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Final regulations: Exclusion from gross income under section 139E of Tribal general welfare benefits

The U.S. Treasury Department and IRS today released [final regulations](#) (T.D. 10040) regarding the requirements for benefits that an Indian Tribal government program provides to qualify as Tribal general welfare benefits eligible for exclusion from gross income under section 139E.

The Tribal General Welfare Exclusion Act of 2014 (the “Act”) amended the Code by adding section 139E, which excludes the value of any “Indian general welfare benefit” from an individual’s gross income. The final regulations provide guidance on the administration of Tribal general welfare programs, the types of benefits that qualify for exclusion, and the deference given to Indian Tribal governments in determining what constitutes a Tribal general welfare benefit.

The regulations also address the exclusion of benefits provided for cultural or ceremonial activities, the use of grantor trusts to provide benefits, and the non-applicability of section 7872 to certain loans from Indian Tribal governments to Tribal program participants. Additionally, the regulations provide a presumption that benefits are not lavish or extravagant if they are described in the written specified guidelines of an Indian Tribal government program. The preamble to the regulations notes that the scope of tribal general welfare under section 139E and the final 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. The preamble states that because this broader scope is due to the specific text of section 139E and the Act, the regulations issued today do not provide any basis for analyzing the applicability of the administrative general welfare doctrine to any benefit.

The final regulations will apply to tax years beginning on or after January 1, 2027, but Indian Tribal governments may choose to apply the provisions of the regulations to earlier tax years.

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