

## Part III Administrative, Procedural and Miscellaneous

### Application of General Welfare Exclusion to Benefits Provided under Indian Tribal Government Programs

Notice 2011-94

#### PURPOSE

This notice invites comments concerning the application of the general welfare exclusion to Indian tribal government programs that provide benefits to tribal members.

#### BACKGROUND

Section 61(a) of the Internal Revenue Code provides that, except as otherwise provided by law, gross income means all income from whatever source derived. The Internal Revenue Service has consistently held, however, under a limited general welfare exclusion (the exclusion), that payments under governmental social benefit programs for the promotion of the general welfare are not includible in a recipient's gross income. Rev. Rul. 2009-19, 2009-28 I.R.B. 111; Rev. Rul. 98-19, 1998-1 C.B. 840; Rev. Rul. 74-205, 1974-1 C.B. 20. To qualify under the exclusion, the payments must (1) be made to an individual under a governmental program, (2) be for the promotion of the general welfare (that is, based on need), and (3) not represent compensation for services. Rev. Rul. 2003-12, 2003-1 C.B. 283; Rev. Rul. 2005-46, 2005-2 C.B. 120.

E.O. 13175 (November 6, 2000) requires Federal agencies to consult with tribal officials before formulating and implementing policies that have tribal implications.

#### REQUEST FOR COMMENTS

The Service has received inquiries from Indian tribal governments about the

application of the exclusion to tribal government programs that provide benefits to tribal members. These programs may include, but are not limited to:

- Housing (for example, programs providing housing on and off the reservation, with income limits different from those of the United States Department of Housing and Urban Development);
- Cultural (for example, programs involving tours of sites that are historically significant to a tribe; language preservation programs; community recreational programs; cultural and social events);
- Education (for example, programs providing tutors or supplies to primary and secondary school students; job retraining programs for adults);
- Elder programs (for example, programs providing heating assistance or meals).

In response to these inquiries, and to provide clarity and certainty to Indian tribal governments and consistency in applying the exclusion, the Service and the Treasury Department are considering issuing guidance. Pursuant to E.O. 13175, comments are invited describing actual or proposed Indian tribal government programs that provide benefits to members and the application of the exclusion to these programs and benefits.

Comments may be submitted in writing on or before February 13, 2012.

Comments should be submitted to Internal Revenue Service, CC:PA:LPD:PR (Notice 2011-94), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, or electronically to [Notice.Comments@irs.counsel.treas.gov](mailto:Notice.Comments@irs.counsel.treas.gov). Please include "Notice 2011-94" in the subject line of any electronic communications. Alternatively, comments may be hand delivered between the hours of 8:00 a.m. and 4:00 p.m. Monday to Friday to CC:PA:LPD:PR (Notice 2011-94), Courier's Desk, Internal Revenue Service, 1111

Constitution Avenue NW, Washington, D.C. All comments will be available for public inspection and copying.

**DRAFTING INFORMATION**

The principal author of this notice is Sheldon Iskow of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information, please contact Mr. Iskow at (202) 622-4920 (not a toll-free call).