

TITLE 2. ADMINISTRATION AND GOVERNMENT SERVICES

Chapter 2.8

GENERAL WELFARE ASSISTANCE

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2.8.1. Purpose. The Suquamish Tribe of the Port Madison Indian Reservation (“Tribe”), a federally-recognized Indian Tribe, exercises its inherent sovereign right to promote the general welfare of the Tribe and its members, its self-determination, culture, and tradition, by providing general welfare programs and individual assistance. Both the United States Congress, through its enactment of the Tribal General Welfare Exclusion Act of 2014 (Public Law 113-168), and the Internal Revenue Service, through its traditional application of the General Welfare Doctrine and subsequent guidance, have recognized the sovereign right of Indian tribal governments to provide assistance to its citizens under certain circumstances on a non-taxable basis. This chapter affirms the Tribe’s sovereign right to provide benefits and assistance on a non-taxable basis; without limitation, the following benefits and assistance will be treated as non-taxable:

(a) Benefits that satisfy the requirements of Internal Revenue Code Section 139E;

(b) Benefits that are provided under an Internal Revenue Service Safe Harbor Program;

(c) Benefits that qualify for an exclusion under the Internal Revenue Service General Welfare Test; or

(d) Benefits that meet any other express exemption under the Internal Revenue Code, such as the exemption for tribal medical expense assistance under Internal Revenue Code Section 139D, or that meet other recognized exemptions including resource or land-based exemptions under 25 U.S.C. Sections 117a-b, 1407 and 1408 and 26 U.S.C. Section 7873. (Res. 2016-138, passed Aug. 29, 2016)

2.8.2. Definitions. For purposes of this chapter, the following words and phrases will have the meanings set forth below.

(a) “Applicant(s)” means an enrolled Suquamish Tribal member, a qualified non-member, or an identified group who is eligible for a specific approved program and who has applied for assistance under this chapter.

(b) “Approved program(s)” means any program or programs the Tribal Council has approved to provide general welfare assistance to applicants that are intended to qualify under the General Welfare Doctrine, as defined in this chapter. It may include, for example, the payment of benefits related to housing, education, elder or disabled status, cultural and religious programs or for other qualifying assistance, such as transportation costs.

(c) “Assistance” means benefits, services, and payments under an approved program, which are provided by the Tribe and/or paid to or on behalf of a beneficiary as set out in this chapter. The recipient may be required to pay such assistance back to the Tribe if the program administrator and Executive Director or Deputy Executive Director determine that the recipient abused the program as set out in section 2.8.12 of this chapter.

(d) “Beneficiary” means the recipient of general welfare assistance payments or direct benefits or services as set out in this chapter.

(e) “Council” or “Tribal Council” means the properly elected governing body of the Suquamish Tribe of the Port Madison Indian Reservation, a federally recognized Indian tribal government.

(f) “General Welfare Doctrine” means the doctrine, as recognized by the Internal Revenue Service, acknowledging that a sovereign tribal government may provide assistance to its citizens that does not subject the recipient to federal income tax liabilities, subject to certain conditions.

(g) “General test” means the standards by which benefits or assistance are found to be non-taxable; benefits are non-taxable if they: (1) arise under a Tribal Council approved program that does not discriminate in favor of the Tribal Council members; (2) promote the general welfare of the Tribe and its members; (3) are made available to

any applicant who satisfies the program policies and procedures, subject to available budget; (4) are not provided as compensation for goods and/or services; and (5) are not lavish or extravagant under the facts and circumstances, as the Tribal Council determines.

(h) "Lavish" and/or "extravagant" has the meaning the Tribal Council determines in its sole discretion based on all facts and circumstances, taking into account needs unique to the Tribe as well as the social purpose the particular assistance at hand serves, except as otherwise may be required for compliance with final guidance issued under IRS Code Section 139E following consultation between the Tribe and the IRS.

(i) "Qualified non-member" means an individual who is not an enrolled member of the Tribe but who is a spouse, dependent, ancestor, domestic partner or descendant of a Suquamish Tribal member.

(j) "Identified group" means Suquamish Tribal members and qualified non-members who are members of an identified group, such as veterans or tribal foster care families.

(k) "Safe Harbor Program" refers to an assistance program that meets the safe harbor requirements set forth in the Tribal General Welfare Exclusion Act of 2014 (Pub. L. 113-168), any amendments to that Act, and IRS Revenue Procedure 2014-35 and any future guidance the Internal Revenue Service issues. Need is assumed to exist for assistance provided under a Safe Harbor Program. (Res. 2016-138, passed Aug. 29, 2016)

2.8.3. Ratification of Prior Acts; Legislative Intent. (a) The Tribal Council, acting as the Tribe's legislative body and through its properly-elected members, has traditionally exercised the Tribe's sovereign right to provide assistance in order to promote the general welfare and best interests of the Tribe and its members.

(b) The enactment of this chapter does not invalidate any prior acts and exercises of the Tribe's sovereign authority in providing assistance before this chapter's effective date; the Tribal Council by this section specifically ratifies its prior acts providing such assistance.

(c) The Tribal Council by this section further finds that all such need-based assistance provided to promote the Tribe's general welfare is, and has been, intended to reflect the sovereign act of a legislative body under the General Welfare Doctrine.

(d) This chapter, therefore, does not create or establish new general welfare assistance rights or any related program but only memorializes, confirms and codifies existing procedures the Tribe uses in administering its assistance programs and services to its members, qualified non-members and identified groups, which are by this chapter declared to be an inherent right of Tribal sovereignty that the Council exercises. This chapter establishes a framework to engage in providing general welfare assistance

through coordination and compliance with the General Welfare Doctrine. (Res. 2016-138, passed Aug. 29, 2016)

2.8.4. Assistance Not Entitlement or Treated as a Resource. Assistance under this chapter comes from the assets of the Tribal government and, as such, all payments are subject to the availability of budgeted Tribal governmental funds. Tribal assistance is not guaranteed under this chapter. Assistance is provided on the basis of need and may not be treated as an applicant's resource for any purpose. (Res. 2016-138, passed Aug. 29, 2016)

2.8.5. Federal Trust Obligations. The Tribe reserves the right to provide assistance when federal funding is insufficient to operate federal programs designed to benefit applicants and when federal funding is not enough to adequately and consistently fulfill federal trust obligations. The Tribe's adoption of its approved programs is not intended to relieve or diminish the federal government's funding and trust responsibilities. Nothing in this chapter waives the Tribe's right to seek funding shortfalls or to enforce the trust rights of the Tribe and its citizens. The Tribe is entitled to government-to-government consultation and coordination of rights with the federal government in regard to this chapter. (Res. 2016-138, passed Aug. 29, 2016)

2.8.6. Tribal Council Approved Programs. The Tribal Council must designate approved programs for which it will budget funds each fiscal year, consistent with this chapter's purposes. The purpose, eligibility, and funding of each approved program must be consistent with the General Welfare Doctrine. An approved program must be established and operated to promote the general welfare of the Tribe, including programs designed to promote its citizens' health, education, self-sufficiency, self-determination, culture and tradition, entrepreneurship, and employment. (Res. 2016-138, passed Aug. 29, 2016)

2.8.7. Eligibility and Application Procedures. Assistance intended to qualify for General Welfare Doctrine treatment is limited to enrolled tribal members, qualified non-members, and identified groups. Each approved program must clearly state its specific eligibility rules and limitations and may limit benefits to an identified group of tribal members and qualified non-members. Each approved program's administrator must present program descriptions, which include eligibility rules and limitations, along with application forms and procedures, to the Tribal Council for approval in accordance with this chapter. Only those descriptions, application forms and procedures that the Council approves will be considered to be in full force and effect. (Res. 2016-138, passed Aug. 29, 2016)

2.8.8. Limited Use of Assistance Payments; Substantiation. All assistance must be used for the purpose stated in the approved program description and in the applicant's application. If assistance is used or pledged for a purpose that is not consistent with the approved program's stated purpose or the applicant's application, the recipient will be required to repay the funds and any staff who authorize assistance not consistent with the program's purpose, eligibility requirements, or benefit level will be subject to

employment discipline. Approved program administrators will keep records appropriate to prove compliance with this chapter and to provide reports to the Tribal Council on the number of applicants served and the ways in which the approved program has accomplished its purposes in promoting the general welfare of the Tribe and its members, self-determination, culture and traditions. (Res. 2016-138, passed Aug. 29, 2016)

2.8.9. Programs Not Limited to Means Testing. Programs that qualify under Internal Revenue Code Section 139E or the Internal Revenue Service Safe Harbor designated programs will not require a showing of individual need or means testing in order to achieve non-taxable treatment under the General Welfare exclusion. (Res. 2016-138, passed Aug. 29, 2016)

2.8.10. Programs Meeting the General Test. Programs that are not specifically listed for non-taxable treatment under Internal Revenue Code Section 139E or as an Internal Revenue Service Safe Harbor program will still be treated as non-taxable if the approved program satisfies the general test for treatment under the General Welfare exclusion. For purposes of the general test only, need must be shown in one of the following ways:

(a) Individual Need. Certain programs may be based on individual need. For those programs, 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 approved program may take into account individual circumstances or extraordinary need instead of relying on income alone.

(b) Community Need. Certain programs may be based on community need, which is important to the Tribe's self-determination, culture and traditions such that the assistance provided may be considered appropriate regardless of individual income. (Res. 2016-138, passed Aug. 29, 2016)

2.8.11. Unfunded Program. Regardless of anything to the contrary, the assistance authorized in this chapter is "unfunded" for tax purposes and no applicant will have an interest in or right to any funds budgeted for or set aside for approved programs until the funds are paid. Assistance funds remain assets of the Tribe until distributed and the approved programs must be administered at all times to avoid triggering of the doctrines of "constructive receipt" and/or "economic benefit." (Res. 2016-138, passed Aug. 29, 2016)

2.8.12. Penalty for Abuse of Program. Regardless of anything in this chapter to the contrary, the approved program administrator, acting on behalf of the Council, may take away assistance from any applicant who the administrator finds has violated this chapter's terms, or any approved program's policies and procedures. The administrator may also decline assistance to the applicant if that assistance is treated as a resource and is detrimental to the Tribe or an applicant. The approved program administrator is

also authorized to offset any other payments owed to such an applicant, if an offset is necessary to secure repayment of assistance wrongfully collected under this chapter. If assistance is taken away from an applicant, all assistance provided to the applicant under this chapter will be considered a loan and enforceable as such. (Res. 2016-138, passed Aug. 29, 2016)

2.8.13. Anti-Alienation. An applicant's right to apply for assistance is not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment by the applicant's creditors. (Res. 2016-138, passed Aug. 29, 2016)

2.8.14. Governing Law; Sovereignty. All the rights and liabilities that come with enacting this chapter, or the assistance made under this chapter, will be construed and enforced according to the Tribe's laws and applicable federal law. Nothing in this chapter or the related policies or procedures adopted to implement it, if any, will be construed to make any laws or regulations apply to the Tribe which otherwise do not apply to the Tribe or from which the Tribe is entitled to exemption because of its sovereign status. (Res. 2016-138, passed Aug. 29, 2016)

2.8.15. Adoption and Effective Date. The Tribal Council adopted chapter 2.8, General Welfare Assistance, as a new chapter to the Tribal Code on August 29, 2016 by Resolution 2016-138. This chapter takes effect on January 1, 2017. (Res. 2016-138, passed Aug. 29, 2016)

2.8.16. Amendments. (Reserved). (Res. 2016-138, passed Aug. 29, 2016)