IRS have generally determined that where an IGRA trust satisfies Revenue Procedure 2011-56 and is treated as owned by the Indian Tribal government, the Indian Tribal government may subsequently determine distributions from the trust

are for general welfare purposes under section 139E to the extent that DOI approval is otherwise received to modify a RAP or IGRA trust, as applicable. In general, the date of distribution from the IGRA trust is the relevant time at which to determine whether the payment is a Tribal general welfare benefit or a per capita payment. The Indian Tribal government, subject to DOI approvals of RAPs or IGRA trusts, has sole discretion to determine whether a payment is a per capita payment for purposes of section 139E and these regulations.

### 3. Deferred Benefits

Some commenters requested that the final regulations provide that Tribal members have the right to defer or disclaim current, smaller, general welfare benefits in exchange for the Tribe funding future, larger general welfare benefits for more-costly needs. One of these commenters noted the importance of flexibility to allow Tribal members to prioritize assistance that meets their specific needs. Some commenters noted they agree with the TTAC proposal that complex IRS deferred compensation rules, like constructive receipt, should not apply to deferred general welfare benefits.

The Treasury Department and the IRS do not agree with the suggestion that Federal income tax principles, such as the constructive receipt doctrine, should be inapplicable to deferred general welfare benefits. The language of section 139E does not provide an exception for treating amounts that, under ordinary Federal income tax principles (such as principles of constructive receipt), are actually or constructively transferred to or for the benefit of a Tribal program participant in one taxable year as being transferred in a later taxable year. The Treasury Department and the IRS note that, as a general matter, a Tribal program participant's election to defer a Tribal general welfare benefit that is made before the Tribal program participant would have rights to the Tribal general welfare benefit under Tribal law would not be treated as constructively received by the Tribal program participant for Federal income tax purposes.

#### E. Recordkeeping Requirements of the Tribal Program Participant

The preamble to the proposed regulations stated, under the general recordkeeping requirements of section 6001, that Tribal program participants are required to maintain records sufficient to show that the value of a Tribal general welfare benefit received from an Indian Tribal government program is excludible from gross income. Under section 6001 and §1.6001-1(a), taxpayers are required to maintain records sufficient to establish the amount of gross income or other matters required to be shown by them in any return of income tax.

Many commenters expressed confusion regarding substantiation requirements that Tribal program participants may have for benefits received from Indian Tribal government programs. One commenter expressed appreciation that Tribes and Tribal program participants, in the commenter's interpretation of the proposed regulations, were not required to keep receipts to substantiate benefits. However, other commenters recommended that the final regulations expressly provide that Tribal program participants will not be subject to additional substantiation requirements such as maintaining receipts or other proof not otherwise required by the Indian Tribal government program. Further, some of these commenters pointed out that the Treasury Department stated at Tribal consultations that receipts were not needed to substantiate the benefit. In general, commenters explained that imposing additional substantiation requirements on Indian Tribal governments and Tribal program participants would create administrative burdens and contradict the Act's objective of streamlining Tribal program administration.

Some commenters referred to the TTAC Report, which proposes that individual members should not be required to submit receipts to prove general welfare expenses if there is sufficient documentation of an Indian Tribal government's general welfare program, including written program guidelines, and that compliance should be

presumed for Tribal program participants where the Indian Tribal government can show benefit amounts are reasonably calculated to meet general welfare needs and the method of distribution to members is reasonably expected to achieve program goals. Other commenters proposed that the IRS should use an Indian Tribal government's year-end compliance certificates confirming general welfare expenses at or above program benefit levels and any corroborating program documentation as sufficient substantiation of a Tribal program participant's benefits. Finally, a commenter recommended that complete deference be given to Indian Tribal government determinations for the administration of program benefits such that the Tribal program participant's substantiation of Tribal general welfare benefits for Federal income tax purposes is satisfied.

Many commenters requested that the Treasury Department and the IRS maintain the deference to Indian Tribal government program methods for substantiation of general welfare program benefits so long as an Indian Tribal government implements its general welfare program consistent with written program guidelines that meet the criteria of section 139E. These commenters suggested addressing only situations where additional substantiation may be required. Some commenters noted that substantiation requirements for benefits add administrative costs to Indian Tribal governments.

These final regulations do not impose additional recordkeeping requirements on Tribal program participants. However, section 6001 and §1.6001-1 generally require a taxpayer to maintain records to establish the amount of gross income reported on the taxpayer's tax return. This requirement is independent of the exclusion provided under section 139E. Notwithstanding the previous sentence, the Treasury Department and the IRS confirm that individuals are not required to maintain personal receipts to substantiate that a benefit provided under an Indian Tribal government program was



used by the recipient for the purpose for which it was provided. Deference is given to the Indian Tribal government with regard to the general welfare programs it administers and, accordingly, what requirements a Tribal program participant may need to satisfy in order to receive program benefits.

Accordingly, the Treasury Department and the IRS do not prescribe any specific types of documentation that a Tribal program participant would be required to retain to substantiate that a particular benefit is a Tribal general welfare benefit excludable from gross income under section 139E. Nonetheless, corroborating program documentation, such as a written description of the Indian Tribal government program, an application or acceptance letter into the program, or any year-end compliance certificates of the Indian Tribal government may satisfy the requirements of section 6001 and §1.6001-1.

Moreover, Tribal program participants may choose to ask the Indian Tribal government for clarification on whether the benefit is intended to be a Tribal general welfare benefit under section 139E.

#### IV. Tribal General Welfare Benefits

##### A. Benefits Must be for the Promotion of General Welfare within the Meaning of Section 139E

###### 1. Deference to Tribes in Determining Promotion of General Welfare

Proposed §1.139E-1(d)(2)(i) would provide that a benefit provided under an Indian Tribal government program must be for the promotion of general welfare, and that the Indian Tribal government determines that a benefit is for the promotion of general welfare at the time it establishes the program. Proposed §1.139E-1(d)(2)(i) would provide that an Indian Tribal government has sole discretion to determine whether a benefit is for the promotion of general welfare and that the IRS will defer to the Indian Tribal government's determination that a benefit is for the promotion of general welfare. Proposed §1.139E-1(d)(2)(i) would provide that Tribal general welfare

benefits may be provided without regard to financial or other need of Tribal program participants and may be provided on a uniform or pro-rata basis.

Commenters generally appreciated the deference provided to Indian Tribal governments for establishing programs to promote the general welfare. Commenters noted that Indian Tribal governments are uniquely positioned to assess the distinct cultural, social, and economic needs of their Tribes and Tribal program participants, and structure their general welfare programs accordingly. Several commenters also appreciated that Indian Tribal governments have sole discretion to determine whether a benefit is for the promotion of general welfare.

One commenter requested the Treasury Department and the IRS to clarify in the final regulations that the following additional activities are considered to be for the promotion of the general welfare: recovery from cultural or lifeway losses experienced due to non-Tribal policies, such as termination or forced relocation (as determined by the administering Tribe); the advancement of Tribal self-determination (as determined by the administering Tribe); and the promotion of individual and collective self-sufficiency (as determined by the administering Tribe). Some commenters requested the final regulations confirm that Tribal general welfare benefits may include student loan debt repayment programs.

In response to these suggestions for clarification, the Treasury Department and the IRS reiterate the sole discretion standard is consistent with the deference required under section 2(c) of the Act. The examples in §1.139E-1(d)(2) merely provide illustrative examples of benefits an Indian Tribal government may provide. Accordingly, the Treasury Department and the IRS affirm the types of programs described in the preceding paragraph are not contrary to the standard provided in §1.139E-1(d)(2), if an Indian Tribal government has determined such benefit is for the promotion of the general welfare and the program satisfies the other requirements in section 139E.

## 2. Examples of Promotion of General Welfare

Proposed §1.139E-1(d)(2)(ii) would provide non-exhaustive examples of programs that an Indian Tribal government may determine, in its sole discretion, distribute benefits that are for the promotion of the general welfare, as required under proposed §1.139E-1(d)(2).

One commenter recommended additional clarification to proposed §1.139E-1(d)(2)(ii) to make clear that the examples provided are not an exhaustive list of types of programs that would be for the promotion of general welfare. Other commenters pointed out a typographical error in proposed §1.139E-1(d)(2)(ii)(B) and requested clarification on additional specific types of permissible program payments.

The Treasury Department and the IRS agree with commenters that the examples in proposed §1.139E-1(d)(2)(ii) are intended to be non-exhaustive. The Treasury Department and the IRS clarify that the programs described in §1.139E-1(d)(2)(ii) of these final regulations are a non-exhaustive list of examples of programs that an Indian Tribal government may determine are for the promotion of general welfare for purposes of section 139E. Thus, these regulations reaffirm that the Indian Tribal government has the sole discretion to determine what program benefits are for the promotion of general welfare of Tribal program participants.

In addition, the Treasury Department and the IRS have changed the language used in some of the examples in proposed §1.139E-1(d)(2)(ii) to respond to comments. For example, §1.139E-1(d)(2)(ii)(B) (education programs) corrects a typographical error in the proposed regulations and includes textbooks as an example of school supplies. In response to comments, §1.139E-1(d)(2)(ii)(D) (transportation programs) of these final regulations does not include the word “substantiated” before “mileage,” and lacks the language that would limit fares for public transportation to specific origins and destinations. In addition, §1.139E-1(d)(2)(ii)(A) (housing programs) of these final

regulations removes the reference to benefits that may not be used for any trade or business because of the changes provided in §1.139E-1(d)(2) for business grants. See part IV.A.5. of this Summary of Comments and Explanation of Revisions. Finally, §1.139E-1(d)(2)(ii)(G) of these final regulations (cultural and religious programs) removes the reference to section 168(j) as providing the definition of “Indian reservations.” These final regulations remove this reference because Indian reservations are subject to varying definitions under Federal law, and it is unnecessary to prescribe a definition in this rule. In sum, the changes to the language in §1.139E-1(d)(2)(ii) are intended to remove limiting language that could be viewed by an Indian Tribal government as constraining its discretion to determine that program benefits are for the promotion of general welfare.

Some commenters requested that benefits or assistance provided after a Tribally declared disaster be included as an example of a promotion of general welfare purpose in proposed §1.139E-1(d)(2). For example, an Indian Tribal government may declare a disaster that may not qualify as a Federally declared disaster. One commenter recommended clarifying that “assistance in an emergency” is intended to include events that are not otherwise qualified disasters.

The Treasury Department and the IRS have determined no changes are necessary in these final regulations to the language of proposed §1.139E-1(d)(2) to include references to Tribally declared disasters. The Treasury Department and the IRS agree with commenters that benefits provided to Tribal program participants as a result of a Tribally declared disaster are benefits that would be described in §1.139E-1(d)(2). However, a governmentally declared disaster is not a requirement of §1.139E-1(d)(2). Indian Tribal governments have the sole discretion to determine whether a benefit is for the promotion of general welfare for purposes of section 139E. Section 1.139E-1(d)(2) broadly describes “assistance for disasters or other emergency

situations” and does not limit an Indian Tribal government’s determination of what benefits are needed to be provided to Tribal program participants in the event of emergency situations. The Treasury Department and the IRS decline to include a reference to Tribally declared disasters because it may be viewed as a limitation on the types of disasters that could satisfy §1.139E-1(d)(2).

### 3. Prizes and Awards

Many commenters requested clarification that section 139E can apply to prizes and awards provided pursuant to Indian Tribal government programs at powwows or similar ceremonial activities. Commenters argued that powwow prizes and awards constitute Tribal general welfare benefits because they are designed to encourage participation at ceremonial and cultural events and foster the exchange of Tribal culture and traditions. One commenter shared an example of a cultural event to promote cultural and traditional practices in which awards are given to only some of the dancers who are performing dances traditional to their Tribe. Similarly, the commenter provided an example of a Tribe holding a social event in which door prizes are provided to a few individuals in order to promote participation at social activities among Tribal members.

Some commenters explained that the IRS has, in the past, treated powwow prizes for cultural or ceremonial activities as taxable under section 74 of the Code. These commenters expressed concern that the IRS may continue to treat these payments as taxable prizes and awards under section 74.

The Treasury Department and the IRS agree with commenters that prizes and awards provided by an Indian Tribal government program as part of a cultural or ceremonial program or activity could be a Tribal general welfare benefit if the benefit otherwise satisfies section 139E and these regulations. These final regulations differ from proposed §1.139E-1(d)(2)(ii)(G) by including examples of prizes or awards provided as part of cultural or ceremonial activities that an Indian Tribal government

may determine are for the promotion of general welfare for purposes of section 139E. Specifically, the final regulations provide that an Indian Tribal government program may provide cash or property as a prize or award in connection with cultural, social, religious, or community activities, and such prize or award could be a Tribal general welfare benefit if it is determined by the Indian Tribal government to be for the promotion of general welfare and the other requirements of section 139E and these regulations are otherwise satisfied.

In addition, §1.139E-1(e)(2) provides that a prize or award that would otherwise be compensation for services may qualify for the exception in section 139E(c)(5) and §1.139E-1(e) if the prize or award is provided as a benefit to, or on behalf of, a Tribal program participant for the Tribal program participant's participation in cultural or ceremonial activities for the transmission of Tribal culture. For example, if an Indian Tribal government program that supports cultural or ceremonial activities, including powwows, provides a prize or award to a Tribal program participant of such program who performs dances as part of a powwow, the prize or award would be a Tribal general welfare benefit if the other requirements of §1.139E-1(d) are met.

#### 4. Indian Tribal Government's Discretion to Provide Benefits in Equal Amounts

Proposed §1.139E-1(d)(2)(i) would provide that an Indian Tribal government has sole discretion to determine whether a benefit is for the promotion of general welfare and that the IRS will defer to the Indian Tribal government's determination that a benefit is for the promotion of general welfare. Consistent with this approach, proposed §1.139E-1(d)(2)(i) would provide that an Indian Tribal government program may provide Tribal general welfare benefits on a uniform or pro-rata basis to Tribal program participants.

One commenter urged clarification that an Indian Tribal government program may also provide benefits based on a schedule that authorizes unequal payment

amounts based on reasonable criteria applicable to all qualifying Tribal members. For example, a program may provide different benefit amounts to larger families than smaller families.

The Treasury Department and the IRS decline to adopt the comments to change proposed §1.139E-1(d)(2)(i) because the Treasury Department and the IRS have determined that the language of proposed §1.139E-1(d)(2)(i) provides broad deference to an Indian Tribal government to determine whether a benefit is for the promotion of the general welfare for purposes section 139E and is given the discretion to determine whether benefits should be paid. In sum, proposed §1.139E-1(d)(2)(i) provides flexibility to an Indian Tribal government to determine whether program benefits are best allocated to Tribal program participants on an equal basis or in in varying amounts. Because an Indian Tribal government has sole discretion to determine whether a benefit is for the promotion of general welfare for purposes of section 139E, a program that provides a benefit in an unequal amount, such as providing different benefit amounts to larger families than smaller families, would be permitted under proposed §1.139E-1(d)(2)(i). Accordingly, proposed §1.139E-1(d)(2)(i) is finalized without modification.

## 5. Economic Development Benefits

The proposed regulations would not address payments provided in connection with business ventures of Tribal program participants. Part V.B. of the Explanation of Provisions in the preamble to the proposed regulations stated that the administrative general welfare exclusion and Revenue Procedure 2014-35 generally do not apply to payments made to businesses. Similarly, the preamble to the proposed regulations stated that section 139E applies only to individuals and not businesses. However, the preamble to the proposed regulations stated that Revenue Ruling 77-77 (1977-1 C.B. 11) holds there is a limited exception to the rule that the administrative general welfare doctrine does not apply to businesses. Revenue Ruling 77-77 provides that a grant

made by an Indian Tribal government to a Tribal member to expand an Indian-owned business on or near a reservation is excluded from the Tribal member's gross income under the administrative general welfare exclusion.

(a) Revenue Ruling 77-77

Many commenters disagreed with the characterization by the Treasury Department and the IRS of Revenue Ruling 77-77 as constituting a narrow exception to the administrative general welfare exclusion. Several commenters similarly disagreed with the assertion that the administrative general welfare exclusion does not apply to economic development assistance or payments to businesses, including sole proprietors, because such payments are not based on individual or family need. Many commenters also refer to other situations where the IRS has applied the administrative general welfare exclusion to Tribal general welfare benefits for the purpose of economic development assistance. See PLR 199924026 and COVID-19 FAQs on the IRS website at <https://www.irs.gov/newsroom/faqs-for-payments-by-indian-tribal-governments-and-alaska-native-corporations-to-individuals-under-covid-relief-legislation>.

The Treasury Department and the IRS have determined that the preamble to the proposed regulations accurately described the *administrative* general welfare exclusion (not section 139E) and its inapplicability to payments made to businesses. However, the Treasury Department and the IRS are aware that Revenue Ruling 77-77 and recent COVID-19 FAQs refer to the administrative general welfare exclusion applying to certain business grants made by an Indian Tribal government to expand an Indian-owned business on or near a reservation. The Treasury Department and the IRS have determined this guidance remains applicable when applying the administrative general welfare exclusion specific to Indian Tribal governments.

(b) Business Grants under Section 139E



Commenters requested that the Treasury Department and the IRS specify that benefits provided by the Indian Tribal government to Tribal members to start, operate, develop, or expand businesses constitute Tribal general welfare benefits provided to promote the general welfare of the community. Commenters generally argued section 139E should be viewed broadly to include promotion of general welfare of individuals and needs of the Tribal community. Similarly, some commenters pointed to the Act to support this broad interpretation of section 139E. Commenters also argued such economic development promotes the general welfare of Tribes and their Tribal communities by promoting self-sufficiency in light of the difficulties faced by Tribes in generating revenue and attracting capital and businesses onto reservations, and Tribal goals of promoting stable employment and economic opportunities. Finally, commenters requested clarification on whether an Indian Tribal government program could provide benefits to encourage business activity on or near a reservation by providing Tribal-member-owned businesses with grants, interest-free or other below-market loans, or reimbursements for employment taxes.

Commenters also argued the scope of program eligibility for grants to businesses should not be limited to Tribal citizens. Rather, a commenter suggested that the Tribe should be able to provide general welfare benefits to any persons consistent with Tribal law. Similarly, commenters requested that the term “Indian-owned enterprise” should not be defined by the IRS.

The Treasury Department and the IRS have reconsidered the issue of Tribal general welfare payments made to Tribal program participants to support businesses and agree that it would be helpful to clarify in §1.139E-1(d)(2) of these final regulations that an Indian Tribal government program may provide benefits to support, develop, operate, expand, or start certain trades or businesses. Consistent with the proposed regulations, §1.139E-1(d)(2)(i) broadly provides that the Indian Tribal government has

sole discretion to determine that a benefit is for the promotion of general welfare at the time it establishes the Indian Tribal government program. The Treasury Department and the IRS agree with commenters that section 2(c) of the Act provides broad deference to Indian Tribal governments for the Indian Tribal government programs administered and authorized by the Tribes to determine the general welfare programs that are provided in their communities.

The Treasury Department and the IRS agree with commenters that the term “Indian-owned enterprise” should not be defined in these regulations. Moreover, these regulations do not restrict Indian Tribal government programs to support or expand Indian-owned businesses on or near a reservation. Section 1.139E-1(d)(2) provides broad deference to Indian Tribal governments to determine whether benefits are for the promotion of general welfare.

However, section 139E is an exclusion from the gross income of individuals and therefore is limited to benefits provided to, or on behalf of, the individuals described in section 139E(b) and §1.139E-1(b)(8). See discussion of Tribal program participant in part II.C. of this Summary of Comments and Explanation of Revisions. Accordingly, these final regulations provide that any Tribal general welfare benefit provided to support, develop, operate, expand, or start a trade or business must be provided to, or on behalf of, an individual that is a Tribal program participant. Thus, an Indian Tribal government program may not provide benefits under the program to an entity, regardless of whether it is owned by a Tribal program participant.

Similarly, the Treasury Department and the IRS have determined that the language “on behalf of” is not intended to apply to program benefits provided by an Indian Tribal government program to non-individuals, such as a business entity owned by a Tribal program participant. Rather, the Treasury Department and the IRS interpret the statutory language “on behalf of” to address situations such as where an Indian

Tribal government program pays rent directly to a landlord on behalf of a Tribal member tenant who operates a trade or business as a sole proprietorship.

The final regulations also provide an example of general welfare programs to support businesses. The Treasury Department and the IRS agree with commenters that program benefits to Tribal program participants, as individuals, in the form of non-reimbursable grants, interest-free or other below-market loans, or amounts paid to a Tribal program participant that are equivalent to the employment taxes imposed on the Tribal program participant as an employer, may qualify for section 139E.

In addition, the final regulations provide that section 7872 of the Code generally does not apply to a loan from an Indian Tribal government to a Tribal program participant pursuant to an Indian Tribal government program. The Treasury Department and the IRS believe that such loans are a class of transactions the interest arrangements of which have no significant effect on any Federal tax liability of the lender or the borrower. The Treasury Department and the IRS have expanded the proposed regulations by adding §§1.139E-1(d)(6) and 1.7872-5(b)(17) to these final regulations.

#### B. Benefits Cannot Be Lavish or Extravagant

Proposed §1.139E-1(d)(4) would provide a facts and circumstances test to determine whether a Tribal program benefit is lavish or extravagant under section 139E. Relevant facts and circumstances include a Tribe's culture and cultural practices, history, geographic area, traditions, resources, and economic conditions or factors. Proposed §1.139E-1(d)(4) would also provide a presumption that a benefit is not lavish or extravagant if it is described in, and provided in accordance with, the written specified guidelines of the Indian Tribal government program.

##### 1. Facts and Circumstances Standard

Some commenters expressed support for the general approach of a facts and

circumstances test in proposed §1.139E-1(d)(4). Commenters noted Tribal governments are uniquely qualified to assess what constitutes lavish or extravagant within their cultural and economic context, and factors such as geographic location, cost-of-living variations, and the cultural significance of certain expenditures are best understood by Tribal leaders. Commenters noted that the proposed regulations would recognize Tribal sovereignty by considering a Tribe's cultural practices and economic condition and would be consistent with the Act's explicit mandate for deference to Indian Tribal governments.

Some commenters suggested changes to proposed §1.139E-1(d)(4) to ensure that the enumerated factors for the facts and circumstances test are not treated as exhaustive factors. Also, commenters requested that the regulations provide Indian Tribal governments with the flexibility to adapt the definition of lavish or extravagant as economic and cultural conditions evolve. Moreover, some commenters requested that the determination of whether a benefit is lavish or extravagant be made at the time a program is implemented, authorized, or modified, rather than at the time a benefit is provided.

Other commenters recommended that the Treasury Department and the IRS defer entirely to Indian Tribal governments on whether a Tribal general welfare benefit is lavish or extravagant regardless of whether a program is in writing. These commenters expressed concern that the evaluation by the IRS of a Tribe's culture and cultural practices, history, geographic area, traditions, resources, and economic conditions or factors would result in an intrusion on an Indian Tribal government's sovereignty. Some commenters recommended express language in §1.139E-1(d)(4) providing that the IRS will accept and defer to any attestations of the Indian Tribal government regarding the facts and circumstances at the time the benefit is provided. Another commenter stated that the lavish or extravagant standard in section 139E(c)(3) is offensive in the context

of the commenter's Tribe's historical oppression at the hands of the Federal government and long-standing and severe poverty.

The test in proposed §1.139E-1(d)(4) is intended to be a test that considers the totality of the facts and circumstances. Relevant facts and circumstances include a Tribe's culture and cultural practices, history, geographic area, traditions, resources, and economic conditions or factors. However, the Treasury Department and the IRS agree with commenters that an Indian Tribal government is uniquely qualified to evaluate its culture and cultural practices, history, geographic area, traditions, resources, and economic conditions and that deference should be provided to an Indian Tribal government's attestation of the facts and circumstances at the time the benefit is provided to a Tribal program participant. Accordingly, newly renumbered §1.139E-1(d)(4)(i) of the final regulations provides that the IRS will defer to an Indian Tribal government's attestations of facts and circumstances, regardless of whether the program is in writing, at the time the benefit is provided to the Tribal program participant. However, the deference provided in §1.139E-1(d)(4)(i) to the Indian Tribal government's attestation of facts and circumstances does not preclude the IRS from determining that a benefit is lavish or extravagant under the Indian Tribal government's attestations of the facts and circumstances at the time the benefit was provided. In addition, while the IRS would respect the Indian Tribal government's attestations of fact and circumstances, the Treasury Department and the IRS are clarifying that the IRS may also consider facts and circumstances not included in the Indian Tribal government's attestations in ascertaining whether a benefit is lavish or extravagant.

The Treasury Department and the IRS continue to be of the view that the proper time to test whether a benefit is lavish or extravagant is at the time the benefit is provided. Section 139E and §1.139E-1(a) provide that the gross income of the Tribal program participant does not include the value of any Tribal general welfare benefit

provided during the year to or on behalf of the Tribal program participant. The value of the benefit, including for purposes of whether it is lavish or extravagant, is determined during the taxable year it is provided. The fact that the lavish or extravagant determination is made at the time the benefit is provided does not mean that facts and circumstances involving prior years, including facts and circumstances present at the time at which a program was implemented, authorized, or modified, cannot be taken into account in the determination made at the time the benefit is provided.

One commenter disagreed with the requirement that a benefit not be lavish or extravagant. However, section 139E(b)(2)(C) provides that a benefit, among other requirements, cannot be lavish or extravagant. Moreover, pursuant to section 139E(c)(3), the Treasury Department and the IRS consulted with TTAC regarding the lavish or extravagant standard under section 139E(b)(2)(C). Accordingly, these final regulations retain the requirement in §1.139E-1(d)(4) that a benefit cannot be lavish or extravagant as required by law.

## 2. Presumption

Some commenters supported the addition of the presumption in proposed §1.139E-1(d)(4) that a benefit is not lavish or extravagant if it is described in, and provided in accordance with, the written specified guidelines of the Indian Tribal government program. Some commenters noted that the presumption respects Tribal cultural practices and the various factors that inform a Tribe's general welfare program. These commenters mentioned that the presumption provides deference to Tribes, helps administrative flexibility, Tribal sovereignty, self-determination, and self-governance, which will enable Indian Tribal governments to maximize the benefit to the Tribe. Many commenters requested clarification on how the IRS would be able to rebut the presumption and what a written program should contain to benefit from the presumption.

Some commenters recommended the TTAC Report's approach to lavish or extravagant. The TTAC Report recommended that the term "lavish or extravagant" be defined as a relative term that depends on the unique circumstances of the Tribe, and also depends on the type of benefit being provided (such as, one-time payment or monthly assistance). The TTAC Report sets forth a non-exclusive list of circumstances that should be considered when determining if a benefit is lavish or extravagant: an Indian Tribal government's economic circumstances or factors, culture and cultural practices, history, geographic area, traditions, and resources. The TTAC Report recommends deference to Indian Tribal governments and proposes a rebuttable presumption that the benefit is not lavish or extravagant if the Indian Tribal government program meets general welfare needs or purposes, and the method of distribution is expected to achieve program goals.

Some commenters requested that the final regulations provide that a Tribe's attestation of the relevant facts and circumstances would meet any burden that may arise in connection with the presumption. These commenters stated that the IRS should not define facts and circumstances, including a Tribe's own culture, history, or tradition, in an attempt to rebut the presumption.

Some commenters requested that the frequency of payments under a program should be irrelevant in applying the presumption provided to written programs. Similarly, many commenters requested that the final regulations provide a conclusive presumption that a benefit based on the facts and circumstances provided in proposed §1.139E-1(d)(4) and administered in good faith is not lavish or extravagant. Commenters suggested that a conclusive presumption is a natural extension of the presumption provided in the proposed regulations.

The Treasury Department and the IRS decline to provide a conclusive presumption on the issue of whether a benefit is lavish or extravagant. However, the

Treasury Department and the IRS have clarified the proposed regulations by providing in these final regulations that an Indian Tribal government program is afforded deference on the attestations of the facts and circumstances. This deference is afforded whether or not the specified guidelines are in writing. This deference is intended to reflect that the Tribe is in the best position to determine which factors and attestations of fact were considered when determining benefits. In particular the Tribe is in the best position to determine which facts and circumstances are specific to its culture and cultural practices, history, geographic area, traditions, resources, and economic conditions. Similarly, the presumption in the proposed regulations has been clarified. Newly renumbered §1.139E-1(d)(4)(ii) clarifies that the presumption is based on the written specified guidelines of an Indian Tribal government program that exist at the time that the benefit is provided to the Tribal program participant. This change acknowledges that the specified guidelines in Indian Tribal government programs may be modified from time to time.

C. Benefits Cannot Be Compensation for Services.

Section 139E(b)(2)(D) provides that benefits provided under a Tribal general welfare benefit paid under an Indian Tribal government program cannot be compensation for services, subject to exceptions discussed in part V of this Summary of Comments and Explanation of Revisions. Proposed §1.139E-1(d)(5) would provide a reference to section 61(a) of the Code to define compensation for services and is intended to include existing law and guidance under section 61.

Several commenters argued the broad reliance on section 61 to define compensation for services lacks practical clarity for Tribal situations. Some commenters also recommended that the final regulations include the recommendations of the TTAC Report, which provide specific examples of activities that should be excluded from compensation for services. For example, the TTAC Report refers to the



following as not compensation for services: (1) a benefit in connection with Tribal custom or tradition regarding community service; (2) cultural or ceremonial gifts and payments as determined by the Tribe; and (3) payments as part of training programs.

Many commenters stated that the proposed regulations lack clarity on work-training programs, and some commenters expressed concern that meaningful input from Tribes and the TTAC on this issue was not incorporated into the rules. Some commenters noted that Indian Tribal governments often consider work-training payments to participants as honorarium payments to assist their Tribal community.

One commenter requested clarity on whether support of educational and Native-language recovery is considered practical work-training and not compensation for services. The commenter noted that the IRS has previously determined this activity does not constitute compensation for services.

Some commenters argued that the final regulations should clarify that “benefits provided for cultural or ceremonial purposes, as explicitly allowed under section 139E, are not compensation for services.” Several commenters also requested clarification that community service requirements will not be compensation for services because the programs are designed to foster kinship and encourage community involvement. Another commenter requested that the final regulations provide clarification that benefits provided with legitimate service ties for Tribal culture and tradition are not compensation for services. The commenter gave examples of payments (i) for neighborhood cleanup costs, (ii) for teaching the Tribal language, and (iii) to Tribal youths to cut and gather wood for elders.

One commenter argued that section 139E(b)(2)(D) is intended to prevent potential abuse by converting employee wages and vendor payments into tax-free remuneration. The commenter also requested that an Indian Tribal government be able to use a facts and circumstances test to show the benefits provided under its program

are consistent with the intent of section 139E in order to rebut any interpretation by the IRS that a payment is compensation for services.

The Treasury Department and the IRS continue to be of the view that the term “compensation for services” in section 139E(b)(2)(D) is appropriately defined by reference to section 61, which generally defines “gross income” for purposes of subtitle A of the Code. Section 139E(a) provides an exclusion from gross income for the value of any Indian general welfare benefit. The Treasury Department and the IRS have determined that the general definition of gross income under section 61 is the starting point to ascertain the exclusion under section 139E. In addition, the Treasury Department and the IRS affirm that the term “compensation for services” in section 61(a)(1) is broader than services that are traditionally provided under an employment or contracted-vendor relationship. Section 1.61-2(a)(1) provides that compensation for services includes amounts that are not paid in an employment or contracted-vendor relationship.

However, the Treasury Department and the IRS are aware of the need for clarity on benefits provided that relate to cultural or ceremonial activities. For example, commenters referred to certain program benefits for community service, language preservation, and work training that are provided as part of cultural or ceremonial activities. The Treasury Department and the IRS have determined that to the extent that these specific situations constitute compensation for services, they are better addressed within the exclusion under section 139E(c)(5) and §1.139E-1(e) for activities relating to cultural or ceremonial activities.

These final regulations do not provide a facts and circumstances test to rebut an interpretation by the IRS that a payment is compensation for services. The Treasury Department and the IRS have concluded that whether a payment constitutes compensation for services is generally determined using existing guidance, and

examination of all the facts. Moreover, the Treasury Department and the IRS also affirm that section 139E(c)(5) and §1.139E-1(e) are an exception to the general prohibition that prevents treating compensation for services as Tribal general welfare benefits. Facts may be presented to support the argument that the payment is not compensation for services under section 139E(b)(2)(D) or to support the payment is subject to the exception to compensation for services under section 139E(c)(5).

#### V. Exception to Prohibition on Compensation for Services

Proposed §1.139E-1(e) would provide that a benefit is not compensation for services if the benefit is provided to a Tribal program participant for the Tribal program participant's participation in cultural or ceremonial activities for the transmission of Tribal culture as determined by the Indian Tribal government, and such benefit consists of an item of cultural significance, reimbursement of costs, or cash honorarium. Proposed §1.139E-1(e)(1)(i) would provide a non-exhaustive list of examples of cultural or ceremonial activities, including powwows, rite of passage ceremonies, funerals, wakes, burials, other bereavement events, and honoring events. Proposed §1.139E-1(e)(2) also would provide that, in general, an Indian Tribal government has sole discretion to determine whether a benefit consists of an item of cultural significance and whether an activity is a cultural or ceremonial activity, and the IRS will defer to this determination. However, proposed §1.139E-1(e)(2) would further provide that cash, gift cards, and vehicles generally are not considered items of cultural significance.

##### A. In General

Commenters generally expressed support for the deference provided to Tribal determinations in proposed §1.139E-1(e) regarding cultural and ceremonial activities. These commenters noted the deference provided to Tribes supports Tribal self-determination and administrative flexibility and provides clarity regarding cultural and ceremonial activities. Other commenters expressed support for the exclusion of items

of cultural significance, cash honoraria, and “ceremonial costs,” consistent with section 139E(c)(5). Commenters supported the omission of the “de minimis” limitation on cash honorarium payments that was present in Revenue Procedure 2014-35. One commenter recommended finalizing proposed §1.139E-1(e) regardless of how the final regulations address the “lavish or extravagant” standard. One commenter was critical of the use of the terms “shamans, medicine men, or medicine women,” in the preamble to the proposed regulations, and further described the regulation as mischaracterizing Tribal culture by confining it to the 18th and 19th century.

Similarly, some commenters requested clarification on specific benefits provided in connection with participation in cultural or ceremonial activities that may not be clearly described in proposed §1.139E-1(e). For example, commenters mentioned efforts to recover, preserve, and promote (among Tribal members) cultural practices, resources, or historic languages, efforts to teach Native languages, and efforts to create, recover, protect, and preserve cultural places or spaces. Another commenter suggested that the final regulations provide clarity that honoraria given to Tribal members who assist with setting up before or closing after a cultural or ceremonial event are included in activities described in proposed §1.139E-1(e). One commenter pointed out that cultural activities, such as singing songs, are not recognized as such by the IRS. As discussed in part IV.C. of this Summary of Comments and Explanation of Revisions, some commenters requested that certain benefits that have the legitimate purpose of promoting Tribal culture and tradition, such as community service or work-training programs that are connected to Tribal culture and tradition, should not be compensation for services.

One commenter urged that IRS agents not be able to second guess Tribal culture or traditions, and that IRS agents should be restricted from issuing requests for documents, including books and records relating to Tribal culture and traditions.

Section 1.139E-1(e) provides that Indian Tribal governments are in the best position to determine what it means to participate in cultural or ceremonial activities for the transmission of Tribal culture. Thus, under §1.139E-1(e), Indian Tribal governments determine what it means to participate in cultural or ceremonial activities for the transmission of Tribal culture. The IRS would defer to determinations by the Indian Tribal government that activities undertaken in connection with a cultural or ceremonial activity, as determined by the Indian Tribal government, constitute participation in that cultural or ceremonial activity.

Section 1.139E-1(e) of the final regulations includes additional, non-exhaustive examples of cultural or ceremonial activities. In general, the Treasury Department and the IRS have determined that benefits provided to Tribal program participants for community service or work-training programs connected to Tribal culture and tradition would be activities described in §1.139E-1(e). Accordingly, the additional examples of cultural or ceremonial activities in §1.139E-1(e)(1)(i) of these final regulations include: Tribal community service events, such as neighborhood clean-ups or youth woodcutting programs to benefit elders; participation in training in traditional construction techniques; and Tribal language education.

As noted previously, one commenter expressed the view that the preamble to the proposed regulations used inappropriate terminology to describe Tribal cultural or ceremonial activities, and otherwise mischaracterized Tribal culture. The Treasury Department and the IRS affirm that there was no intention in drafting the proposed regulations to express any characterizations or generalizations regarding the culture and traditions of any Tribe or Tribes. The terminology in the proposed regulations was included in the context of a quotation from the provision of Revenue Procedure 2014-35 that excepts certain culturally significant payments from being treated as compensation for services but limits such exception to benefits received by certain religious or spiritual

officials or leaders. The quotation was included in order to clarify that the proposed regulation would not contain a comparable limitation on the scope of section 139E(c)(5), and these final regulations similarly contain no such limitation.

These final regulations are intended to provide broad deference to Indian Tribal governments. To that end, the Treasury Department and the IRS affirm that the IRS will defer to an Indian Tribal government's determinations of whether an activity is a cultural or ceremonial activity for the transmission of Tribal culture, and to the definitions of whether an item is an item of cultural significance.

#### **B. Employment or Contracted-Vendor Relationship**

Some commenters expressed confusion regarding the discussion of employment or contracted vendor relationships in part IV.A. of the Explanation of Provisions in the preamble to the proposed regulations. The discussion included examples illustrating that payments to corporations owned by Tribal members for services provided during cultural or ceremonial activities are not excluded under section 139E, but payments made directly to the Tribal members for such services would be excludible under section 139E. These commenters requested clarification that an Indian Tribal government's formal agreement, such as a contract, with persons participating in cultural or ceremonial activities, such as with spiritual leaders, and fluent Native speakers would not prevent the application of proposed §1.139E-1(e). In addition, one commenter recommended that the regulations provide that section 139E applies to payments made in connection with participation in cultural or ceremonial activities to a pass-through entity that is wholly owned by a Tribal member.

Several commenters requested clarity on the taxability of payments made from a Tribe to its members for volunteer services that these members normally provide professionally. Some commenters argued that services provided during cultural or ceremonial gatherings should be excluded under section 139E(c)(5) even though the

Tribal member may separately provide similar services in a professional capacity for compensation. Finally, one commenter recommended that activities of an advisory group also be considered a cultural activity because some Tribal cultures use these groups to distribute Tribal decision-making power.

The mere existence of a contract between a Tribal program participant and an Indian Tribal government does not prevent the application of §1.139E-1(e). For example, a program benefit provided to a spiritual leader to perform a blessing at a ceremonial or cultural activity of the Tribe may qualify under §1.139E-1(e) if paid directly to the spiritual leader even without regard to whether the spiritual leader had a verbal or written agreement with the Indian Tribal government to perform such services.

However, the Treasury Department and the IRS continue to be of the view that the exception in section 139E(c)(5) does not broadly apply to services that are traditionally provided in an employment or contracted-vendor relationship because section 139E is an exclusion from gross income for individuals and families. However, in response to comments, the Treasury Department and the IRS clarify that the example in part IV.A. of the Explanation of Provisions in the preamble to the proposed regulations was not intended to suggest that an individual who owns a catering business is unable to receive a cash honorarium in the individual's capacity as an individual when volunteering to assist in food preparation for a cultural or ceremonial activity of the Tribe. However, the exception in section 139E(c)(5) would not apply if the individual's catering corporation received compensation in exchange for providing services to the Tribe for a cultural or ceremonial activity of the Tribe.

## VI. Examples

### A. New Examples

The Treasury Department and the IRS requested comments on whether additional examples should be included in the final regulations, and if so, what specific

fact patterns or rules should be addressed by the additional examples. In general, comments were mixed on this issue.

Many commenters favored additional examples but did not want examples to have the unintended effect of limiting the rules or the deference provided to Indian Tribal governments or their programs. Most commenters requested that the regulations clearly confirm that examples do not limit or curtail Tribal flexibility to design Indian Tribal government programs, and many commenters suggest adding “without limitation” in all examples or stating that the examples are neither exclusive nor exhaustive. Some commenters requested that any new examples be discussed with the TTAC.

Conversely, many commenters recommended no new examples be added to the final regulations. Some commenters were concerned that additional examples could be viewed as setting limits on Tribal general welfare benefits and may not be viewed as an illustration of possible benefits.

Some commenters requested new examples in specific areas. For example, one commenter recommended that new examples would be helpful for rules that do not explicitly provide deference to Indian Tribal governments. A few commenters requested examples relating to the rules for lavish or extravagant, such as: how the facts-and-circumstances test applies particularly in relation to different geographical or economic areas (such as high-cost or low-cost areas); how the presumption could be rebutted by IRS; and examples of how “level” cash benefits interact with the “promotion of the general welfare” standard. One commenter requested an example on the interactions of a general welfare benefit under section 139E with other Federal benefits programs, such as Supplemental Security Income (SSI) and Medicaid. Finally, this commenter also requested an example on general welfare payments distributed from a trust on a pro-rata basis.

In general, the Treasury Department and the IRS have concluded it would be



best to refrain from adding many new examples to these final regulations, and have added new examples only after consulting with the TTAC GWE Subcommittee. Specifically, after careful consideration, the Treasury Department and the IRS decline to add examples regarding the lavish or extravagant rules because examples may create a negative inference that limits an Indian Tribal government program. The test to determine whether a benefit is lavish or extravagant depends on the facts and circumstances, some of which are factors that would be specific to a Tribe. Finally, the Treasury Department and the IRS also decline to add an example to describe the interaction of Tribal general welfare benefits and SSI or Medicaid benefits because the definition of income for SSI or Medicaid benefits is outside the scope of these regulations.

#### B. Existing Examples

Some commenters observed that the examples in proposed §1.139E-1(d)(2)(ii) are directly from Revenue Procedure 2014-35. These commenters recommended refining these examples to help guide Tribal governments and the IRS. In addition, several commenters recommended using consistent language when referring to the examples not being an exhaustive list. For instance, commenters suggested using the words “including but not limited to” to denote the example is a non-exhaustive list.

The Treasury Department and the IRS have revised the examples in these final regulations to clarify that they are not intended to be exhaustive, and to make clear that items following the word “including” are similarly not intended to be exhaustive. The examples in §1.139E-1(d)(2)(ii) of these final regulations have also been revised to assist with readability.

#### VII. Obsolescence of Revenue Procedure 2014-35

The Treasury Department and the IRS proposed to obsolete Revenue Procedure 2014-35 after the final regulations are applicable. Comments were requested on

whether the revenue procedure should be obsoleted when the final regulations become applicable, and if not, why there is a continuing need for it after the publication of final regulations.

Most commenters argued that Revenue Procedure 2014-35 is outdated and should be obsoleted when the final regulations are applicable. Some commenters noted confusion may occur if the revenue procedure is retained because some provisions of Revenue Procedure 2014-35 conflict with the Act. In particular, one commenter noted there is no need for safe harbors if Indian Tribal governments are provided broad deference and the IRS defers to Tribal determinations under the proposed regulations. Similarly, other commenters argued that the Act, section 139E, and the proposed regulations are more flexible and provide more comprehensive guidance to Indian Tribal governments than the revenue procedure. Commenters also argued that the safe harbors are no longer needed because section 139E and the proposed regulations, unlike the administrative general welfare exclusion, do not require a showing of individual need. However, these commenters recommended a transition period to allow continued use of the revenue procedure for at least one year after the final regulations are applicable in order to give Indian Tribal governments time to comply with the final regulations.

Similarly, a few commenters noted that some Federal agencies interpret the revenue procedure's safe harbors narrowly to the detriment of benefit recipients who rely on Federal assistance. Another commenter supported obsolescence of Revenue Procedure 2014-35 but detailed the challenges the commenter has experienced with the Social Security Administration and requested that the Treasury Department confirm that Tribal general welfare benefits are needs-based assistance for purposes of eligibility standards under Social Security Administration programs.

One commenter argued that the Treasury Department and the IRS should not

obsolete Revenue Procedure 2014-35 so that it remains as fallback guidance in case the final regulations are ever invalidated by a court or otherwise scaled back. Another commenter requested that language be added to the final regulations that, in addition to section 139E and these final regulations, provide that the administrative general welfare exclusion may also be available to exclude an amount from gross income.

Revenue Procedure 2014-35 will become obsolete for taxable years beginning on or after January 1, 2027, the applicability date of the final regulations, which will provide Indian Tribal governments with additional transition time to adjust or update their programs. See the “Effect on Other Documents” section of this preamble. The Treasury Department and the IRS agree with commenters that it would be confusing to retain the revenue procedure because these final regulations are intended to be broader than the needs-based safe harbors provided in the revenue procedure. The Treasury Department and the IRS also affirm that section 139E and these regulations do not supplant the administrative general welfare exclusion.

However, the Treasury Department and the IRS disagree that Tribal general welfare benefits are always needs-based assistance. Section 1.139E-1(d)(2)(i) expressly provides that Tribal general welfare benefits may be provided without regard to financial or other need of Tribal program participants. Nevertheless, an Indian Tribal government has broad discretion to establish and administer Indian Tribal government programs and may choose to limit a program or its benefits to Tribal program participants based on a showing of individual need.

#### VIII. Audit Suspension and Administration

The responses of the Treasury Department and the IRS to the comments discussed in parts VIII.A. and VIII.B. of this Summary of Comments and Explanation of Revisions are set forth in part VIII.C. of this Summary of Comments and Explanation of Revisions.

#### A. Audit Suspension and the Education and Training Requirement

Section 4 of the Act provides a temporary suspension of audits and examinations of Indian Tribal governments and Tribal members (or any spouse or dependent of such member) to the extent that the audit or examination relates to the exclusion of a payment or benefit from an Indian Tribal government under the general welfare exclusion until the education and training prescribed by section 3(b)(2) of the Act is completed. Section 3(b)(2) of the Act directs the Secretary of the Treasury, in consultation with the TTAC, to establish and require (A) training and education or internal revenue field agents who administer and enforce internal revenue laws with respect to Tribes on Federal Indian law and the Federal Government's unique legal treaty and trust relationship with Indian Tribal governments, and (B) training of such internal revenue field agents, and provision of training and technical assistance to Tribal financial officers, about implementation of the Act and the amendments made thereby.

Many commenters noted that section 4 of the Act expressly provides that the lifting of audit suspension is contingent on the completion of education and training. Many commenters requested that meaningful coordination and consultation with the TTAC occur on the education and training. Several commenters requested that the Treasury Department and the IRS use the same TTAC and Tribal consultation and coordination process to satisfy the required education and training as was used for the development of the regulations. Some of these commenters noted that consultation with the TTAC ensures that training and education materials will be drafted to focus on both the substantive rules and the sovereignty principles underlying these regulations.

Several commenters outlined a specific process for developing a training program under section 3 of the Act, which they urged the Treasury Department to adopt. Under their recommendation, the process would begin with a report prepared by the TTAC in coordination with Tribes that would be formally presented to the Treasury

Department. The Treasury Department and the IRS would then work with the TTAC or an appropriate TTAC subcommittee to develop a Treasury Department and IRS proposal for the education and training program which would be the subject of Tribal consultation. The Treasury Department and the IRS would then review the comments from the Tribes and publish proposed and final regulations describing the training program, following the same process used in issuing these final regulations.

Commenters also provided general recommendations for what should be included in the required training and education of internal revenue field agents and Tribal financial officers. Some commenters requested that the training materials be made publicly available and that internal revenue field agents receive training on such topics as how to defer to Tribal determinations on whether an item is a Tribal general welfare benefit, a Tribe's customs and programmatic guidelines, and that examples in the regulations are not exclusive examples.

Some commenters also requested that the final guidance and training materials require IRS agents to consult with the IRS Office of Indian Tribal Governments on audits involving general welfare issues due to that office's expertise with the Federal trust and treaty relationships with Federally recognized Tribes. Some commenters recommended in-person trainings for all individuals required to complete the Act's education and training requirements to foster a better understanding of the materials on Federal Indian law and Tribal-specific issues. Other commenters requested in-person audit training with Tribal representatives because not all Tribes have access to virtual training, or do not attend national or regional Tribal conferences. Another commenter requested that any IRS training manual require the IRS to consult with a Tribe during an audit and to focus on program compliance by allowing for a program to be amended rather than focusing on imposing penalties.

Commenters noted that the statutory language of section 3(b) of the Act

describing the categories of persons covered by the audit suspension is narrower than the definition of Tribal program participant in the proposed regulations. Some commenters requested the audit suspension apply to any individual eligible for the exclusion of benefits under the proposed regulations. Commenters noted a lack of parity puts families of Tribal members at risk of audit. One commenter provided a personal experience in which the audit suspension was not applied to an individual's Tribally-recognized spouse who would qualify as a Tribal Program participant under the proposed regulations. Another commenter asserted that the IRS should seek input from the Tribal government that provided a general welfare benefit before penalizing an individual recipient. One commenter requested the audit suspension be extended to Alaska Native regional or village corporations.

#### B. Transition Relief

In the Comments and Public Hearing section of the preamble to the proposed regulations, the Treasury Department and the IRS requested comments on whether Tribes would need time to transition existing general welfare programs to satisfy the proposed regulations before the regulations are finalized. In addition, if transition relief would be helpful, comments were also requested on the nature of the transition relief needed and any recommendations as to what relief would be helpful to Indian Tribal governments.

Many commenters favored transition relief to allow Indian Tribal governments to adopt changes to their programs after the final regulations are applicable. Commenters noted that program changes may require extensive time to implement due to changes to Tribal ordinances, and RAPs under IGRA. Commenters also noted that Tribal members and Tribal staff need training and education on program changes before such changes are implemented. One commenter requested transition relief due to the legal and financial costs associated with transitioning to a new policy.

Some commenters supported the TTAC proposal of a minimum one-year transition period after the required training and education under section 3(b) of the Act is complete. Many commenters requested specific language be added to proposed §1.139E-1(f) providing that no audits or examinations will begin prior to one year after the effective date of the regulations. Other commenters stated that a one-year transition period is a reasonable starting point but recommended that a transition period for changes to Tribal programs be provided through the end of the calendar year beginning after the final regulations are issued and education and training requirements under section 3(b) of the Act are complete. Many commenters requested relief extending the transition period on a case-by-case basis for Tribes that have initiated Tribal approval processes in a timely manner but where the Tribe cannot reasonably complete such processes within the one-year period, as well as for delays in approvals for changes to a RAP.

Another commenter requested that transition relief be provided that allows an Indian Tribal government program that is in effect during the period between the effective date of the Act and the effective date of the final regulations, and that qualifies as an Indian Tribal government program under the final regulations, be treated as satisfying the requirements of the Act. The commenter also requested that a Tribal government program adopted in good faith based on a reasonable interpretation of the Act be treated as satisfying the requirements of the Act if such program is adopted between the effective date of the Act and the effective date of the final regulations. The commenter noted that this transitional approach was taken in Notice 2006-89 (2006-43 I.R.B. 772).

Some commenters requested the regulations provide that for the first year in which audits are performed, they be conducted solely for the purpose of helping Tribes comply with the final regulations. These commenters explained that this would help

focus on educating Tribes about requirements for Indian Tribal government programs and Tribal general welfare benefits, in order to support compliance rather than impose penalties.

Most commenters recommended that audits and examinations be prospective and described it as unfair to audit Tribes and Tribal members retroactively in taxable years for which there were no clear rules. Commenters requested that IRS audit and examination efforts focus on future compliance rather than penalizing past actions and urged that audits should apply only to programs and actions implemented after the regulations are finalized. Commenters argued the Act was enacted as a result of excessive IRS audits which stifled Tribes' ability to provide assistance to Tribal members. Some commenters also requested that the Treasury Department and the IRS provide formal notice providing a transition period and when audits and examinations will resume.

#### C. Treasury Department and IRS Response

Pursuant to section 4(a) of the Act, the suspension of audits and examinations of Indian Tribal governments and members of Tribes (or any spouse or dependent of such a member) by the IRS relating to the exclusion of a payment or benefit from an Indian Tribal government under the general welfare exclusion will be lifted once the education and training required by section 3(b)(2) of the Act is completed. As also provided by section 4(a) of the Act, the running of any period of limitations under section 6501 with respect to Indian Tribal governments and members of Tribes is also suspended until the education and training required by section 3(b)(2) of the Act is completed.

The Treasury Department and the IRS expect to begin development of education and training materials in consultation with Tribes and the TTAC soon after the effective date of this Treasury decision.

The Treasury Department and the IRS agree with the TTAC, Tribal leaders, and



commenters generally that it would be in the interest of sound tax administration for IRS audits and examinations (see sections 7602 and 7605 of the Code) of issues under section 139E and these final regulations to be prospective in nature. In addition, the Treasury Department and the IRS agree with the TTAC, Tribal leaders, and commenters generally that it would be counterproductive for IRS audit and examinations of issues under section 139E and these final regulations to apply to taxable years for which there was no guidance interpreting section 139E. The Treasury Department and the IRS also agree that during the period beginning after the effective date of this Treasury decision and while the education and training required by section 3(b)(2) of the Act is ongoing, it would be most productive to allow Indian Tribal governments time to adopt changes to the general welfare programs they administer such that the programs comply with these final regulations. In addition, until such education and training are complete, the Treasury Department and the IRS intend to apply the temporary suspension of audits and examinations to Indian Tribal governments and Tribal program participants as defined in the final regulations, which, based on the comments received, is not limited to the individuals described in section 4(a) of the Act. However, the IRS may inquire as to whether a taxpayer qualifies for the audit suspension. For example, the IRS may ask questions to determine whether an individual is a Tribal program participant. Accordingly, §1.139E-1(g) also provides for the ability of the IRS to inquire into a taxpayer's eligibility for the audit suspension.

Accordingly, the Treasury Department and the IRS have determined that although these final regulations will be effective after **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, the rules of §1.139E-1 will not be applicable to any taxable years of Tribal program participants that begin before January 1, 2027. Once the education and training required by section 3(b)(2) of the Act is complete, the Treasury Department and the IRS will publish a formal notice that the

required education and training has been completed at least 30 days in advance of lifting the suspension of audits and examinations. The tolling of the period of limitations under section 6501 pursuant to section 4(a) of the Act will also end once the suspension of audits and examinations is lifted. However, in the interest of sound tax administration, once the suspension of audits and examination is lifted, the IRS does not intend to open audits or examinations (except in certain circumstances such as, for example, in the case of fraud) with respect to the exclusion of a payment or benefit under section 139E for taxable years ending before **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

In addition, once the suspension of audits and examinations is lifted, the IRS will apply section 139E to taxable years ending on or after **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, and beginning before January 1, 2027, by taking into account the good faith efforts of an Indian Tribal government or Tribal program participant to comply with the requirements of section 139E in advance of the January 1, 2027, applicability date of §1.139E-1. Indian Tribal governments may also choose to apply the provisions of §1.139E-1, in their entirety, for benefits provided to Tribal program participants in taxable years that begin before January 1, 2027. In addition, Indian Tribal governments may continue to apply Revenue Procedure 2014-35 for benefits provided to Tribal program participants in taxable years that begin before January 1, 2027, as Indian Tribal governments transition any programs to comply with the final regulations in advance of January 1, 2027. However, once the final regulations become applicable for taxable years beginning on or after January 1, 2027, Revenue Procedure 2014-35 will become obsolete, and no person may rely on Revenue Procedure 2014-35 for any taxable year beginning on or after January 1, 2027.

Finally, the Treasury Department and the IRS remind Indian Tribal governments and administrators of Indian Tribal government programs that satisfy the requirements

of §1.139E-1(d) that no amount of any Tribal general welfare benefit satisfying the requirements of §1.139E-1(d) that is provided by such an Indian Tribal government program to a Tribal program participant (as defined in §1.139E-1(b)(8)) should be reported on any information return (for example, Form 1099-MISC, Miscellaneous Information) or statement otherwise required to be filed with the IRS or furnished to an individual under the Code. If a Tribal program participant believes that he or she has received an information return in error, the Tribal program participant should contact the issuer for a corrected information return.

With regard to the comments on the audit suspension program and the education and training, the Treasury Department and the IRS confirm that the audit suspension described in section 4(a) of the Act continues until all the requirements of section 3(b)(2) of the Act are satisfied. Once these final regulations under section 139E are published in the ***Federal Register***, the Treasury Department and the IRS, in consultation with Tribes and the TTAC, will develop the training curriculum and conduct the required education and training under section 3(b)(2) of the Act. Only after that required education and training is complete will the audit suspension be lifted.

The Treasury Department and the IRS intend to work closely with the TTAC and consult with the TTAC GWE Subcommittee in designing and preparing the training and education program required under section 3(b)(2) of the Act. However, the Treasury Department and the IRS have determined that a notice and comment period similar to that used for regulations is not required by section 3 of the Act and would delay the implementation of these final regulations for Tribal officers and IRS agents. The Treasury Department and the IRS are aware of Executive Order 13175 and intend to hold consultations with Tribal leaders on training and education programs.

The Treasury Department and the IRS decline to adopt the recommendations in the comments related to what the required education and training may provide because

the specifics of this education and training are outside the scope of these regulations.

As noted in the preamble to the proposed regulations, these regulations “do not address the education and training that will be required to be complete before the audit suspension is lifted.” The Treasury Department and the IRS will continue to consult with the TTAC as required under section 3(b)(2) of the Act.

## IX. Other Issues

### A. Coordination with other Federal Agencies/Social Welfare Programs

Several commenters expressed concern that Tribal general welfare benefits are considered in income-based eligibility determinations for Federal assistance programs administered by other agencies, such as the Social Security Administration for Medicaid, Department of Agriculture, Housing and Urban Development, and the Department of Veteran Affairs. Most commenters requested that the Treasury Department and the IRS engage with other Federal agencies to address this issue and ensure that benefits excluded under section 139E do not affect eligibility for other Federal assistance programs. This issue is important to Tribes because it results in hardships for vulnerable Tribal citizens. Some of these commenters recommended that the Treasury Department and the IRS collaborate with the TTAC on the issue of the interaction of Tribal general welfare benefits under section 139E and eligibility requirements for other Federal assistance programs. Several commenters noted that other Federal programs should consider the Tribal canon of construction when determining eligibility based on income.

The Treasury Department and the IRS have authority to interpret and provide rules under section 139E to determine whether a benefit is excludible from gross income for Federal income tax purposes. However, the issue of whether a Tribal general welfare benefit is taken into account for purposes of other Federal benefit programs administered by other Federal agencies is outside the authority of the

Treasury Department and the IRS. As such, these final regulations do not provide guidance on the treatment of Tribal general welfare benefits outside of the Internal Revenue Code (26 U.S.C. et seq.). The Treasury Department and the IRS understand the importance of this issue for Tribes and will continue to work with the TTAC and Tribes to confer with other Federal agencies to provide advice on how the Federal tax law applies to Tribal general welfare benefits.

#### B. Advance Rulings

Some commenters requested an advance ruling process be established by the IRS for Tribes to have access to an optional advance ruling program or procedures to address program design and compliance issues not directly or fully answered in the final regulations.

The Treasury Department and the IRS appreciate that Tribes want certainty on the Indian Tribal government programs to ensure the programs comply with section 139E and these final regulations. However, these final regulations do not provide a new advance ruling process for Tribes to request review of the general welfare programs for the reasons discussed below.

The IRS has a general process already in place for entities and individuals to request a letter ruling on the tax treatment of a particular transaction or program. If an Indian Tribal government receives a letter ruling from the IRS, the ruling generally is binding on the IRS. However, a letter ruling would address the Federal tax law and would not be binding in any way on other Federal or State agencies. The IRS expects the letter ruling process to be available to Indian Tribal governments after the final regulations are effective (that is, after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**).

In addition, section 3(b)(2) of the Act requires the Treasury Department, in consultation with the TTAC, to establish training and education, with specific

requirements to provide assistance to Tribal financial officers on the implementation of section 139E. The Treasury Department and the IRS expect such training and education to support Tribes in understanding the flexibility and deference provided to Indian Tribal governments in developing general welfare programs to satisfy the program and benefit requirements of section 139E and these final regulations. Moreover, the IRS Office of Indian Tribal Governments is also a resource for informal advice on issues that affect Indian Tribal governments.

### C. Appeal Process

Some commenters requested an appeals process be provided to Tribes and Tribal members to appeal IRS field agent decisions to a team of Tribal specialists at the top of the IRS structure without waiving existing legal rights. These commenters asserted that such an appeals process would acknowledge the unique Tribal relationship with the Federal government and would help Tribes and their Tribal members avoid litigation expenses. These commenters requested that Tribal court decisions be given full faith and credit by the IRS.

The Treasury Department and the IRS do not include a separate appeals process in these final regulations because it is outside the scope of section 139E. The IRS expects that the existing appeals processes in place for entities and individuals to request the review of Federal income tax controversies would apply, including through the Independent Office of Appeals (Appeals). The IRS expects that the required education and training under section 3(b)(2) of the Act will also help IRS field agents and Tribal financial officers understand the requirements of these final regulations and the unique government-to-government relationship with the Federal government.

### D. Section 139D

In part III.A.4. of the Explanation of Provisions in the preamble to the proposed regulations, the Treasury Department and the IRS discussed wellness and health-

related programs and explained that section 139D of the Code and section 139E are independent provisions, and that section 139D does not limit the application of section 139E. The preamble discussed qualified Indian health care benefits generally and provided an example of medical care under section 213(d) of the Code. Moreover, the example described certain wellness and health-related programs, as well as care by an unlicensed spouse or relative, that are not considered medical care under section 213(d), and concludes these are not excludible under section 139D.

Commenters expressed concern that the Treasury Department and the IRS's description of section 139D in the proposed regulations is inaccurate and too narrow. Commenters requested that the Treasury Department and the IRS revise the description of section 139D to accurately reflect the exclusion from gross income for qualified Indian health care benefits. Several commenters stated that Tribes provide more than medical care under their Indian Self Determination and Education Assistance Act (ISDEAA) agreements and in the health coverage they purchase and/or provide to their members. The commenters further explained that Tribes routinely provide general health, wellness, and other preventative and health promotion services to their members through the community health representative programs, home and community-based services, community health education, and other services.

The Treasury Department and the IRS agree with commenters that the description of section 139D in the proposed regulations was too narrow and inaccurate in describing a qualified Indian health care benefit. The Treasury Department and the IRS intended for the discussion in the proposed regulations to explain that section 139E applies to a benefit independent of section 139D such that a benefit from certain wellness and health-related programs may qualify for exclusion from gross income under section 139E whether or not it also qualifies for exclusion from gross income under section 139D.

Section 139D generally provides an exclusion from gross income for any qualified Indian health care benefit. The term “qualified Indian health care benefit” is defined in section 139D(b) and some benefits may not be limited by the definition of medical care under section 213. For example, section 139D(b)(1) provides that a qualified Indian health care benefit includes any health service or benefit provided or purchased, directly or indirectly, by the Indian Health Service through a grant to or a contract or compact with an Indian Tribe or Tribal organization, or through a third-party program funded by the Indian Health Service.

Amounts paid for benefits that are merely beneficial to the general health of an individual, such as certain wellness and health-related programs, as well as care by an unlicensed spouse or relative, are not amounts paid for medical care. However, even if such benefit is not a qualified Indian health care benefit under section 139D, an Indian Tribal government may determine, under §1.139E-1(d)(2), that wellness and health-related programs are for the promotion of general welfare under section 139E. Thus, amounts paid for benefits that are merely beneficial to the general health of an individual, such as certain wellness and health-related programs, as well as care by a spouse or relative, may be amounts which qualify as Tribal general welfare benefits.

#### X. Ongoing Consultation

##### A. Future TTAC Coordination

Many commenters requested that the Treasury Department and the IRS continue to coordinate all changes and future guidance with the TTAC to ensure Tribal input remains at the forefront of future efforts to develop and implement the Act. Many commenters requested that the Treasury Department and the IRS maintain an open dialogue with TTAC on guidance proposals, and not mere listening sessions, so that Tribes have a meaningful role in the development of all rules that impact the Tribal general welfare exclusion both directly and through TTAC. For example, one



commenter requested that the Treasury Department and the IRS meet with TTAC to jointly consider and address the comments received on the proposed regulations, and, in turn, that the TTAC share this progress with Tribes to ensure Tribal input in the guidance process. Moreover, commenters requested that the Treasury Department and the IRS maintain ongoing consultation with Tribal leaders and the TTAC as new issues arise to ensure the regulations protect Tribal sovereignty and support effective Tribal governance.

One commenter objected generally to the composition of Tribal representation on the TTAC. Conversely, some commenters shared appreciation for the Treasury Department and the IRS's collaborative approach with the TTAC and Tribes on the development of the proposed regulations. Commenters also expressed support for the work of Treasury's Office of Tribal and Native Affairs and requested permanency for the office.

The Treasury Department and the IRS agree with commenters that ongoing consultation with the TTAC is beneficial to the implementation of the Act. The Treasury Department and the IRS have engaged in extensive consultation with the TTAC GWE Subcommittee during the drafting of these final regulations with meaningful discussion of the comments received on the proposed regulation. These final regulations incorporate the recommendations of the TTAC GWE Subcommittee on these issues. Moreover, the Treasury Department and the IRS intend to continue meaningful consultation with the TTAC GWE Subcommittee to develop the training and education required by section 3(b) of the Act.

#### B. Alaska Native Regional or Village Corporations

Several commenters expressed concern that the proposed regulations do not provide guidance for Alaska Native regional or village corporations, even though Alaska Native regional or village corporations are included in section 139E(c)(1). Commenters

stated the Treasury Department and the IRS are required to consult with Alaska Native regional or village corporations on the same basis as Federally recognized Tribes under Executive Order 13175. Some commenters pointed to Dear Tribal Leader Letters sent to leaders of Federally recognized Tribes and those letters were not sent to leadership of Alaska Native regional or village corporations and did not specifically address Alaska Native regional or village corporations. These commenters argued that the promise to issue guidance in the future is inadequate to satisfy the requirements of the Act and leaves out Alaska Native regional or village corporations, and Alaska Native regional or village corporations have no information when consultation will be held on section 139E and the Act. These commenters asserted that the IRS should have consulted with Alaska Native regional or village corporations to provide their leadership and other interested parties an opportunity to engage in the commenting process before deciding to omit Alaska Native regional or village corporations from the proposed regulations.

Some commenters argued that providing guidance for Alaska Native regional or village corporations in later regulations is harmful and has negative effects on Alaska Native regional or village corporations because it creates confusion and uncertainty for Alaska Native regional or village corporations and may have the potential to obscure their place in the regulatory framework, contrary to their inclusion in section 139E. One commenter notes the omission of Alaska Native regional or village corporations from the proposed regulations creates confusion as to whether section 139E applies to Alaska Native regional or village corporations and that eliminating this uncertainty should be a top priority of the Treasury Department and the IRS.

Some commenters recommended that the final regulations include Alaska Native regional or village corporations in the definitions of Indian Tribal government and Tribe in §1.139E-1. Other commenters recommended that the Treasury Department and the IRS finalize the regulations only after consultation with Alaska Native regional or village

corporations on section 139E, publishing a proposed regulation applicable to Alaska Native regional or village corporations, providing notice and comment on such regulation, and soliciting specific questions of Alaska Native regional or village corporations. A commenter stated that Alaska Native regional or village corporations also provide vital general welfare benefits and services to their shareholders, such as scholarships, funding for cultural programs, improvements to healthcare access, and other essential services. Another commenter recommended that the Treasury Department and the IRS quickly promulgate proposed §1.139E-2 to address Alaska Native regional or village corporations. Several commenters mentioned that rules provided for Alaska Native regional or village corporations should be similar to those for Federally recognized Tribes in the proposed regulation, possibly with minor customizations.

One commenter acknowledged the decision of the Treasury Department and the IRS to issue separate guidance for Alaska Native regional or village corporations and Federally recognized Tribes. However, the commenter requested that the Treasury Department and the IRS include section 139E guidance for Alaska Native regional or village corporations as a priority on the Priority Guidance Plan (PGP) for the 2025-2026 plan year and that the guidance provided be similar to the guidance provided to Federally recognized Tribes under the proposed regulations. The commenter also recommended that interim guidance allow Alaska Native regional or village corporations to apply any or all of the provisions of the proposed regulation on a case-by-case basis.

In the interest of sound tax administration, the Treasury Department and the IRS have decided to continue to limit the rules of §1.139E-1 to Federally recognized Tribes. However, the Treasury Department and the IRS agree with commenters that, as provided in section 139E(c)(1), an Alaska Native regional or village corporation may provide Tribal general welfare benefits excluded from gross income under section 139E.

The Treasury Department and the IRS held a consultation with Alaska Native regional and village corporations on July 29, 2025, in order to gather input before promulgating proposed regulations under section 139E customized to the specific circumstances of Alaska Native regional or village corporations. Discussion at this consultation focused on the application of section 139E to Alaska Native regional or village corporations and what guidance specific to Alaska Native regional or village corporations' distinct Federal income tax characteristics and circumstances would be helpful. Additionally, the Treasury Department and the IRS included section 139E guidance for Alaska Native regional or village corporations as a priority on the Priority Guidance Plan for the 2025-2026 plan year, released on September 30, 2025. The current Priority Guidance Plan is available at <https://www.irs.gov/privacy-disclosure/priority-guidance-plan>.

The Treasury Department and IRS are aware that Alaska Native regional or village corporations may want more certainty regarding their general welfare programs prior to the promulgation of additional final regulations under section 139E. Accordingly, the Treasury Department and the IRS have determined that Alaska Native regional or village corporations may choose to apply the final rules in §1.139E-1 until proposed regulations that specifically address the application of the requirements of section 139E to Alaska Native regional or village corporations are published under §1.139E-2. However, an Alaska Native regional or village corporation that chooses to apply the rules in §1.139E-1 must consistently apply the rules of §1.139E-1 with respect to any general welfare benefits provided to a shareholder of the Alaska Native regional or village corporation (and the shareholder's spouse and dependents) and other Tribal program participants from general welfare programs of the Alaska Native regional or village corporation that satisfy §1.139E-1(c). These final regulations set forth the substance of the preceding two sentences at §1.139E-2. Moreover, the Treasury

Department and the IRS acknowledge that section 3(b) of the Act requires education and training specific to Alaska Native regional or village corporations.

## **Special Analyses**

### **I. Executive Order 13175: Consultation and Coordination With Indian Tribal**

#### **Governments**

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments) prohibits an agency from publishing any rule that has Tribal implications if the rule either imposes substantial, direct compliance costs on Indian Tribal governments and is not required by statute, or preempts Tribal law, unless the agency meets the consultation and funding requirements of section 5 of the Executive order. These final regulations have a substantial direct effect on one or more Federally recognized Indian Tribes and do impose substantial direct compliance costs on Indian Tribal governments within the meaning of the Executive order. As a result, the Treasury Department complied with section 5(b)(2)(A) and (B) of Executive Order 13175. In compliance with section 5(b)(2)(A) of Executive Order 13175 and in response to Tribal leader requests for these final regulations, the Treasury Department and the IRS held consultations with Tribal leaders on November 18, 19, and 20, 2024, requesting assistance in addressing questions related to the Act and the proposed regulations, which informed the development of these final regulations. The Treasury Department and the IRS also intend to conduct Tribal consultation on the required training described in section 3(b)(2) of the Act.

### **II. Regulatory Planning and Review**

The Office of Information and Regulatory Analysis of the Office of Management and Budget (OMB) has determined that this regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (July 4, 2025) between the Treasury Department and the OMB regarding review of tax

regulations. Therefore, a regulatory impact assessment is not required.

The Executive Order 14192 designation for this rule is anticipated to be deregulatory.

### III. Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) under control number 1545-2328.

These regulations include third-party disclosures and recordkeeping requirements that are required to substantiate that the value of a Tribal General Welfare Benefit is excluded from a recipient's gross income.

The recordkeeping requirements in §1.139E-1(c)(3) provide that Indian Tribal government programs must be administered under specified guidelines and provide general requirements on the content of those guidelines. Written specified guidelines are not required. Additionally, Indian Tribal governments should keep records they deem appropriate to substantiate that the Tribal general welfare benefits are distributed without discriminating in favor of the governing body of the Tribe, as described in §1.139E-1(c)(4), are not lavish or extravagant, as described in §1.139E-1(d)(4), and are not compensation for services, as described in §1.139E-1(d)(5). This information will generally be used by the IRS for tax compliance purposes to ensure Indian Tribal governments are distributing Tribal general welfare benefits in accordance with §1.139E-1.

A disclosure requirement may apply to Indian Tribal governments that choose to provide notification to Tribal program participants that an Indian Tribal government program exists for which Tribal program participants may apply for benefits. These final regulations do not prescribe a specific method Indian Tribal governments must use to announce the existence of a program. An Indian Tribal government may announce

Indian Tribal government programs in any manner it deems appropriate.

These final regulations do not change the general recordkeeping requirement under section 6001 or create any new recordkeeping requirements for Tribal program participants that receive a Tribal general welfare benefit.

The estimated total reporting burden for Indian Tribal governments (third-party disclosure and recordkeeping burden for Tribal entities) is as follows:

Estimated Number of Respondents: 2,296

Estimated Time per Response: 2 hours

Estimated Frequency of Response: Once or on occasion

Estimated Total Burden Hours: 4,592 hours

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) generally requires a Federal agency obtain the approval of OMB before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the OMB.

#### IV. Regulatory Flexibility Act

The Secretary of the Treasury hereby certifies these final regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). These final regulations affect Indian Tribal governments that establish and administer Tribal general welfare programs and that distribute Tribal general welfare benefits to certain individuals. The Treasury Department and the IRS have no reliable data to determine whether Tribal general welfare programs may be established and administered through small entities, such as not-for-profit entities. Although data is not readily available about the number of small entities that will potentially be affected by these final regulations, it is possible that a

substantial number of small entities may be affected. However, any impact on those entities will not be economically significant and therefore a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

The impact of these final regulations can be described in the following categories. First, §1.139E-1(c) provides guidance on what criteria a program must meet in order to be an “Indian Tribal Government Program.” Specifically, §1.139E-1(c) provides that the program must be established by the Indian Tribal government; administered under specified guidelines; and not discriminate in favor of members of the governing body of the Tribe. Even assuming these provisions affect a substantial number of small entities, they will not have a significant economic impact. Section 139E(b) imposes the burden of what is needed to create an Indian Tribal government program. These final regulations will provide deference to Indian Tribal governments on the types of general welfare programs established and generally defer to Indian Tribal governments on the form of the program’s specified guidelines and the specific records they should maintain. As such, it is expected that the final regulations will have a minimal economic impact on Indian Tribal governments.

Second, §1.139E-1(d) will provide guidance on whether a benefit is a “Tribal General Welfare Benefit” that is excluded from an individual’s gross income. Specifically, §1.139E-1(d) will require the benefit be provided pursuant to an Indian Tribal government program; be for the promotion of general welfare; be available to any eligible Tribal program participant; not be lavish or extravagant; and, except as provided in section 139E(c)(5), not be for compensation for services. Section 1.139E-1(d) will provide deference to Indian Tribal governments on the types of benefits that promote the general welfare, the individuals who are eligible for benefits, and whether benefits are provided in exchange for participation in certain cultural or ceremonial activities under section 139E(c)(5) and these final regulations. It also provides that deference is



given to the attestations of the facts and circumstances at the time that a benefit is provided to the Tribal program participant, and that the benefit is presumed to not be lavish or extravagant if it is described in, and provided in accordance with, the written specified guidelines of an Indian Tribal government program that exist at the time that the benefit is provided to the Tribal program participant. As such, it is expected that the final regulations will have a minimal economic impact on Indian Tribal governments.

Third, an Indian Tribal government program may provide benefits to a Tribal program participant that are items of cultural significance, reimbursement of costs, or cash honoraria for the Tribal program participant's participation in certain cultural or ceremonial activities. See §1.139E-1(e). Indian Tribal governments have broad discretion to determine whether or not these benefits are provided. Even assuming this provision affects a substantial number of small entities, it will not have a significant economic impact because benefits that are items of cultural significance, reimbursement of costs, and cash honoraria are only a few types of the benefits that are permitted to be provided under section 139E and §1.139E-1. An Indian Tribal government is not required to provide these types of benefits.

For the reasons stated, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

#### V. Section 7805(f)

Pursuant to section 7805(f) of the Code, the proposed regulations (REG-106851-21) preceding this final regulation were submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

#### VI. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before

issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Indian Tribal government, in the aggregate, or by the private sector, of \$100 million (updated annually for inflation). These final regulations do not include any Federal mandate that may result in expenditures by State, local, or Indian Tribal governments, or by the private sector in excess of that threshold.

## VII. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These final regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

### **Effect on Other Documents**

Revenue Procedure 2014-35 (2014-26 I.R.B. 1110) and Notice 2015-34 (2015-18 I.R.B. 942) are obsolete for taxable years beginning on or after January 1, 2027.

### **Statement of Availability of IRS Documents**

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

### **Drafting Information**

The principal authors of these regulations are Mon Lam, Jonathan Dunlap, and Thomas Brown of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the Treasury Department and the IRS participated in the development of the regulations.

### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

## **Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

### **PART 1--INCOME TAXES**

**Paragraph 1.** The authority citation for part 1 is amended by adding entries for §§1.139E-1, 1.139E-1(d)(6), 1.139E-2, and 1.7872-5(b)(17), in numerical order, to read in part, as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

\* \* \* \* \*

Section 1.139E-1 also issued under 26 U.S.C. 139E.

Section 1.139E-1(d)(6) also issued under 26 U.S.C. 7872.

Section 1.139E-2 also issued under 26 U.S.C. 139E.

\* \* \* \* \*

Section 1.7872-5(b)(17) also issued under 26 U.S.C. 7872.

\* \* \* \* \*

**Par. 2.** Sections 1.139E-0 through 1.139E-2 are added to read as follows:

\* \* \* \* \*

Sec.

1.139E-0 Table of contents.

1.139E-1 Tribal general welfare benefits.

1.139E-2 Alaska Native regional or village corporations.

\* \* \* \* \*

#### **§1.139E-0 Table of contents.**

This section lists the major captions for §§1.139E-1 and 1.139E-2.

*§1.139E-1 Tribal general welfare benefits.*

(a) Overview.

(b) Definitions.

(1) Act.

- (2) Benefit.
- (3) Code.
- (4) Indian Tribal Government.
- (5) Indian Tribal Government Program.
- (6) Tribal General Welfare Benefit.
- (7) Tribe.
- (8) Tribal Program Participant.
- (9) Tribal Member.
- (10) Dependent.
- (c) Indian Tribal Government Program.
- (1) In general.
- (2) Program must be established.
- (3) Program must be administered under specified guidelines.
- (4) Program cannot discriminate in favor of members of the governing body of the Tribe.
- (5) No limitation on source of funds.
- (d) Tribal General Welfare Benefits.
- (1) In general.
- (2) Benefits must be for the promotion of general welfare.
- (3) Benefits must be available.
- (4) Benefits cannot be lavish or extravagant.
- (5) Benefits cannot be compensation for services.
- (6) Loans from an Indian Tribal Government to a Tribal Program Participant.
- (e) Cultural or ceremonial activities.
- (1) In general.
- (2) Application.
- (3) Examples.
- (f) Section 2(c) of the Act.
- (g) Audit suspension.
- (h) Applicability date.

*§1.139E-2 Alaska Native regional or village corporations.*

**§1.139E-1 Tribal general welfare benefits.**

(a) *Overview.* Under section 139E of the Code and this section, the gross income of a Tribal Program Participant for the taxable year does not include the value of any Tribal General Welfare Benefit provided by an Indian Tribal Government Program during the year to or on behalf of the Tribal Program Participant. Paragraph (b) of this section provides definitions that apply for purposes of this section. Paragraph (c) of this section provides the requirements that any program must satisfy to qualify as an Indian Tribal Government Program for purposes of this section. Paragraph (d) of this section provides the requirements that any benefit provided to or on behalf of a Tribal Program Participant must satisfy to qualify as a Tribal General Welfare Benefit for purposes of

this section. Paragraph (e) of this section provides special rules related to cultural or ceremonial activities solely for purposes of this section. Paragraph (f) of this section restates the deference provided to Indian Tribal governments under section 2(c) of the Act. Paragraph (g) of this section describes the audit suspension provisions in section 4(a) of the Act. Paragraph (h) of this section provides the date of applicability of this section.

(b) *Definitions.* The following definitions apply for purposes of this section:

(1) *Act.* The term *Act* means the Tribal General Welfare Exclusion Act of 2014, Public Law 113–168, 128 Stat. 1883 (2014).

(2) *Benefit.* The term *benefit* means any money, property, services, or other item of value provided to or on behalf of an individual.

(3) *Code.* The term *Code* means the Internal Revenue Code.

(4) *Indian Tribal Government.* The term *Indian Tribal Government* means an Indian Tribal Government as defined by section 7701(a)(40) of the Code and includes any agencies or instrumentalities of such an Indian Tribal Government.

(5) *Indian Tribal Government Program.* The term *Indian Tribal Government Program* means a program that satisfies the requirements of paragraph (c) of this section.

(6) *Tribal General Welfare Benefit.* The term *Tribal General Welfare Benefit* means any benefit provided to or on behalf of a Tribal Program Participant that satisfies the requirements of paragraph (d) of this section for exclusion from gross income as an “Indian general welfare benefit” under section 139E of the Code.

(7) *Tribe.* The term *Tribe* means any Indian Tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village as defined in 43 U.S.C. 1602(c), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(8) *Tribal Program Participant*--(i) *In general.* The term *Tribal Program Participant* means a Tribal Member, spouse of a Tribal Member within the meaning of §301.7701-18 of this chapter, spouse of a Tribal Member under applicable Tribal law, dependent of a Tribal Member, or other individual who has been determined by the Indian Tribal Government to be eligible for a Tribal General Welfare Benefit because such individual is, with respect to a Tribal Member, an ancestor, descendant, former spouse, widow or widower, legally recognized domestic partner or former domestic partner, or an individual for whom a Tribal Member is a caregiver authorized under Tribal or State law.

(ii) *Special rule for ceremonial or cultural activities.* Solely for purposes of paragraph (e) of this section, the term *Tribal Program Participant* may include a member or citizen of a Tribe that is different from the Tribe that establishes or maintains the Indian Tribal Government Program that provides the Tribal General Welfare Benefit, and other individuals described in paragraph (b)(8)(i) of this section. For purposes of this paragraph (b)(8)(ii), in applying paragraph (b)(8)(i) of this section, such member or citizen of another Tribe will be treated as a Tribal Member.

(9) *Tribal Member.* The term *Tribal Member* means an individual who is a member or citizen of the Tribe that establishes or maintains the Indian Tribal Government Program because the individual meets the requirements established by applicable Tribal law for enrollment in the Tribe, and:

- (i) Is listed on the Tribal rolls of the Tribe if such rolls are kept;
- (ii) Is recognized as a member by the Tribe if Tribal rolls are not kept; or
- (iii) Is an Indian child as defined in 25 U.S.C. 1903.

(10) *Dependent.* The term *dependent* means an individual who is a qualifying child or a qualifying relative, as defined in section 152 of the Code, of a Tribal Member for the taxable year determined:

(i) Without regard to whether the Tribal Member was a qualifying child or qualifying relative, each as defined in section 152, of another taxpayer for a taxable year of the other taxpayer beginning in that calendar year.

(ii) Without regard to whether the individual filed a joint return with the individual's spouse (as defined in section 6013 of the Code) for the taxable year beginning in that calendar year; and

(iii) Without regard to the individual's gross income for the calendar year in which the individual's taxable year begins.

(c) *Indian Tribal Government Program--(1) In general.* A program is an Indian Tribal Government Program only if the program:

(i) Is established by the Indian Tribal Government, as described in paragraph (c)(2) of this section;

(ii) Is administered under specified guidelines, as described in paragraph (c)(3) of this section; and

(iii) Does not discriminate in favor of members of the governing body of the Tribe, as described in paragraph (c)(4) of this section.

(2) *Program must be established--(i) In general.* A program must be established by an Indian Tribal Government. A program established by Tribal custom or government practice, or by formal action of the Indian Tribal Government, is a program established by the Indian Tribal Government. Formal action means authorization of the program pursuant to applicable Tribal law. The formal action must be in writing to the extent such writing is required under applicable Tribal law. For example, written documentation that evidences the formal action of the Indian Tribal Government to establish the program is required if such written documentation is required under applicable Tribal law. Similarly, no written documentation of the formal action of the Indian Tribal Government to establish the program is required if, under applicable Tribal

law, no written documentation of such action is required. As an additional example, a program may be established by a voice vote if such voice vote would otherwise constitute formal action of the Indian Tribal Government under applicable Tribal law. To the extent permitted under applicable Tribal law, an Indian Tribal Government may delegate the authority for establishing a program to a designated individual or entity of the Indian Tribal Government.

(ii) *Examples.* The requirements of this paragraph (c)(2) are illustrated by the following examples, which are not intended to be an exhaustive or exclusive illustration of the rules provided in this paragraph (c)(2):

(A) *Example 1.* A, a Tribe, operates under the direction of its Indian Tribal Government (the Council). According to the laws of A, all expenditures of A must be approved by a majority of the Council at the Council's annual meeting or by written unanimous consent if the action is taken without a meeting. During the annual meeting of A's Council, a majority of the Council vote to approve establishing a program. A's Council has established the program under paragraph (c)(2)(i) of this section.

(B) *Example 2--(1) Facts.* The facts are the same as in paragraph (c)(2)(ii)(A) of this section (*Example 1*), except that, based on a recommendation from the Tribal Education office, A's Council determines to provide funding for a scholarship program to pay 100% of education related expenses for any Tribal Member who graduates from high school or receives a GED during the calendar year. Because the next Council meeting is scheduled in December 2024, and to avoid potential impact on eligible students, in February 2024, Council adopts by unanimous written consent the following education program:

- (i) Approving \$X of funding for the 2024 year for the scholarship program; and
- (ii) Authorizing the director of the Tribal Education office to use the approved funds for the scholarship program.



(2) *Analysis.* A's Council has established the education program under paragraph (c)(2)(i) of this section.

(C) *Example 3.* The facts are the same as in paragraph (c)(2)(ii)(B) of this section (*Example 2*) except that A's Council approves \$X of annual funding to be provided for the education program, and delegates to the Tribal Education office authority to establish a scholarship program. A's Council has established the education program under paragraph (c)(2)(i) of this section.

(3) *Program must be administered under specified guidelines.* A program must be administered under specified guidelines. The specified guidelines must include, at a minimum, a description of the program to provide Tribal General Welfare Benefits, the eligibility requirements for the program, a description of the type of benefits authorized by the program, and the process for receiving benefits under the program. A program is administered under specified guidelines if the program is operated in accordance with such guidelines. Indian Tribal Governments may choose to, but are not required to, set forth the specified guidelines of the program in writing.

(4) *Program cannot discriminate in favor of members of the governing body of the Tribe--*(i) *In general.* Except in the case of a program described in paragraph (c)(4)(ii) of this section, a program cannot discriminate in favor of members of the governing body of the Tribe. For the purposes of this paragraph (c)(4), a governing body means the legislative body of the Tribe, such as the Tribal Council, or the representative equivalent of the legislative body of the Tribe.

(ii) *General council Tribes.* A program is treated as being in compliance with this paragraph (c)(4) if the governing body of a Tribe consists of the entire adult membership of the Tribe.

(iii) *Facts and circumstances test.* Except in the case of a program described in paragraph (c)(4)(ii) of this section, a program fails to satisfy the requirements of this

paragraph (c)(4) if, based on all the facts and circumstances, the program, either by its terms or in its administration, discriminates in favor of members of the governing body of the Tribe. A program discriminates in favor of the members of the governing body of the Tribe if the program by its terms is available only to members of the governing body. Thus, for example, a program established to provide benefits solely to the children of members of the governing body of the Tribe (unless the Tribe is a general council Tribe) and thus defrays costs otherwise borne by members of the governing body fails to satisfy the requirements of this paragraph (c)(4). Additionally, the administration of a program discriminates in favor of members of the governing body of the Tribe if, based on the totality of the facts and circumstances, the benefits provided during the year disproportionately favor members of the governing body of the Tribe because of their status as members of the governing body.

(5) *No limitation on source of funds*—(i) *In general.* Benefits under the Indian Tribal Government Program may be funded by any source of revenue or funds. For example, an Indian Tribal Government may use funds derived from levies, taxes, and service fees; settlements; revenues from Tribally owned businesses, including casino revenues; funds from Federal, State, or local governments; and funds from other sources, including grants and loans, to provide benefits under an Indian Tribal Government Program.

(ii) *Benefits funded by net gaming revenues.* Benefits under the Indian Tribal Government Program may be funded by net gaming revenues as permitted under the Indian Gaming Regulatory Act, 25 U.S.C. 2701-2721 (IGRA). However, per capita payments, as defined under IGRA, are subject to Federal taxation under IGRA and are not excludable from gross income under section 139E or this section. For purposes of section 139E and this section, a payment is a per capita payment if it is identified by the Indian Tribal Government as a per capita payment in a Revenue Allocation Plan that is

approved by the Department of the Interior (see 25 U.S.C. 2710(b)(3) and 25 CFR 290.11) and in effect at the time of the payment.

(iii) *Benefits paid as distributions from certain trusts.* Benefits under the Indian Tribal Government Program may be provided to Tribal Program Participants as distributions from the portion of a trust of which the Indian Tribal Government is treated as owner under sections 671 through 677. For purposes of section 139E and this section, the determination of whether a benefit is a Tribal General Welfare Benefit is made at the time the benefit is distributed from the trust to the Tribal Program Participant. A benefit, or a portion thereof, that an Indian Tribal Government Program distributes from a trust is a Tribal General Welfare Benefit under section 139E if it otherwise satisfies the requirements of section 139E and this section.

(d) *Tribal General Welfare Benefits--(1) In general.* A benefit does not qualify as a Tribal General Welfare Benefit unless the benefit is:

(i) Provided pursuant to an Indian Tribal Government Program, as described in paragraph (c) of this section;

(ii) Provided for the promotion of general welfare, as described in paragraph (d)(2) of this section;

(iii) Available to any eligible Tribal Program Participant, as described in paragraph (d)(3) of this section;

(iv) Not lavish or extravagant, as described in paragraph (d)(4) of this section; and

(v) Not compensation for services, as described in paragraph (d)(5) of this section.

(2) *Benefits must be for the promotion of general welfare--(i) In general.* Tribal General Welfare Benefits must be for the promotion of general welfare. For purposes of section 139E and this paragraph (d)(2), the Indian Tribal Government determines that a

benefit is for the promotion of general welfare at the time it establishes the Tribal General Welfare Program meeting the requirements of paragraph (c) of this section. An Indian Tribal Government has sole discretion to determine whether a benefit is for the promotion of general welfare and the Internal Revenue Service will defer to the Indian Tribal Government's determination that a benefit is for the promotion of general welfare. Benefits may be provided without regard to the financial or other need of Tribal Program Participants and may be provided on a uniform or pro-rata basis to Tribal Program Participants. Thus, for example, an Indian Tribal Government determines whether benefits are for the promotion of general welfare under programs such as cultural programs, housing assistance programs, programs to provide education benefits, programs for training or retraining to acquire new skills or to obtain better employment opportunities, programs to provide assistance for disasters or emergency situations, funeral or burial assistance programs, legal aid programs, wellness and health-related programs, or any programs that provide benefits to specific categories of individuals, such as elderly individuals or minors. Moreover, an Indian Tribal Government may also determine that providing a benefit to a Tribal Program Participant to support, develop, operate, expand or start a trade or business is a benefit for the promotion of general welfare. However, a benefit paid to or on behalf of a Tribal Program Participant for a trade or business must be paid to or on behalf of the Tribal Program Participant in the Tribal Program Participant's capacity as an individual (for example, the benefit cannot be paid to or on behalf of the Tribal Program Participant's corporation or partnership).

(ii) *Examples.* The requirements of paragraph (d)(2)(i) of this section are illustrated by the following examples. Items listed in these examples following the term "including" are not intended to be an exhaustive or exclusive illustration of the application of the rules in paragraph (d)(2)(i) of this section. For the examples in this paragraph (d)(2)(ii), assume the Indian Tribal Government has determined that the

benefits provided are for the promotion of general welfare.

(A) *Example 1: Housing programs.* Indian Tribal Government A administers a program, B, pursuant to which the following benefits are provided in connection with A's Tribal Members' principal residences and ancillary structures: payments for Tribal Members to use to make mortgage payments, down payments, and rent payments (including security deposits); payments for Tribal Members to enhance habitability of housing, such as by remedying water, sewage, sanitation service, safety (including mold remediation), and heating or cooling issues; payments for Tribal Members to provide for basic housing repairs or rehabilitation (including roof repair and replacement); and payments to Tribal Members to pay utility bills and charges (including water, electricity, gas, and basic communications services such as phone, internet, and cable). The payments made by A under B are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(B) *Example 2: Educational programs.* Indian Tribal Government C administers a program, D, pursuant to which the following benefits are provided: provision to students (including post-secondary students) of transportation to and from school, tutors, and supplies (including clothing, backpacks, laptop computers, textbooks, musical instruments, and sports equipment) for use in school activities and extracurricular activities; tuition payments for students (as well as 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; provision of 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 provision of job counseling and programs for which the primary objective is job placement or training, including allowances for expenses for interviewing or

training away from home (including travel, auto expenses, lodging, and food), tutoring, and appropriate clothing for a job interview or training (including an interview suit or a uniform required during a period of training). The payments made by C under D are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(C) *Example 3: Elder and disabled programs.* Indian Tribal Government E administers a program, F, pursuant to which the following benefits are provided to Tribal Members who have attained age 55 or are mentally or physically disabled (as defined under applicable law, including an Indian Tribal Government's disability laws): meals through home-delivered meals programs or at a community center or similar facility; home care such as assistance with preparing meals or doing chores, or day care outside the home; local transportation assistance; and improvements to adapt housing to special needs (including but not limited to grab bars and ramps). The payments made by E under F are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(D) *Example 4: Transportation programs.* Indian Tribal Government G administers a program, H, pursuant to which the following benefits are provided: payment of transportation costs, including for rental cars, mileage, and fares for taxis, ride-sharing or ride-hailing services, buses, and other public transportation. The payments made by G under H are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(E) *Example 5: Medical programs.* Indian Tribal Government J administers a program, K, pursuant to which the following benefits are provided: payments for the cost of transportation, temporary meals, and lodging of a Tribal Program Participant while the individual is receiving medical care away from home, or to pay the cost of nonprescription drugs (including traditional Tribal medicines). The payments made by J under K are for the promotion of general welfare as described in paragraph (d)(2)(i) of

this section.

(F) *Example 6: Emergency programs.* Indian Tribal Government L administers a program, M, pursuant to which the following benefits are provided to individuals in exigent circumstances (including victims of abuse): assistance to cover costs, including the costs of food, clothing, shelter, transportation, auto repair bills, and similar expenses; payment of costs for temporary relocation and shelter for individuals involuntarily displaced from their homes (including situations in which a home is destroyed by a fire or natural disaster); and assistance for transportation emergencies (for example, when stranded away from home) in the form of transportation costs, a hotel room, and meals. The payments made by L under M are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(G) *Example 7: Cultural and religious programs.* Indian Tribal Government N administers a program, P, pursuant to which the following benefits are provided: payment of expenses (including admission fees, transportation, food, and lodging) to attend or participate in a Tribe's cultural, social, religious, or community activities, including powwows, potlatches, ceremonies, and traditional dances; payment of expenses (including admission fees, transportation, food, and lodging) to visit sites that are culturally or historically significant for the Tribe, including other Indian reservations; payment of the costs of receiving instruction about a Tribe's culture, history, and traditions (including traditional language, music, and dances); payment of funeral and burial expenses and expenses of hosting or attending wakes, funerals, burials, other bereavement events, and subsequent honoring events; payment of transportation costs and admission fees to attend educational, social, or cultural programs offered or supported by the Tribe or another Tribe; and cash or property provided as prizes or awards in connection with cultural, social, religious, or community activities (including powwows, potlatches, ceremonies, and traditional dances). In addition, the benefits

provided by program P include the payment of expenses to assist in the preparation and clean-up activities related to the Tribe's cultural, social, religious, or community activities. The payments made by N under P are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(H) *Example 8: Economic development benefits.* Indian Tribal Government Q administers a program, R, pursuant to which Q provides benefits to Tribal Program Participants to support, develop, operate, expand or start a trade or business. Q provides benefits under program R, which include: a nonreimbursable grant paid directly to a Tribal Program Participant; an interest-free or other below-market loan to a Tribal Program Participant; and a cash benefit to a Tribal Program Participant to pay rent on a commercial lease. The benefits provided by Q to Tribal Program Participants under R, are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(3) *Benefits must be available.* The benefits provided under an Indian Tribal Government Program must be available to any Tribal Program Participant who meets the specified guidelines of the program required under paragraph (c)(3) of this section, subject to budgetary constraints. However, the Indian Tribal Government has discretion to determine the category of individuals who are Tribal Program Participants under the Indian Tribal Government Program, provided that such determination is consistent with the specified guidelines described in paragraph (c)(3) of this section and subject to the prohibition on discrimination under paragraph (c)(4) of this section. Thus, for example, an Indian Tribal Government is permitted to limit eligibility for an Indian Tribal Government Program to dependents of Tribal Members who have attained a specified age, or, as another example, to a Tribal Member's household.

(4) *Benefits cannot be lavish or extravagant—(i) Facts and circumstances test.* The benefit provided by an Indian Tribal Government Program cannot be lavish or



extravagant. Whether a benefit is lavish or extravagant for purposes of this section is based on the facts and circumstances at the time the benefit is provided. Relevant facts and circumstances include a Tribe's culture and cultural practices, history, geographic area, traditions, resources, and economic conditions or factors. For purposes of this paragraph (d)(4)(i), the Internal Revenue Service will defer to an Indian Tribal Government's attestations of the fact and circumstances but may also consider other facts and circumstances that are not attested to by the Indian Tribal government at the time that the benefit is provided to the Tribal Program Participant.

(ii) *Presumption for written specified guidelines.* A benefit will be presumed to not be lavish or extravagant if it is described in, and provided in accordance with, the written specified guidelines of an Indian Tribal Government Program that exist at the time that the benefit is provided to the Tribal Program Participant.

(5) *Benefits cannot be compensation for services.* Except as provided in paragraph (e) of this section, a Tribal General Welfare Benefit does not include benefits that are provided as compensation for services to any person. Under section 61(a) of the Code, compensation for services includes fees, commissions, fringe benefits, and similar items, whether paid in money or property.

(6) *Loans from an Indian Tribal Government to a Tribal Program Participant.* Except as provided in §1.7872-5(a)(2), section 7872 of the Code does not apply to a loan from an Indian Tribal Government to a Tribal Program Participant pursuant to an Indian Tribal Government Program.

(e) *Cultural or ceremonial activities--(1) In general.* For purposes of section 139E and paragraph (d)(5) of this section, a benefit is not compensation for services if:

(i) The benefit is provided to a Tribal Program Participant for the Tribal Program Participant's participation in cultural or ceremonial activities for the transmission of Tribal culture as determined by the Indian Tribal Government (including but not limited

to: powwows; rite of passage ceremonies; funerals; wakes; burials; other bereavement events; honoring events; Tribal community service events, such as a neighborhood clean-up or a youth woodcutting program to benefit elders; participation in training in traditional construction techniques; Tribal language education; and other activities, including, for example, those described in paragraph (d)(2)(ii)(G) of this section); and

(ii) The benefit consists of an item of cultural significance as determined by the Indian Tribal Government, the reimbursement of costs, or a cash honorarium.

(2) *Application.* Except as otherwise provided in this paragraph (e)(2), an Indian Tribal Government has sole discretion to determine whether an item is an item of cultural significance and whether an activity is a cultural or ceremonial activity, and the Internal Revenue Service will defer to these determinations by the Indian Tribal Government. A benefit provided under this paragraph (e) can be a prize or award given to a Tribal Program Participant for the Tribal Program Participant's participation in cultural or ceremonial activities for the transmission of Tribal culture. However, cash, gift cards, or vehicles are generally not items of cultural significance.

(3) *Examples.* The application of this paragraph (e) is illustrated by the following examples, which are not intended to be an exhaustive or exclusive illustration of the rules provided in this paragraph (e):

(i) *Example 1: Benefits for cultural or ceremonial activities not compensation for services.* Tribe B regularly holds a gathering during the fall season to celebrate its cultural traditions. During the gathering, Tribal Members of B, as well as Tribal members of other Tribes from around the region, are invited to participate. The Indian Tribal Government of B (ITG-B) allocates funds for the gathering, some of which are used for the following payments:

(A) *Tribal Member of B.* Individual 1, a Tribal Member of B, provides traditional blessings on the first and final days of the gathering. ITG-B gives Individual 1 a cash

honorarium in recognition of providing the blessings. The cash honorarium that Individual 1 receives from ITG-B is not compensation for services under this paragraph (e).

(B) *Tribal Member of different Tribe.* Individual 2, a Tribal Member of Tribe C, participates as a drummer for a ceremonial dance on the second day of the gathering. ITG-B gives Individual 2 a piece of culturally significant jewelry. Under paragraph (b)(8)(ii) of this section, Individual 2 is a Tribal Program Participant solely for purposes of this paragraph (e). The jewelry that Individual 2 receives from ITG-B is not compensation for services under this paragraph (e).

(ii) *Example 2: Benefits for cultural or ceremonial activities not compensation for services.* Tribe C operates a language preservation center in which Individual 3, a Tribal Member of C, who speaks the traditional language that is common to C and other regional Tribes, volunteers to come in every Saturday to discuss and teach the traditional language of C to other Tribal Members of C. The Indian Tribal Government of C (ITG-C), reimburses Individual 3 for travel expenses and teaching supplies used in Individual 3's language lessons. The reimbursement of costs that Individual 3 receives from ITG-C is not compensation for services under this paragraph (e).

(f) *Section 2(c) of the Act.* Section 2(c) of the Act provides that ambiguities in section 139E of the Internal Revenue Code, as added by the Act, shall be resolved in favor of Indian Tribal governments and 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.

(g) *Audit suspension.* After **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the Department of the Treasury and the Internal Revenue Service will, in consultation with the Treasury Tribal Advisory Committee, establish and require the education and training prescribed in section 3(b)(2) of the Act. The

temporary suspension of audits and examinations (see sections 7602 and 7605 of the Code) described in section 4(a) of the Act applies to Indian Tribal governments and Tribal Program Participants and will not be lifted until after the education and training prescribed by section 3(b)(2) of the Act is completed. An inquiry into a taxpayer's eligibility for the audit suspension does not constitute an audit or examination for purposes of the audit suspension described in section 4(a) of the Act.

(h) *Applicability date.* This section applies to taxable years of Tribal Program Participants that begin on or after January 1, 2027. Indian Tribal Governments and Tribal Program Participants may choose to apply the provisions of this section, in their entirety, to taxable years that begin before January 1, 2027.

#### **§1.139E-2 Alaska Native regional or village corporations.**

An Alaska Native regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), may choose to apply the rules in §1.139E-1 until rules that specifically address the application of the requirements of section 139E of the Internal Revenue Code to Alaska Native regional or village corporations are published under this section. However, an Alaska Native regional or village corporation that chooses to apply the rules in §1.139E-1 must apply all of the rules of §1.139E-1 with respect to any general welfare benefits provided to a shareholder of the Alaska Native regional or village corporation (and the shareholder's spouse and dependents) and other Tribal Program Participants (as defined in §1.139E-1(b)).

**Par. 3.** Section 1.7872-5 is amended by adding paragraph (b)(17) to read as follows:

#### **§1.7872-5 Exempted loans.**

\* \* \* \* \*

(b) \* \* \*

(17) See §1.139E-1(d)(6) for rules for a loan from an Indian Tribal Government to a Tribal Program Participant pursuant to an Indian Tribal Government Program within the meaning of §1.139E-1(c). See §1.139E-1(h) for the applicability date of this paragraph (b)(17).

\* \* \* \* \*

**Frank J. Bisignano,**  
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**Approved:** November 19, 2025.

**Kenneth J. Kies**  
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