



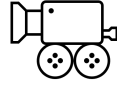
Listening Session on Recent GWE Notice of Proposed Rulemaking

October 24, 2024



Housekeeping

This event is being **recorded**. Slides will be available after the session.



Please use **Q&A box** to submit questions



Use the **chat** function for any technical difficulties and other comments.



Listening Session on Recent GWE Notice of Proposed Rulemaking

Presenters:

W. Ron Allen, Chairman & CEO
(TAC Chairman)
Jamestown S'Kallam Tribe

Robert Yoder, Esq., Attorney
(TAC Advisor and GWE
Subcommittee Member)
Yoder & Langford

Telly J. Meier, Esq., Partner

(TAC Advisor and GWE Subcommittee Member)
Hobbs Straus Dean & Walker

Ken Parsons, Esq., Partner

(TAC Advisor and GWE Subcommittee Member)
Holland & Knight

Moderator:

NAFOA Listening Session

October 24, 2024

Treasury Tribal Advisory Committee (TTAC)

Establishment of the Treasury Tribal Advisory Committee (TTAC) was required by the Tribal General Welfare Exclusion Act of 2014.

The purpose of TTAC is to advise the Treasury Secretary and Internal Revenue Service on matters relating to the taxation of Indians, the training of Internal Revenue Service field agents, and the provision of training and technical assistance to tribal financial officers.

Statute **requires** Treasury and the IRS to consult with TTAC on GWE and other tax issues.

Each TTAC member is appointed by the Treasury, Senate, or House.

NAFOA has been involved with TTAC since its inception.

Current Members of TTAC

W. Ron Allen, Tribal Chair and CEO of the Jamestown S'Kalliam Tribe (TTAC Chair)
(Secretary's appointment)
Jamestown S'Kalliam Tribe (Washington State)

Will Micklin, 4th Vice President of the Central Council of Tlingit Haida Indian Tribes of Alaska
(Secretary's appointment)
Tlingit Haida Indian Tribes of Alaska (Alaska)

Rodney A. Butler, Chairman of the Mashantucket Pequot Tribal Nation
(Massachusetts Representative Richard Neal, Ranking Member of the House Ways & Means Committee appointment)
Mashantucket Pequot Tribe (Connecticut)

Cora White Horse, Council Member of the Ojala Sioux Tribe
(Secretary's Appointment)
Ojala Sioux Tribe (South Dakota)

Martin Tucker, Chief Financial Officer, Choctaw Nation of Oklahoma
(Missouri Representative Jason Smith, Chairman of the House Ways & Means Committee appointment)

Chief Allan, Chairman of the Coeur d'Alene Tribe
(Idaho Senator Mike Crapo, Ranking Member of the Senate Finance Committee appointment)
Coeur d'Alene Tribe (Idaho)

Carla Keene, Chairman of the Cow Creek Band of Umpqua Tribe of Indians
(Oregon Senator Ron Wyden, Chairman of the Senate Finance Committee appointment)
Cow Creek Band of Umpqua Tribe of Indians (Oregon)

Treasury Designated Federal Officer
Fatima Abbas, Director, Office of Tribal and Native Affairs

TTAC Subcommittees and Working Group

General Welfare Exclusion Subcommittee
Implementation of the Tribal General Welfare Exclusion Act and
training of IRS agents
Tribal Economies Subcommittee
Tribally chartered corporations, dual taxation
Pensions, Parity and Tribal Reform Subcommittee
Pensions and other issues
TTAC Working Group
Addressing structural recommendations within IRS and Treasury

General Welfare Exclusion: Background

Revenue Procedure 2014-35 (IRS Safe Harbor)

Programs for housing, education, elders, disabled members, cultural and religious events

Tribal General Welfare Exclusion Act of 2014

Intended to be **broader** than IRS Safe Harbor

Applies to **any** Tribal benefit for the promotion of general welfare

Under both the IRS Safe Harbor and Act, **no income/no 1099** if program meets certain requirements, including:

Benefits available to all members or class (e.g., elders)

Distribution of benefits does not discriminate

Benefits are not compensation

Benefits are not lavish or extravagant

What's Happened Since 2014?

Treasury Tribal Advisory Committee ("TTAC") established. TTAC's purpose is to advise the Treasury Department and IRS on matters relating to the taxation of Native Americans, and the training of IRS agents.

In 2021, TTAC's GWE Subcommittee issued a report and its version of proposed GWE regulations for consideration by Treasury. In 2022, Treasury and the IRS engaged in consultations with tribes on the TTAC report and proposed regulations. Throughout 2023 and 2024, Treasury and the IRS met with the GWE Subcommittee to discuss the proposed regulations and tribal comments.

Summary of GWE Proposed Regulations

Reflect many priorities of Indian Country, including substantial deference to Tribes as they create and implement GWE programs. However, work remains to improve clarity of the guidance and address unresolved issues.

Complete deference to Tribal governments to determine whether a benefit is for the promotion of general welfare.

No limitation on source of funds; GWE programs can be funded with any source including gaming revenue.

However, must be careful with per capita/Revenue Allocation Plans.

Deference to Tribal governments on whether an activity is a cultural or ceremonial activity for the transmission of Tribal culture.

Summary of GWE Proposed Regulations

Program must be established under specified guidelines. A GWE program must include, at a minimum:

- 1) a description of the program to provide Tribal general welfare benefits;
- 2) the benefits provided by the program, including how benefits are determined;
- 3) the eligibility requirements for the program; and
- 4) the process for receiving benefits under the program.

Treasury and IRS agreed with the GWE Subcommittee Report and Tribal Comments that Section 139E does not require the specified guidelines of the program to be memorialized in a written document.

However, several features in the Proposed Regulations incentivize Tribal governments to put their GWE programs in writing.

Lavish or Extravagant?

Whether a benefit is lavish or extravagant is based on 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.

If a Tribe has a **written GWE program**, the IRS will presume the benefit is not lavish or extravagant.

Proposed regulations unclear on how – if at all – this presumption can be rebutted.

Consultation and Comment Opportunities

Three virtual consultations on November 18, 19, and 20, 2024

Written comments due December 17, 2024

Public hearing on January 13, 2025 at IRS building in DC.

Why submit comments?

Opportunity to clear up ambiguities and unaddressed issues BEFORE guidance is finalized.

65 Tribes and 2 Tribal organizations commented in response to DTL that led to proposed regulations.

Treasury and the IRS are listening!