

Title 10. General Welfare Exclusion - Chapter 1001

ONEIDA GENERAL WELFARE

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1001.1. Purpose and Policy

1001.1-1. *Purpose.* The purpose of this law is to provide assistance to eligible Tribal members. The Nation affirms hereby its sovereign right to do so on a non-taxable basis, pursuant to the principles of the General Welfare Exclusion to Indian Tribal governmental programs that provide benefits to Tribal members.

1001.1-2. The federal government through the Tribal General Welfare Exclusion Act of 2014, codified at 26 U.S.C §139E and the Internal Revenue Service, through its traditional application of the general welfare doctrine and subsequent guidance, has recognized the sovereign right of Indian tribal governments to provide financial assistance to its Tribal members under certain circumstances on a non-taxable basis.

1001.1-3. *Policy.* It is the policy of the Nation to provide assistance to Tribal members through approved programs that promote the general welfare of the Nation. This law provides a framework for approved programs to follow to ensure compliance with the General Welfare Exclusion, 26 U.S.C. §139E, and applicable Internal Revenue Service regulations or revenue procedures including I.R.S. Rev. Proc. 2014-35. Further, it is the intent of the Oneida Business Committee that all assistance provided under this law:

- (a) is available to any recipients who satisfy the program policies, subject to budgetary restraints;
- (b) is made under an approved program that does not discriminate in favor of members of the Nation's governing body;
- (c) is not provided as compensation for goods and/or services; and
- (d) is not lavish or extravagant under the facts and circumstances, as determined by the Oneida Business Committee.

1001.2. Adoption, Amendment, Repeal

1001.2-1. This law was adopted by the Oneida Business Committee on an emergency basis by resolution BC-08-12-20-D.

1001.2-2. This law may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

1001.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

1001.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

1001.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

1001.3. Definitions

1001.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Approved program" means any program(s) to provide general welfare assistance that

is intended to qualify as non-taxable as a General Welfare Exclusion, administered under specific guidelines, and is adopted as a law by resolution of the Oneida Business Committee.

(b) "Assistance" means benefits or payments under an approved program, which are paid to or on behalf of a recipient pursuant to this law, provided, that such assistance shall be owed back to the Nation from the Tribal member recipient in the event the Tribal member misappropriates the assistance..

(c) "Benefits" means any approved program assistance, including payments, which is provided pursuant to this law.

(d) "General Test" means the criteria used to determine if any assistance or benefits provided through an approved program to a recipient shall be treated as a General Welfare Exclusion. The criteria of the General Test include the following:

- (1) Paid on behalf of the Nation;
- (2) Pursuant to an approved program;
- (3) Does not discriminate in favor of members of the governing body of the Nation;
- (4) Are available to any Tribal member who meets the guidelines of the approved program;
- (5) Are for the promotion of general welfare;
- (6) Are not lavish or extravagant;
- (7) Are not compensation for services; and
- (8) Are not per capita payments.

(e) "General Welfare Exclusion" means any benefits shall be treated as non-taxable under federal law so long as it satisfies the requirements for exclusion under 26 U.S.C. §139E, is provided under a Safe Harbor Program listed and detailed in I.R.S. Rev. Proc. 2014-35 or subsequent Internal Revenue Service procedures or regulations, or it meets the General Test.

(f) "General welfare need" means a need, in the sole discretion of the Oneida Business Committee, which shall be met to ensure the Nation's longevity as a self-governing Indian nation, and includes needs in the areas of health, education, self-sufficiency, self-determination, the maintenance of culture and tradition, entrepreneurship, and employment.

(g) "Lavish" or "Extravagant" shall have the meaning determined by the Oneida Business Committee in its discretion and based on the circumstances, taking into account needs unique to the Nation as well as the social purpose being served by the particular assistance at hand, except as otherwise may be required for compliance with final guidance issued under 26 U.S.C. §139E following consultation between the Nation and the federal government.

(h) "Nation" means the Oneida Nation.

(i) "Recipient" means any Tribal member entitled to receive assistance in accordance with approved program requirements.

(j) "Tribal member" means an individual who is an enrolled member of the Nation.

1001.4. Ratification of Prior Acts

1001.4-1. This law is not to be construed as creating new general welfare assistance rights which are an inherent right of Nation. Rather, this law is intended to codify existing procedures used by the Nation to administer its general welfare assistance.

1001.4-2. Assistance provided prior to the enactment of this law is hereby ratified and confirmed as general welfare assistance provided pursuant to the exercise by the Nation of its inherent tribal sovereignty.

1001.5. General Welfare Doctrine and IRS Revenue Procedure 2014-53/ Tribal General Welfare Exclusion of 2014

1001.5-1. The federal government recognizes that benefits to recipients under an approved program for the promotion of the general welfare of the Nation is excludable from the gross income of those recipients.

1001.5-2. The Internal Revenue Service, through I.R.S. Revenue Procedure 2014-35, listed and detailed examples of Safe Harbor programs under which, if approved and in writing, need would be presumed, and benefits would be excluded from gross income.

1001.5-3. Benefits authorized by this law are intended to qualify non-taxable under the principles of the General Welfare Exclusion to the fullest extent permitted at law.

1001.5-4. Assistance authorized by this law shall be limited to funds appropriated, at the discretion of the Oneida Business Committee and no matter the source of the funds. All amounts budgeted by the Nation for assistance shall remain general assets of the Nation until payments are disbursed.

1001.5-5. Benefits are not subject to information reporting by the Nation to the Internal Revenue Service.

1001.5-6. Without limitation, the following benefits shall be treated as non-taxable hereunder:

- (a) Benefits that satisfy the requirements for the exemption under 26 U.S.C. §139E;
- (b) Benefits that are provided under an IRS Safe Harbor Program listed and described in I.R.S. Rev. Proc. 2014-35; or
- (c) Benefits that qualify for exclusion under the I.R.S. General Criteria of General Welfare exclusion listed in I.R.S. Rev. Proc. 2014-35, section 5.02(1).

1001.6. Non-Recourse Designation

1001.6-1. The Nation does not guarantee benefits under this law. Benefits shall not be treated as a resource or asset of a recipient for any purpose; and no recipient shall have an interest in or right to any funds budgeted for, or set aside for, approved programs until paid. Oneida Business Committee reserves the right to cancel, adjust, modify or revoke any benefit. The approved programs shall be administered at all times to avoid triggering of the doctrines of “constructive receipt” and/or “economic benefit.”

1001.7. Governing Law; Sovereignty

1001.7-1. All the rights and liabilities associated with the enactment of this law, or the assistance made hereunder, shall be construed and enforced according to the Nation’s laws and applicable federal law. Nothing in this law or the related laws, policies, or procedures adopted for its implementation, if any, shall be construed to make applicable to the Nation any laws or regulations which are otherwise inapplicable to the Nation, or from which the Nation is entitled to exemption because of its sovereign status.

1001.8. Federal Trust Obligations

1001.8-1. The Nation reserves the right to provide assistance in circumstances where federal funding is insufficient to operate federal programs designed to benefit applicants and when federal funding is insufficient to adequately and consistently fulfill federal trust obligations. The Nation's adoption of its approved programs is not intended to relieve or diminish the federal government of its funding and trust responsibilities. Nothing herein shall waive the Nation's right to seek funding shortfalls or to enforce the trust rights of the Nation and its citizens. The Nation shall be entitled to government-to-government consultation and coordination with the federal government in regard to these obligations.

1001.9. Approved Program Guidelines

1001.9-1. *Nation Approved Programs.* The Oneida Business Committee shall designate approved programs for which funds shall be budgeted each fiscal year, consistent with the purposes of this law. Each approved program shall be consistent with the principles of the General Welfare Exclusion as to purpose, eligibility, and funding.

1001.9-2. *Purpose of Approved Programs.* Each approved program shall be limited to purposes consistent with treatment under the General Welfare Exclusion. An approved program shall be established and operated to promote the general welfare of the Nation, including programs designed to enhance the promotion of health, education, self-sufficiency, self-determination, and the maintenance of culture and tradition, entrepreneurship, and employment.

1001.9-3. *Eligibility.* Assistance intended to qualify under the General Welfare Exclusion shall be limited to Tribal members. Each approved program shall set forth the specific eligibility rules and limitations applied to that program. Programs comprising descriptions, including eligibility rules and limitations, may be presented to the Oneida Business Committee for approval in accordance with this law. Programs shall be approved by the Oneida Business Committee to be considered in force and effect and in accordance with this law.

1001.9-4. *Limited Use of Assistance Payments.* All assistance shall be used for the purpose stated in the approved program description. If assistance is used or pledged for a purpose inconsistent with the purpose set forth in an approved program the payment shall be deemed forfeited. The Nation may secure repayment from the recipient. The Nation may seek to garnish remuneration from other payments made to recipient to secure repayment of assistance under this law.

1001.9-5. *Anti-Alienation.* A Tribal member's benefit is not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment by creditors of the Tribal member.

End.

Emergency Adopted - BC-08-12-20-D