

Remarks by Dr. Elaine Buckberg, Treasury Point of Contact for Tribal Consultation and Deputy Assistant Secretary for Policy Coordination in the Office of Economic Policy, for the Tribal Consultation Listening Session held during the United South and Eastern Tribes Impact Week Meeting

As Prepared for Delivery

INTRODUCTION

Good afternoon. My name is Elaine Buckberg, and I am the Treasury's Point of Contact for Tribal Consultation. I also serve as Deputy Assistant Secretary for Policy Coordination in the Office of Economic Policy.

I'd like to thank USET for inviting me to participate in their meetings and making this space and time slot available for a Treasury Department listening session.

As always, I want to emphasize at the outset how much Treasury respects and values the sovereign-to-sovereign relationship between your tribal governments and the Federal government.

We are committed to tribal consultation as part of the government to government dialogue between the federal government and tribes, as sovereign nations. The tribal consultation process allows us to better understand your concerns, your needs, and your circumstances—and to better address them.

We recognize the many challenges facing tribal nations today. We thank you for your willingness to work with us to find ways to make our governments more responsive and effective.

Before we begin the listening portion of today's meeting, I want to update you on Treasury initiatives affecting tribes in the areas of tax, economic development, and access to credit. I know tax issues are an important policy priority for tribes, so let me begin there.

GENERAL WELFARE EXCLUSION

As many of you are aware, the general welfare exclusion is an administrative exclusion under which certain payments are not included in a recipient's taxable income. These payments generally are made to or on behalf of individuals by governmental units under certain social benefit programs for the promotion of the general welfare. To qualify under the general welfare exclusion, the payments must (1) be made pursuant to a governmental program, (2) be for the promotion of the general welfare (that is, based on individual or family need), and (3) not represent compensation for services.

The general welfare exclusion does not restrict the benefits a tribe may provide its members. As sovereign governments, tribes are free to provide benefits on whatever basis they see fit subject

to other provisions of law. But the general welfare exclusion determines whether the benefits provided by tribal governments to their members should be included in the taxable income of the benefit recipient.

In December 2012, the IRS issued preliminary guidance on Indian Tribal government benefits covered by the general welfare exclusion. We received a number of thoughtful comments from tribes and are currently considering those comments in preparing to issue final guidance. We expect to issue final guidance sometime this spring.

Let me also speak to the implementation of the interim guidance. The IRS Office of Indian Tribal Governments began implementing the preliminary guidance as soon as it was announced in December 2012.

If any new audits relating to GWE have arisen since the preliminary guidance was issued, those would have been reviewed at the national level of the IRS Office of Indian Tribal Governments to ensure consistency in the application of the new guidance. The guidance is applicable to those prior taxable years for which the period of limitation on credits and refunds has not expired. If a GWE-related audit was concluded prior to the issuance of the new guidance, tribal members may be able to remedy the prior decision by filing an amended return based on the new guidance. There were some audits already in process that involved GWE as a secondary issue. Most of those GWE audit issues were immediately resolved based on the preliminary guidance. During the past year, the IRS has worked with tribal representatives and field staff to help them incorporate the new guidance into their operations.

While previous GWE audit issues have been raised to our attention, I believe these are behind us. If you have specific concerns tied to audit activity involving a particular tribe since December 2012, please contact Joe Kincaid, Acting Director of the IRS Indian Tribal Governments Program, or Christie Jacobs, Director of IRS ITG. We are optimistic that the forthcoming final guidance will resolve GWE issues going forward.

PER CAPITA ACT GUIDANCE

Last week, we conducted a tribal consultation via conference call to discuss forthcoming guidance concerning the federal income tax treatment of per capita distributions made to Indian tribe members from funds held in trust by the Secretary of the Interior. Over 170 callers participated in the consultation call.

As you probably know, generally, funds may be accepted by the Secretary of the Interior on behalf of federally recognized Indian tribes and certain individual Indians who have an interest in trust lands, trust resources, or trust assets. The forthcoming guidance will clarify the income tax exclusion for per capita payments made to Indian tribe members from funds held by the Secretary for the benefit of the tribe.

Under the Per Capita Act of 1983, tribes are authorized to make trust per capita distributions from these accounts directly to tribal members when the distributions conform to standards established by the Secretary of the Interior. In September 2012, Treasury and the IRS released

guidance on per capita distributions from specific settlements. Since that time, we have received many requests that we address the tax status of per capita payments more broadly. We understand that this is a high priority for Indian Country.

Expanding guidance to per capita distributions more broadly is not as simple as restating the existing guidance on settlements. With the settlements, we know the precise source of the money to be distributed per capita. In the general case, trust funds administered by the Interior Department may originate from a range of income sources. Therefore, over recent months, in response to your requests that we issue more general guidance on this matter, we have worked closely with the Department of Interior's Bureau of Indian Affairs to understand their policies and operations relating to the leasing of Trust land, income entering tribal Trust accounts, and per capita distributions from those Trusts.

We expect this new guidance will establish a general rule that per capita payments to tribal members that are made from trust accounts administered by the Interior Department are not subject to the federal income tax for individuals. The guidance will also likely provide exceptions to the general rule to account for the rare but occasional attempt to disguise taxable income as a non-taxable per capita payment. Examples of this may include: disguised business profit distributions, disguised compensation, and gaming revenue disguised as trust funds.

We know how important tribal trust assets are to you, so we recognize the significance of this guidance. I greatly appreciate that so many tribal representatives have taken the time to discuss this with us so that we can make the guidance as effective as possible.

CDFI FUND STUDY

Finally, I would like to mention briefly that Treasury's Community Development Financial Institutions Fund, or CDFI Fund, has begun a study to address the challenges of access to capital in Native Communities. We expect the study to provide a detailed analysis and quantitative research that can lead to actionable recommendations for improving access to capital and credit in Native Communities. These types of studies are tremendously important—a study in 2001 led to the creation of the highly-regarded Native American CDFI Assistance Program, which provides both funding and technical assistance for the delivery of financial services in Native Communities. I encourage all of you to participate in this new study.

There will be CDFI Native Initiatives consultation tomorrow, on Tuesday, February 4, 2014, from 1:00 am - 6:00 pm. It will be held in the Crystal Gateway Marriott - Salon A. I hope you will be able to participate in this consultation and provide input for the study.

TREASURY STAFF INTRODUCTIONS

In these opening remarks I've mentioned the three issues that are on our front burners this spring. Since this is a general listening session, I have invited Treasury and IRS staff members who work in a variety of specialized areas so that they can hear your comments on the issues that they cover. The offices and bureaus represented here include the IRS Indian Tribal Governments program, the IRS General Counsel's office, the offices of Tax Policy and Economic Policy, the

Community Development Financial Institutions' Native Initiatives, and the Bureau of the Fiscal Service.

CONCLUSION

We have the use of this room until 3:30. Please note that we must close this session promptly at 3:30 because I have a 4:00 meeting at the main Treasury building with the Deputy Secretary of the Treasury. Please forgive me, as I will need to leave immediately after this session and will be unable to linger to talk further. Also, in deference to others, I suggest that each leader keep their remarks to four minutes or less so others may also speak.