



Overview of Final Regulations on the Tribal General Welfare Exclusion Act of 2014 and the Tax Status of Wholly Owned Tribal Entities

Agenda

1. Overview of Tribal General Welfare Exclusion Act of 2014-Final Regulations
2. Overview of the Tax Status of Wholly Owned Tribal Entities-Final Regulations
3. Q & A

Tribal General Welfare Exclusion Act of 2014 (TGWEA)

- The TGWEA added section 139E to the Internal Revenue Code (26 U.S.C. 139E) & established the Treasury Tribal Advisory Committee (TTAC).
- Section 139E provides that gross income does not include the value of any **Indian general welfare benefit** made pursuant to an **Indian Tribal government program** subject to the following criteria:

“(b) INDIAN GENERAL WELFARE BENEFIT.—For purposes of this section, the term ‘Indian general welfare benefit’ includes any payment made or services provided to or on behalf of a member of an Indian 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—

“(A) are available to any tribal member who meets such guidelines,

“(B) are for the promotion of general welfare,

“(C) are not lavish or extravagant, and

“(D) are not compensation for services.

- Section 139E provides that the Secretary is to consult with the TTAC on establishment of guidelines for “lavish or extravagant.”
- Section 139E provides further 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.”



TGWEA-Additional Statutory Provisions

- **Definition of Indian Tribal Government:** any agencies or instrumentalities of an Indian tribal government and 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.).
- **Definition of Indian Tribe:** any Indian Tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- **Ambiguities:** Ambiguities in section 139E of such Code, as added by this 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
- **Audit & Examination Suspension:** Audits & examinations for Tribal members (spouses & dependents) are statutorily suspended until following training is completed:
 - (A) training and education for internal revenue field agents who administer and enforce internal revenue laws with respect to Indian 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 this Act and the amendments made thereby.

TGWEA Final Regulations (Key Highlights)

- Published 12/16/25, these regulations incorporate substantial TTAC & Tribal government consultation.
- Reflect a historic incorporation of support for Tribal sovereignty and self-determination in tax regulations.
 - **Tribal Deference:** The regulations expressly incorporates deference to Tribal government decision-making & incorporates the statutory ambiguities clause into a stand-alone regulatory provision.
 - **Tribal Self-Determination in General Welfare Definition:** Recognizes that Tribes self-determine Tribal general welfare and clarifies that this includes ceremonial and cultural prizes and economic development assistance (benefits directly to a Tribal program participant to support, develop, operate, expand, or start trades or businesses).
 - **Expanded Eligibility:** Incorporates respect for Tribal law and broadly define “Tribal program participant”—to include a Tribal Member, their dependent, and their spouse under Tribal or state law. It also covers a Tribal member’s 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.
 - **Use of Any Revenue:** Tribal general welfare benefits may be funded by any source of revenue or funds, including net gaming revenues.
 - **Deference to Tribal Classification of Revenue:** Defers to Tribes in their classification of net gaming revenues as general welfare versus per capita payments. This includes recognition that a Tribe may choose to modify a Revenue Allocation Plan to provide general welfare benefits instead of per capita payments.
 - **Allowance of Uniform Payments and No Need Requirement:** Recognizes that Tribes may use any revenue—including net gaming revenues—to provide eligible benefits, including uniform payments. Does not impose a need requirement.
 - **General Welfare includes Grantor Trusts:** Confirms that a Tribe may provide a general welfare benefit through a grantor’s trust. A Tribe may also choose to modify an existing IGRA trust to provide general welfare benefits. 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.

TGWEA Final Regulations (Key Provisions)

A program is an **Indian Tribal Government Program** only if the program:

- (i) Is established by the Indian Tribal Government;
 - A program may be established by Tribal custom, government practice, or formal action of the Tribe under applicable Tribal law.
 - A program does not need to be in writing to be established, unless a Tribe's law requires otherwise.
 - If permitted under Tribal law, a Tribe may delegate authority to establish a GWE program to a designated individual or the Tribe's entity.
- (ii) Is administered under specified guidelines; and
 - 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
- (iii) Does not discriminate in favor of members of the governing body of the Tribe.
 - A program, either by its terms or in its administration, cannot discriminate 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.
 - 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.
 - A program is treated as being in compliance with the non-discrimination provision if the governing body of a Tribe consists of the entire adult membership of the Tribe.

TGWEA Final Regulations (Key Provisions) Cont'd

A benefit qualifies as a **Tribal General Welfare Benefit** if it is:

- (i) Provided pursuant to an Indian Tribal Government Program;
- (ii) Provided for the promotion of general welfare
 - 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 Tribal General Welfare Program.
 - The IRS will defer to a Tribe's determination.
 - Program examples in the regulation cover the following non-exhaustive categories: housing, education, elder and disabled, transportation, medical, emergency, cultural/religious, and economic development.
- (iii) Available to any eligible Tribal Program Participant;
 - The Indian Tribal Government has discretion to determine the category of individuals who are Tribal Program Participants. 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.
- (iv) Not lavish or extravagant; and
 - 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.
 - The IRS 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.
 - 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.
- (v) Not compensation for service.
 - Except as related to cultural and ceremonial activities, a Tribal General Welfare Benefit does not include benefits that are provided as compensation for services to any person.

TGWEA Final Regulations (Key Provisions) Cont'd

- **Cultural or Ceremonial Activities:** 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; 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.
- **Tribal Deference:** A 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.
 - In response to Tribal comments, the regulation also recognizes that community service, job, training, and prizes or awards for participation in cultural or ceremonial activities may all constitute general welfare as determined by a Tribe.
 - However, the regulation states that cash, gift cards, or vehicles are generally not items of cultural significance.
- **Members of Other Tribes:** Related to cultural or ceremonial activities, the definition of "Tribal program participant" includes citizens of other Tribes and the individuals in the Tribal program participant category affiliated with them.



TGWEA Final Regulations (Administrative Highlights)

- **Examples are Illustrative & Non-Exhaustive:** The final regulations provide that examples are illustrative and non-exhaustive. It also broadens existing examples and adds a new one on economic development to support Tribes.
- **Substantiation Clarification:** The final regulations do not limit the types of documentation a Tribe can provide its recipients to substantiate a general welfare payment. The final regulations also confirm that individuals are not required to maintain personal receipts for benefits received.
- **One Year Transition Period and Prior Reliance:** The final regulations generally are effective January 1, 2027, which provides Tribes a one-year transition period. Tribes are also permitted to apply the final regulations to prior taxable years.
- **Prospective Enforcement:** The final regulations provide that the Department agrees with the TTAC and Tribal leaders that it would be counterproductive for IRS audits 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.
- **Maintenance of the Audit and Examination Suspension:** The final regulations confirm that the Act's audit suspension will not be lifted until after final regulations are issued and the Act's required training is completed in consultation with Tribal governments and the TTAC.
- **Inclusion of Tribal Program Participant's in Audit Suspension:** The final regulations confirm that the audit and examination suspension will apply to all Tribal Program Participants.



Tax Status of Wholly Owned Tribal Entities Final Regulations-Regulatory Highlights

- **Confirms Tribally Chartered Entities Are Not Subject to Income Tax:** Tribes do not pay Federal income tax. The final rule provides that wholly-owned Tribally chartered entities are not recognized as separate entities for Federal tax purposes and, therefore, are not subject to Federal income tax. This affords them parity with Federally chartered Tribal corporations. This clarification includes entities that are chartered as corporations or organized as limited liability companies.
- **Multi-Tribal Entities Have the Tax Status of their Owing Tribes:** The final regulations provide that an entity owned by more than one Tribe and organized or incorporated under one or more of their respective laws, would have the Federal tax status of the owning Tribes. This means the entity is not subject to federal income tax. The final regulations also recognize that multi-Tribe owned entities may elect a choice of law or forum for administrative convenience.
- **Provides Tribes with Liability Protections for Federal Employment and Excise Tax:** The final regulations treat Tribally chartered entities as separate for employment and excise tax liability. This means that a Tribal government is not subject to liability for federal employment and excise taxes owed by its Tribally chartered entity. This approach also minimizes administrative burdens, particularly for entities owned by multiple Tribes.
- **Provides Clarity on Indirect Ownership:** The final regulations confirm that the wholly owned requirement can be met through either direct ownership or through ownership by other entities not recognized as separate. Example 2 of the final regulations is intended to be a general illustration of how subsidiaries in a tiered entity structure of wholly owned Tribal entities are not recognized as separate entities for Federal tax purposes and are, therefore, not subject to Federal income tax.
- **Tax-Status of Partially-Owned Entities Subject to Separate Consultation and Guidance:** The final regulations explain that the Department will conduct separate Tribal consultation prior to issuing any additional guidance regarding the tax status of partially-owned Tribal corporations.

Tax Status of Wholly Owned Tribal Entities-Administrative Highlights

- **No Imposition of an Integral Part Test:** The final regulations incorporate Tribal feedback and do not impose a multi-factor integral part test.
- **Provides Reliance for Years Preceding the Final Regulations:** The final regulations provide that Tribes may rely on these rules for tax years that precede the final regulations' date of publication.
- **Explains Income Tax Refund Process:** The preamble confirms that Tribally chartered entities that choose to apply the final regulations retroactively may seek income tax refunds by filing Form 1120-X, Amended U.S. Corporation Income Tax Return, for tax years for which the applicable period of limitations is open and obtain the assistance of the Indian Tribal Governments office of the Tax Exempt and Government Entities Division of the Internal Revenue Service to process their refund requests.
- **No Imposition of Information Reporting:** These final regulations do not subject Tribal entities to any new reporting requirements.