

**RESOLUTION OF THE GOVERNING BODY  
OF THE  
WASHOE TRIBE OF NEVADA AND CALIFORNIA**


- WHEREAS,** the Washoe Tribe of Nevada and California, is organized pursuant to the Provisions of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended, to exercise certain rights of home rule and to be responsible for the general welfare of its membership; and
- WHEREAS,** the Washoe Tribal Council is the recognized governing body of the Washoe Tribe, possessing all powers conferred by Article VI of the Washoe Constitution and Article VII of the Bylaws to promulgate ordinances and resolutions; and
- WHEREAS,** both the United States Congress, through its enactment of the Tribal General Welfare Exclusion Act of 2014, and the Internal Revenue Service, through its traditional application of the general welfare doctrine, have long recognized the sovereign right of Indian tribal governments to provide financial assistance to individuals under certain circumstances on a non-taxable basis; and
- WHEREAS,** the Washoe Tribe of Nevada and California exercises its inherent rights of sovereignty to promote the general welfare of the Tribe, its self-determination, culture, and tradition, by providing general welfare assistance, including Indian general welfare benefits within the meaning of Internal Revenue Code Section 139E; and
- WHEREAS,** the Washoe Tribal Council declared a State of Emergency in the Washoe Nation on account of the novel coronavirus (COVID-19) pandemic by Tribal Resolution 2020-03-WTC-013 on March 13, 2020; and
- WHEREAS,** in response to all of the foregoing, the Washoe Tribe developed its own General Welfare Exclusion Act (Appendix A) which is included herein by reference.
- NOW THEREFORE BE IT RESOLVED** in furtherance of its duties and powers to protect and safeguard Washoe Tribal Members and the greater Washoe Community, the Washoe Tribal Council hereby approves and adopts the Washoe Tribe of Nevada and California General Welfare Exclusion Act; and
- BE IT FINALLY RESOLVED THAT** the Washoe Tribal Chairman, Vice-Chairman and or Secretary-Treasurer are authorized to sign all necessary documents to implement the above.

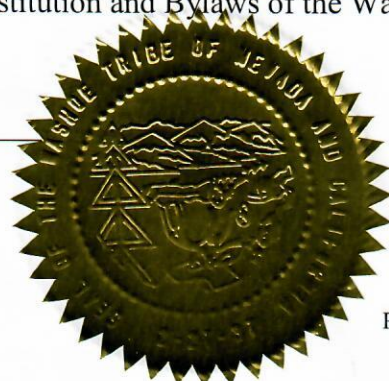
**CERTIFICATION**

It is hereby certified that the Washoe Tribal Council is the governing body of the Washoe Tribe of Nevada and California composed of twelve (12) members of whom eleven (11), constituting a quorum, were present at a meeting duly held on the 28<sup>th</sup> day of July, 2020, and that the foregoing resolution was adopted by the affirmative vote of ten (10) for, zero (0) against, and one (1) abstention pursuant to the authority contained in Article VI, Section 1(h) of the Amended Constitution and Bylaws of the Washoe Tribe of Nevada and California.



Autumn Burt  
Secretary-Treasurer  
Washoe Tribe of Nevada and California

  
Date



# Washoe Tribe of Nevada and California



## ***GENERAL WELFARE EXCLUSION ACT***

### **Section 1. Authority.**

- A. The Washoe Tribe of Nevada and California ("Tribe"), is organized pursuant to the Provisions of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended, to exercise certain rights of home rule and to be responsible for the general welfare of its Tribal Membership ("Membership," "Members," or "Tribal Members").
- B. The Washoe Tribal Council ("Council" or "Tribal Council") is the recognized governing body of the Tribe with the responsibility to exercise the privileges and powers of self-government, to conserve and develop Tribal resources, and to secure the social and economic wellbeing of its Membership delegated under Article VI of the Tribe's Constitution and Bylaws ("Constitution").
- C. In furtherance of its duties and powers to protect and safeguard Tribal Members and the greater Washoe Community, the Tribal Council hereby adopts by resolution this General Welfare Exclusion Act ("GWE Act" or "Act"). It does so under the authority of Article VI of the Constitution further defined under Article VII of the Bylaws of the Tribe insofar as the same delegates to the Tribal Council the power to promulgate ordinances, and resolutions.

### **Section 2. Intent and Purpose.**

- A. The Washoe Tribe of Nevada and California ("Tribe"), is a federally recognized Indian Tribe, and it exercises its inherent rights of sovereignty to promote the general welfare of the Tribe, its self-determination, culture, and tradition, by providing general welfare assistance, including Indian general welfare benefits within the meaning of Internal Revenue Code Section 139E. Both the United States Congress, through its enactment of the Tribal General Welfare Exclusion Act of 2014, and the Internal Revenue Service, through its traditional application of the general welfare doctrine, have long recognized the sovereign right of Indian tribal governments to provide financial assistance to individuals under certain circumstances on a non-taxable basis.
- B. This General Welfare Exclusion Act is intended to affirm the Tribe's inherent sovereign rights to promote the general welfare of the Tribe and provide qualifying assistance and program benefits on a tax free basis. In this regard, the Constitution of the Tribe confirms the sovereign duty and responsibility of the Washoe Tribe to maintain the culture and independence of its Members, to encourage the economic well-being of its Members, and to promote the rights of its Members and their common welfare. Assistance authorized by this GWE Act is intended to qualify for tax free treatment to the fullest extent permitted at law.
- C. The first purpose of the GWE Act is to develop systems and procedures that may be used by the Tribe to determine those best services or programs that are needed to promote public health, safety and other basic need services for the promotion of the general welfare of the Tribe. These may include, without limitation, such items as sewer, water, electrical service / power, infrastructure, housing, public sanitation services, public education and other such functions that would tend to support and maintain the historical and cultural general welfare of the Tribe.

- D. The second purpose of the GWE Act is to establish basic guidelines and procedures for programs to follow in ensuring compliance with the general welfare doctrine and Internal Revenue Code Section 139E.

**Section 3. Effective date.**

This GWE Act shall take effect on the day following its approval by resolution by the Tribal Council and upon execution of this document and the resolution by the Chairman, Vice-Chairman, or Secretary-Treasurer.

**Section 4. Abrogation and greater restriction.**

Where this article imposes greater restrictions than those contained in other ordinances, codes, or resolutions of the Tribe, as well as relevant federal laws and regulations, this article shall govern.

**Section 5. Interpretation.**

In the interpretation and application of the provisions of this GWE Act, the provisions of this Act shall be held to set forth the minimum requirements. The provisions herein shall be liberally construed in favor of the Tribe and shall not be deemed a limitation or repeal of any other power or authority of the Tribe.

**Section 6. Severability.**

If any Section, provision, or portion of this article is adjudged unconstitutional or invalid by a court of competent jurisdiction, then the remaining portions of this Act shall not be affected thereby. The Tribe declares there is no liability may accrue to the Tribe, its agencies, or employees that may occur as a result of a fair and reasonable reliance upon and interpretation of the terms and provisions of this Act.

**Section 7. Sovereign immunity.**

Neither this Act nor any section of it may be construed to waive, limit or otherwise restrict the Tribe's sovereign immunity. The Sovereign Immunity of the Washoe Tribe of Nevada and California is hereby expressly affirmed.

**Section 8. Applicability.**

The policies, provisions and effects of this Act shall apply and are intended to apply to all Members and employees of the Tribe, all activities on lands owned by the Tribe or held in trust by the United States for the benefit of the Tribe, all individuals occupying Tribal lands, and all lands owned in fee by the Tribe or a Member of the Tribe.

**Section 9. Budgeting of Funds.**

The Tribe may budget such funds as may be necessary and available to effectuate the goals and enforcement of the GWE Act, and it shall seek grants, foundation funding and other sources of revenue that may augment this program.

**Section 10. Inconsistent provisions.**

Upon adoption of this Act by Tribal Council Resolution, The General Welfare Exclusion Act will be held during its emergency application, to supersede any existing laws, rules, resolutions, and policies which are or may be found to be inconsistent with this General Welfare Exclusion Act.



## **Section 11. General Provisions.**

This General Welfare Exclusion Act shall be known as the Washoe Tribe of Nevada and California General Welfare Exclusion Act.

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

- i. Benefits that satisfy the requirements for exemption under Internal Revenue Code Section 139E;
- ii. Benefits that are provided under an IRS Safe Harbor Program;
- iii. Benefits that qualify for exclusion under the IRS General Test; or
- iv. Benefits that meet another express exemption under the Internal Revenue Code, such as the exemption provided for tribal medical expenses under Internal Revenue Code Section 139D, or that meet other recognized exemptions including, for example, resource or land-based exemptions under 25 U.S.C. Sections 17a-b, 1407 and 1408.

## **Section 12. Definitions.**

A. In construing the provisions of this General Welfare Exclusion Act, the following words and phrases shall have the meanings designated in this Section unless a different meaning is expressly provided or the context provides otherwise.

1. "Assistance" means any program benefits or payments that qualify for tax free treatment under the General Welfare Exclusion.
2. "Beneficiary" means any person or persons entitled to receive Assistance in accordance with specific Program guidelines. Programs designed to qualify for exemption under IRS Code Section 139E may benefit Members, spouses of a Member, and/or Dependents of a Member. Programs designed to meet the Safe Harbor may benefit any Member or Qualified Nonmember.
3. "Code" means the Internal Revenue Code of 1986, as amended.
4. "Compensation" for services should reflect that qualifying Programs are not disguised employment. However, this shall not prevent the Tribe from structuring Programs with community service ties so long as such ties are consistent with the General Welfare Exclusion. For example, Programs similar to the Workforce Investment Act may include tax free Assistance.
5. "Constitution" means the Constitution of the Washoe Tribe of Nevada and California.
6. "General Welfare Exclusion" Assistance shall be treated as non-taxable so long as it satisfies the requirements for exclusion under IRS Code Section 139E, or it is provided under a Safe Harbor Program, or it meets the General Test.
7. "General Test" Assistance will be treated as meeting the General Test under the General Welfare Exclusion if the benefits are: (1) paid by or on behalf of an Indian Tribe, (2) under a social benefit program, (3) based on either needs of the Indian community itself or upon individual needs of the recipient (which need not be financial in nature), and (4) are not Compensation for services or per capita payments.
8. "GWE Act" means the Washoe Tribe of Nevada and California General Welfare Exclusion Act.
9. "Lavish" or "Extravagant" Except as otherwise required for compliance with final guidance

issued under Code Section 139E following consultation, lavish and extravagant shall be determined by the Tribal Council in its sole discretion based on all facts and circumstances, taking into account needs unique to the Tribe as well as the social purpose being served by the particular Assistance at hand.

10. "Member" or "Tribal Member" means a currently enrolled Washoe Tribal member.
11. "Pay" or "paid" or "payment" means pay or reimburse in whole or in part.
12. "Program" or "Approved Program" means any program established by or under authority of the Tribal Council, including any program authorized through the annual budget process, to provide Assistance hereunder. A program shall not fail to be treated as an Indian tribal government Program solely by reason of the Program being established by tribal custom or government practice.
13. "Promotion of the general welfare" or "Social benefit" should reflect a goal or goals established by and in the sole discretion of the Tribal Council for the promotion of the general welfare of the Tribe, for example, in furtherance of tribal self-determination, culture and tradition.
14. "Qualified Nonmember" means a spouse, former spouse, legally recognized domestic partner or former domestic partner, ancestor, descendant, or Dependent of a member of the Tribe. Individual Tribal Programs may, but are not required to, cover Qualified nonmembers.
15. "Reservation" means the reservation lands of the Washoe Tribe of Nevada and California or, if the context so permits, any other Indian reservation as defined in Internal Revenue Code Section 162(j).
16. "Safe Harbor Program" shall refer to a Program that meets the safe harbor requirements set forth herein and IRS Revenue Procedure 2014-35, as the same may hereafter be amended. Need shall be presumed for Assistance provided under a Safe Harbor Program.
17. "Service area" has the same meaning as in 25 C.F.R. Section 20.100.
18. "Service unit area" means an area designated for purposes of administration of Indian Health Service programs under 42 C.F.R. Section 136.21(l).
19. "Self-determination" should be construed broadly to reflect traditional health, education and welfare programs as well as unique cultural and traditional based programs and economic development. See, e.g., PLR 199924026 (tax free grants to promote onreservation employment).
20. "Spouse" shall be determined in accordance with Tribal laws, customs and traditions.
21. "Tribal Council" or "Council" means the Washoe Tribe of Nevada and California Tribal Council.

### **Section 13. Ratification of Prior Acts; Intent of Legislation.**

This GWE Act does not establish a new program or programs. This GWE Act is intended to memorialize and confirm existing procedures used in the administration of general welfare assistance programs and services and is not to be construed as the creation of new general welfare assistance rights that previously did not exist. Assistance provided prior to the enactment of this GWE Act is hereby ratified and confirmed as general welfare assistance pursuant to the authority of the Constitution. This Act is intended to establish a framework to improve the coordination of

general welfare doctrine compliance. Programs and services referred to herein must be authorized by independent action of the Council or its designees.

#### **Section 14. General Welfare Doctrine; Rules of Construction.**

1. The Internal Revenue Service has historically recognized that payments by Tribal government to Tribal Members under a legislatively provided social benefit program for the promotion of the general welfare of the Tribe are excludable from the gross income of those Tribal Members who receive said payments. On December 5, 2011, the United States Treasury Department and IRS published Notice 2011-94 as part of an initiative to conduct consultation on ways to improve guidance on tribal general welfare matters. Notice 2011-94 invited comments from tribal governments concerning the application of the general welfare exclusion to Indian tribal government programs.
2. On December 5, 2012, the IRS and Treasury Department issued Notice 2012-75 proposing new guidance and providing interim relief under the general welfare exclusion for Programs that meet designated Safe Harbor rules.
3. On June 3, 2014, the Treasury Department issued final guidance in the form of Revenue Procedure 2014-35 confirming that IRS will not tax Member Assistance that meets designated IRS safe harbor requirements. In September of 2014, Tribes and tribal organizations worked with the United States Congress to clarify that Bills then pending in the House (H.R. 3043) and in the Senate (S.B. 1507) were in fact intended to expand tribal general welfare exclusion rights and build upon the safe harbor and general test relief previously recognized by the IRS.
4. On September 17, 2014, Senators Moran and Heitkamp, co-sponsors of S.B. 1507, engaged in a colloquy with the Chairman of the Senate Finance Committee, Senator Wyden, on the Congressional Record of the Senate confirming their understanding and intent that:
  - a. IRS would apply S.B. 1507 “no less favorable than the safe harbor approach provided for in Revenue Procedure 2014-35, and that in no event will IRS require an individualized determination of financial need where a tribal Program meets all other requirements of new Section 139E as added by the bill.”
  - b. The bill requires that “any ambiguities in new IRS Code Section 139E shall resolved by the IRS in favor of Indian Tribal governments and deference shall be given to Indian Tribal governments for programs administered and authorized by the Tribe to benefit the general welfare of the Tribal community.”
  - c. It “would be contrary to the intent of Congress” if IRS were to “take the occasion of passage of H.R. 3043 or S. 1507 to retrench, narrow or possibly withdraw the administrative guidance provided in Rev. Pro. 2014-35 after enactment of the bill.”
  - d. The Congressional intent “is to expand rather than restrict the safe harbor provisions in Rev. Proc. 2014-35.”
  - e. “The purpose of this legislation is to further empower Tribal self-determination.”
  - f. “Tribal governments have a long history of providing critical benefits to Tribal Members, and these programs are fundamental to the sovereignty and cultural integrity of Tribes. Tribes, and not the IRS, are in the best position to determine the needs of their Members and provide for the general welfare of their tribal citizens and communities.”
  - g. On September 18, 2014, the Tribal General Welfare Exclusion Act of 2014 passed both houses of Congress, and was signed into law on September 29, 2014.

- h. The Tribal Council now expressly embraces the forgoing principles as an integral part of this GWE Act and as guiding principles in construing the Tribe's compliance with IRS Code Section 139E, the Safe Harbor Rules, and the General Test.
- i. The assistance payments and services authorized by this GWE Act are intended to qualify for favorable tax treatment under the general welfare doctrine to the fullest extent permitted by law and shall be construed accordingly.

**Section 15. Non-Resource Designation.**

- A. General welfare services and payments hereunder are paid from assets of Tribal government; all payments are based on budget availability of the Tribal government, and the Tribal government does not guarantee any payments hereunder.
- B. Benefits paid hereunder on the basis of need shall not be treated as a resource of the Member for any purpose.
- C. The Council reserves the right to cancel, adjust, modify or revoke any benefits that are treated as a resource of the Tribal Member.

**Section 16. Federal Trust Obligations; Executive Orders.**

The Tribe reserves the right to provide Assistance including in circumstances where federal funding is insufficient to operate federal programs designed to benefit Tribal Members and when federal funding is insufficient to adequately and consistently fulfill federal trust obligations. The Tribe's adoption of Approved Programs is not intended to relieve or diminish the federal government of its funding and trust responsibilities. Nothing herein shall waive the Tribe's right to seek funding shortfalls or to enforce the trust rights of the Tribe and its Members. The Tribe shall be entitled to government-to-government consultation and coordination rights in regard to this Title.

**Section 17. Indian General Welfare Benefits (IRS Code Section 139E).**

- A. Programs that meet the following criteria for exemption under IRS Code Section 139E shall be treated as non-taxable Assistance under the General Welfare Exclusion without the applicant having to demonstrate individual need.
  - 1. General Criteria for Qualification under IRS Code Section 139E: Each payment made or service provided to or on behalf of a Member (or any Spouse or Dependent of the Member) pursuant to a Program under this GWE Act shall be treated as non-taxable Assistance under the General Welfare Exclusion so long as the following criteria are met:
    - a. The Program is administered under specified guidelines and does not discriminate in favor of the members of the governing body of the Tribe;
    - b. Program benefits are available to any Tribal Member who meets the guidelines;
    - c. Program benefits are for the "promotion of the general welfare";
    - d. Program benefits are not Lavish or Extravagant; and
    - e. Program benefits are not Compensation for services.
  - 2. Ceremonial Activities: Any items of cultural significance, reimbursement of costs, or cash honorarium for participation in cultural or ceremonial activities for the transmission of tribal culture shall not be treated as Compensation for services.
  - 3. Special Effective Dates: IRS Code Section 139E is effective for Assistance in taxable years for which the period of limitations on a refund or credit under IRS Code Section 6511 has not expired. If the period of limitation on a refund or credit resulting from the application of IRS Code Section 139E (a) would otherwise expire before the one-year period beginning

on the date of the enactment of IRS Code Section 139E, a refund or credit (to the extent attributed thereto) may be made or allowed if a claim is filed before the close of such one-year period.

## **Section 18. Safe Harbor Programs.**

- A. Programs that meet the following general criteria for safe harbor treatment, and provide qualifying safe harbor benefits, shall be treated as non-taxable Assistance under the General Welfare Exclusion without the applicant having to demonstrate individual need:
1. General Criteria for Safe Harbor Treatment: Each Safe Harbor Program shall satisfy the following general criteria:
    - a. The benefit is provided under a specific Approved Program of the Tribe;
    - b. The Program has written guidelines specifying how individuals may qualify for the benefit;
    - c. The benefit is available to any Tribal Member, Qualified Nonmember, or identified group of Tribal Members or Qualified Nonmembers who satisfy the Program guidelines, subject to budgetary restraints;
    - d. The distribution of benefits from the Program does not discriminate in favor of the governing body of the Tribe;
    - e. The benefit is not Compensation for services; and
    - f. The benefit is not Lavish or Extravagant under the facts and circumstances.
  2. Qualifying Safe Harbor Benefits: The following benefits may be provided under a Safe Harbor Program. The benefits listed in the parenthetical language herein are illustrative only, and are not intended to be an exhaustive list. Thus, a benefit may qualify for exclusion from gross income as a Safe Harbor Program even though the benefit is not expressly described in the parenthetical language herein, provided that it meets all other requirements of Article VI and Revenue Procedure 2014-35 (as may be amended):
    - a. Housing programs. Programs relating to principal residences and ancillary structures that are not used in any trade or business, or for investment purposes that:
      - i. Pay mortgage payments, down payments, or rent payments (including but not limited to security deposits) for principal residences.
      - ii. Enhance habitability of housing, such as by remedying water, sewage, or sanitation service, safety issues (including but not limited to mold remediation), or heating or cooling issues.
      - iii. Provide basic housing repairs or rehabilitation (including but not limited to roof repair and replacement).
      - iv. Pay utility bills and charges (including but not limited to water, electricity, gas, and basic communications services such as phone, internet, and cable).
      - v. Pay property taxes or make payments in lieu of taxes (PILOTs).
    - b. Educational programs. Programs that:
      - i. Provide students (including but not limited to post-secondary students) transportation to and from school, tutors, and supplies (including but not limited to clothing, backpacks, laptop computers, musical instruments, and sports equipment) for use in school activities and extracurricular activities.
      - ii. Provide tuition payments for students (including but not limited to allowances for room and board on or off campus for the student, spouse, domestic partner, and Dependents) to attend preschool, school, college or university, online school, educational seminars, vocational education, technical education, adult education, continuing education, or alternative education.
      - iii. Provide for the care of children away from their homes to help their parents or



other relatives responsible for their care to be gainfully employed or to pursue education.

- iv. Provide job counseling and programs for which the primary objective is job placement or training, including but not limited to allowances for expenses for interviewing or training away from home (including but not limited to travel, auto expenses, lodging, and food); tutoring; and appropriate clothing for a job interview or training (including but not limited to an interview suit or a uniform required during a period of training).
- c. Elder and disabled programs. Programs for individuals who have reached age 55 or are mentally or physically disabled (as defined under applicable law, including but not limited to tribal government disability codes or laws) that provide:
  - i. Meals through home-delivered meal programs or at a community center or similar facility.
  - ii. Home care such as assistance with preparing meals or doing chores, or daycare outside the home.
  - iii. Local transportation assistance.
  - iv. Improvements to adapt housing to special needs (including but not limited to grab bars and ramps).
- d. Cultural and religious programs. Programs that:
  - i. Pay expenses (including but not limited to admission fees, transportation, food, and lodging) to attend or participate in an Indian Tribe's cultural, social, religious, or community activities such as pow-wows, ceremonies, and traditional dances.
  - ii. Pay expenses (including but not limited to admission fees, transportation, food, and lodging) to visit sites that are culturally or historically significant for the Tribe, including but not limited to other Indian reservations.
  - iii. Pay the costs of receiving instruction about an Indian Tribe's culture, history, and traditions (including but not limited to traditional language, music, and dances).
  - iv. Pay funeral and burial expenses and expenses of hosting or attending wakes, funerals, burials, other bereavement events, and subsequent honoring events.
  - v. Pay transportation costs and admission fees to attend educational, social, or cultural programs offered or supported by the Tribe or another Tribe.
- e. Other qualifying assistance programs. Programs that:
  - i. Pay transportation costs such as rental cars, substantiated mileage, and fares for bus, taxi, and public transportation between an Indian reservation, service area, or service unit area and facilities that provide essential services to the public (such as medical facilities and grocery stores).
  - ii. Pay for the cost of transportation, temporary meals, and lodging of a Tribal Member or Qualified Nonmember while the individual is receiving medical care away from home.
  - iii. Provide assistance to individuals in exigent circumstances (including but not limited to victims of abuse), including but not limited to the costs of food, clothing, shelter, transportation, auto repair bills, and similar expenses.
  - iv. Pay costs for temporary relocation and shelter for individuals displaced from their homes (including but not limited to situations in which a home is destroyed by a fire or natural disaster).
  - v. Provide assistance for transportation emergencies (for example, when stranded away from home) in the form of transportation costs, a hotel room, and meals.
  - vi. Pay the cost of nonprescription drugs (including but not limited to traditional

Indian tribal medicines).

3. **Compensation Safe Harbor:** For Safe Harbor Programs, and subject to amendments to Revenue Procedure 2014-35 hereafter, the Tribe will presume that individual need is met for religious leaders or spiritual officials or leaders (including but not limited to medicine men, medicine women, and shamans) receiving the following benefits, and that the benefits do not represent Compensation for services: benefits provided under an Indian tribal governmental Program that are items of cultural significance that are not lavish or extravagant under the facts and circumstances or nominal cash honoraria provided to religious or spiritual officials or leaders (including but not limited to medicine men, medicine women, and shamans) to recognize their participation in cultural, religious, and social events (including but not limited to pow-wows, rite of passage ceremonies, funerals, wakes, burials, other bereavement events, and subsequent honoring events).
4. **Safe Harbor Effective Dates:** Safe harbor treatment shall be afforded to any Program or benefit that otherwise satisfies the safe harbor rule as of, or after, December 6, 2012, or for any earlier taxable period for which the period of limitation on refund or credit under Internal Revenue Code Section 6511 has not expired.
5. **Non-Safe Harbor Programs:** Nothing in this GWE Act or the IRS safe harbor guidance shall limit the Tribe's right to provide Assistance outside of the safe harbor rules.

#### **Section 19. Programs Meeting the General Test.**

Programs that do not qualify for non-taxable treatment under IRS Code Section 139E or under an IRS Safe Harbor, will nonetheless be treated as non-taxable if Program benefits meet the General Test for treatment under the General Welfare Exclusion. For purposes of the General Test only, needs must be shown in one of the following manners:

1. **Individual Needs.** Certain Programs may be based on individual need, rather than an overall need of the Tribe. For those Programs, the Tribal Council may establish income guidelines unique to the Tribe or may use readily available income guidelines used by state or federal programs to demonstrate individual or family need. When individual or family need must be shown, the Program may take into account individual circumstances or extraordinary need to overcome presumptions based on income alone such as unanticipated increases in the cost of necessary services.
2. **Community Needs.** Certain Programs may be based on community needs, which are so important to the self-nation culture and traditions of the Tribe that Assistance may be deemed necessary regardless of individual income or wealth. For example, states provide public education to all citizens regardless of individual income or wealth. Some Programs may address both individual and community-based needs. The Council reserves the right to require any applicant applying for consideration based on non-financial or community-based needs to demonstrate how the Program benefits will benefit the tribal community as a whole, including preservation of culture, tradition and self-determination. Approval based on non-financial need criteria is made on a facts and circumstances basis and will be guided by traditional values and culture. A Program will be deemed to be based on community or non-financial needs if so designated by the Council.

#### **Section 20. Promotion of General Welfare.**

All Assistance disbursed pursuant to this GWE Act shall be designed to promote the general welfare, self-determination, culture and tradition of the Tribe. The Tribal Council shall establish objectives for the furtherance of the general welfare, self-determination, culture and tradition of

the Tribe and assess progress on said objectives in connection with its budgeting and/or strategic planning process. Approved Programs shall be renewed, established, modified, or terminated based upon the needs of the Tribe as compared to the objectives set by the Council from time to time hereunder. All Programs hereunder shall provide a social benefit for the promotion of the general welfare of the Tribe and be limited to purposes consistent with treatment under this GWE Act. Such purposes may include, for example, and not by way of limitation, assistance for medical care, food, shelter, health, education, subsistence, housing, elder and disabled care, assistance to meet cultural, traditional and religious needs of the Tribe and its Membership, and assistance to promote self-sufficiency, self-determination, Tribal image, entrepreneurship, and the employment of Tribal Members. Designation by the Tribal Council of a Program as falling under this GWE Act shall be conclusive evidence that the Tribal Council, following a good faith review of Tribal needs and goals, has determined that said Program is established to achieve a social benefit and to promote the general welfare of the Tribe.

#### **Section 21. Eligibility and Application Procedures.**

Each approved Program shall set forth the specific eligibility rules and limitations applied to that Program. Each designated department shall present program descriptions, which include eligibility rules and limitations, along with application forms and procedures, for approval by the Tribal Council or its designee. Only those descriptions, application forms and procedures which are approved by the Tribal Council or its designee shall be in force and effect. Program guidelines may limit benefits to an identified group of Members or Qualified Nonmembers, as applicable. All Programs may be limited by budget availability. In the absence of specific Program guidelines to the contrary, all Programs shall be deemed to incorporate eligibility criteria necessary for compliance with IRS Code Section 139E.

#### **Section 22. Limited Use of Assistance; Substantiation.**

All Assistance disbursed or provided pursuant to this GWE Act must be used for the purpose stated in the approved Program description, and any application for the applicable Assistance. The Tribe or its designee shall keep books or records deemed appropriate to demonstrate compliance with the GWE Act. Recipients of benefits hereunder are responsible for maintaining books or records as may be required for substantiation to the IRS for individual income tax purposes. In the event that Assistance payments and/or services are used or pledged for a purpose inconsistent with the purpose set forth in the applicable approved Program or the Member's application, the Tribal Council or designee may require the repayment of the welfare assistance payment. The Tribal Council or designee is authorized to offset any other payments owed to a Tribal Member if such an offset is necessary to secure repayment of a welfare assistance payment in accordance with this Section.

#### **Section 23. Limitation on Payments; Annual Budgeting.**

1. Limitations on Welfare Assistance Payments. The Tribal Council, within its annual budgets, by resolution or by motion, may adopt guidelines establishing the maximum Assistance payments to be made to Tribal Members for certain specified purposes or programs or may delegate the establishment of such limitations to the program level. Such guidelines may also include, for example and without limitation, factors to be considered in determining whether deviations from the general payment limitations should be permitted. Departments charged with administering particular programs may be delegated authority to adopt program guidelines to the extent not contrary to the overall guidelines and limitations established by the Tribal Council hereunder. In no event shall Assistance be lavish or extravagant.

2. **Annual Budgeting: Unfunded Program.** The Tribal Council, through its annual budgeting process, by resolution or by motion, shall designate those funding sources that are available for the payment of Assistance benefits. Notwithstanding anything to the contrary, the Assistance payments authorized hereunder shall be “unfunded” for tax purposes and no Beneficiary shall have an interest in or right to any funds budgeted for or set aside for Assistance payments until actually paid. Assistance benefits shall remain assets of the Tribe until distributed, and the Approved Programs shall be administered to avoid premature taxation through the doctrines of constructive receipt and/or economic benefit.

#### **Section 24. Forfeiture of General Welfare Assistance.**

- A. Notwithstanding anything herein to the contrary, Assistance benefits may be revoked or forfeited for any Beneficiary who is found to have misapplied program funds or to have made any misrepresentations during the application process. Assistance may also be forfeited should said benefits be treated as a resource to the detriment of the Tribe or a Beneficiary. The Tribe shall have a right of recovery with regard to any excess or improper payments hereunder.
  1. **Due Process.** Each program shall offer procedures that afford a Beneficiary an opportunity to address forfeiture issues or concerns with the program director or designee.
  2. **Anti-Alienation.** A Tribal Member’s rights to apply for General Welfare assistance payments and/or services under this GWE-Emergency Assistance are not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, levy, attachment or garnishment by creditors.

#### **Section 25. Programs not Limited to Means Testing.**

Programs that qualify under IRS Code Section 139E or the IRS Safe Harbor shall not require a showing of individual need or means testing in order to achieve non-taxable treatment under the General Welfare Exclusion. The Tribe also reserves the right to provide community-based Programs and Programs based on non-financial need under the General Test that are not individually means tested. The Tribe recognizes that means testing can distort certain tribal cultural and community values. The Tribe has participated in consultation with the United States Treasury Department and IRS and will evaluate Programs periodically as guidance is further developed through consultation with the Tribe.

#### **Section 26. Privacy; Information Sharing.**

The Tribe will maintain records regarding sensitive tribal and tribal Member matters, including tribal customs, religion and traditions, confidential from third party disclosures to the fullest extent permitted at law. If information is requested by IRS or other government agencies or third parties during a compliance review or examination disclosures shall be limited to the extent necessary and required by law pending an effort to address such requests through consultation and other rights under Executive Order 13175 on a government-to-government basis. Confidential Tribal information shall not be shared in a manner that would open up additional disclosure, for example, under information sharing agreements the recipient may be subject to or under the Freedom of Information Act.

#### **Section 27. Government-to-Government Relationship; Executive Order 13175.**

Coordination with IRS and the United States Treasury Department on General Welfare matters shall be grounded on a government-to-government relationship that recognizes the unique relationship between the federal government and the Tribal government. The federal government,

as a result of its treaty obligations and trust responsibility, has committed to providing education, housing, clean water, and many other basic needs for Indian people. Through a conscientious shift in policy in recent decades, the federal government has encouraged the Tribe itself to provide for such needs in partnership with the federal government and, increasingly in recent years, instead of the federal government. Essential to the government-to-government relationship is mutual respect and deference to Tribal governance decisions. Future consultations on General Welfare matters should reflect these concerns and the fact that the Tribal government, through its own policy setting process, is best situated to determine the needs of the Tribe and its Members and the appropriate policy solutions. All references to Executive Order 13175 shall include any future amendments thereto.

#### **Section 28. Other Tax Exemptions.**

Notwithstanding anything herein to the contrary, the Tribe reserves the right to waive income limits or needs basis criteria, to the extent otherwise applicable, for expenditures that otherwise qualify for tax exemptions including tax exemptions under this GWE Act, or 25 or 26 of the United States Code so long as the conditions for exemption are met.

Without limitation, this includes Member medical benefits exempt under Section 9021 of the Patient Protection and Affordable Care Act of 2010 (Code Section 139D) and per capita expenses exempt under 25 U.S.C. Sections 1407 and 1408.

#### **Section 29. Governing Law; Venue**

All rights and liabilities associated with the enactment of this GWE-Emergency Assistance, or the welfare assistance payments made hereunder, shall be construed and enforced according to the laws of the Washoe Tribe of Nevada and California. Venue for any action arising hereunder shall be in the Washoe Tribal Court.

#### **Signature and Formal Adoption**

This General Welfare Exclusion Act having been formally adopted upon a majority vote of the duly elected Washoe Tribal Council is executed and deemed in full force and effect this 28<sup>th</sup> day of July, 2020.



SERRELL SMOKEY

Chairman

Washoe Tribe of Nevada and California