

**DRAFT – GWE AMENDMENT – DRAFT**

To amend the Internal Revenue Code of 1986 to codify the exclusion from gross income of general welfare programs and services provided for Indians, and other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress, assembled,*

**SEC. 1. SHORT TITLE**

This Act may be cited as the “Tribal Government Services Act of 2013”.

**SEC. 2. FINDINGS AND AFFIRMATIONS.**

Congress finds and affirms that –

(1) The Constitution of the United States acknowledges Indian tribes as native nations, with a bi-lateral government-to-government relationship with the United States in the Treaty, Commerce, and Supremacy Clauses. Indian tribes are vested with inherent sovereign authority over their members and their territory.

(2) The Constitution recognizes tribal citizens as “Indians not taxed,” subject to tribal government jurisdiction in the original Apportionment Clause and the 14<sup>th</sup> Amendment. Congress granted non-citizen Indians citizenship through the 1924 Indian Citizenship Act with the stipulation that the grant of such citizenship does not impair or in any manner affect an Indian’s right to tribal or other property. In this way, Congress preserved tribal government relations with tribal citizens, at the request of tribal citizens, as part of the basic bargain for dual citizenship for tribal citizens as U.S. citizens.

(3) The United States reserved Indian reservations and lands as permanent homes for Indian tribes through treaty, agreements, statutes, and executive orders. Under reserved powers of tribal self-government, Indian tribes have a right and a duty to provide government programs and services to tribal citizens as assisted and supported by the United States. Under treaties, agreements, statutes, and executive orders, Indian tribes have a right and a duty to strive to make Indian reservations and lands “livable,” permanent homes for tribal citizens, now and in future generations.

(4) Such tribal government programs and services are in the general welfare interests of Indian tribes and the United States. Such tribal government programs and services are not taxable benefits to tribal citizens, but reflect the community tradition of tribal self-government that has been handed down by Indian tribes since time immemorial.

**SEC. 3. EXCLUSION FROM GROSS INCOME FOR TRIBAL GOVERNMENT SERVICES AND PROGRAMS PROVIDED TO TRIBAL CITIZENS.**

(a) In General.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to items specifically excluded from gross income) is amended by inserting after Section 139D the following new section:

“SEC. 139E. General Welfare Provided for Indians.

“(a) General rule

Except as otherwise provided in this section, gross income does not include the value of any qualified Indian general welfare benefit.

“(b) Qualified Indian general welfare benefit

For purposes of this section, the term “qualified Indian general welfare benefit” means—

“(1) any housing, education, elder and disabled, transportation, or cultural and religious benefits authorized, provided or purchased, directly or indirectly, by the United States through a program, grant to, or a contract or compact with an Indian tribe or tribal organization, or through a third-party program funded by the United States,

“(2) housing, education, elder and disabled, transportation, or cultural and religious benefits provided or purchased by, or amounts to reimburse for such benefit provided by, an Indian tribe or tribal organization for, or to, a member of an Indian tribe, and the spouse or dependent family member of such a member,

“(3) any other housing, education (including early childhood education, after school programs, secondary and post-secondary education), elder and disabled, transportation, or cultural and religious benefit provided by an Indian tribe or tribal organization that supplements, replaces, or substitutes for a program or service relating to such benefit authorized or provided by the Federal government to Indian tribes or members of such a tribe, and

“(4) other qualifying Indian general welfare benefits programs shall include transportation fares to public facilities; transportation, meals, and temporary lodging of a tribal family member while a family member is receiving medical care away from the reservation; assistance to individuals in exigent circumstances; costs for temporary relocation and shelter for individuals displaced from their homes; emergency assistance; special programs and services provided by the United States to Indians because of their status as Indians; and benefits directly related to provisions included in specific treaty agreements between the United States and the Indian tribe.

“(c) Definitions

For purposes of this section—

“(1) Indian tribe

The term “Indian tribe” has the meaning given such term by section 45A (c)(6).

“(2) Tribal organization

The term “tribal organization” has the meaning given such term by section 4(l) of the Indian Self-Determination and Education Assistance Act.

“(3) Dependent

The term “dependent” has the meaning given such term by section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof.

(b) Clerical Amendment.—The table of sections for such part III is amended by inserting after the item relating to section 139D the following new item:

“Sec. 139E. General Welfare Provided for Indians.”.

(c) Training.—The Secretary shall provide:

(1) training and education to IRS field agents in the field of federal Indian law and the Federal Government’s unique legal treaty and trust relationship with Indian tribes; and

(2) training of IRS field agents and training and technical assistance to tribal financial officers about implementation of this Act.

(d) Effective Date.—The amendments made by this section shall apply to Indian general welfare benefits to taxable years for which the period of limitation on refund or credit under Section 6511 has not expired and to such benefits provided after the date of enactment of this Act.

## **DRAFT MORATORIUM LANGUAGE**

That no funds appropriated to the Department by this Act shall be available to initiate or continue enforcement actions involving the government benefits derived from programs and services provided by a federally recognized Indian tribe to the enrolled members of the tribe until the following conditions have been met: Treasury Department employees, officials, and senior executives of components and bureaus, including, but not limited to, field agents of the Internal Revenue Service, are trained in federal Indian law and the federal government's unique legal treaty and trust responsibilities to federally recognized Indian tribes; the Secretary consults with Indian tribes before issuing final General Welfare Exclusion guidance pursuant to IRS Notice 2012-75 and implementing standards for the Abuse Detection and Prevention Team program that focuses on Indian Tribal Governments pursuant to TIGTA ref no. 2013-10-018; and the Department provides training and technical assistance to tribal financial officers, IRS field agents, and other relevant Treasury, federal, and tribal officials with regard to implementation of the final guidance and standards.