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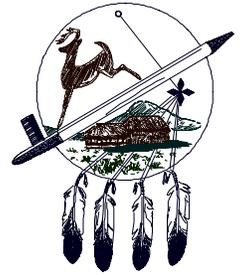
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KICKAPOO

TRADITIONAL TRIBE OF TEXAS



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Via Email

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Public Comment to the Treasury Tribal Advisory Committee

Calling for Immediate Action to Clarify the Purpose and Intent of the Tribal General Welfare Exclusion Act and to Align Federal Needs Based Assistance with Tribal General Welfare Programs

Introduction and Summary

I am writing on behalf of the Kickapoo Traditional Tribe of Texas to thank you for the opportunity to share our comments on a federal tax policy matter that is critical for our Tribe and our tribal members. The Kickapoo Traditional Tribe of Texas submits this statement to further inform the Treasury Tribal Advisory Committee (TTAC) and the TTAC GWE Subcommittee of the urgent need for legislative clarification of the Tribal General Welfare Exclusion Act.

Due to an unintended consequence of ambiguity in the terms of the Tribal General Welfare Exclusion Act (26 U.S.C. § 139E), the most vulnerable members of our tribal community have seen their Supplemental Security Income (SSI) assistance eliminated or reduced because they have received general welfare program assistance from the Tribe. This matter can be remedied for all tribal citizens through legislative terms clarifying that any amount excluded from a tribal member's income under § 139E "shall not be treated as income or taken into account in determining resources" when the Social Security Administration (SSA) assesses tribal member eligibility for SSI assistance.

The Challenges Facing the Kickapoo Traditional Tribe of Texas and its Membership

The Kickapoo Traditional Tribe of Texas is one of three federally recognized tribes in the State of Texas. Most of our Tribal members reside on our Reservation, which is located eight miles south of Eagle Pass in Maverick County, Texas. Our Tribe has more than 10 miles of trust land and adjoining fee land that directly parallels the U.S.-Mexico border.

Maverick County consistently ranks as one of the poorest counties in the United States. The decennial census data does not contain income or other demographic data specific to members of the Kickapoo Traditional Tribe of Texas. Because of the lack of readily available data, the Tribe conducts surveys of its affected members. As our Tribal membership has more than doubled in the past five years, our tribal government has significant needs for service delivery, service capacity, and general welfare assistance to the most vulnerable members of our community.

The COVID-19 Pandemic has compounded the challenges facing our Tribe and our tribal members. Our primary source of revenue, the Kickapoo Lucky Eagle Casino Hotel, was forced to shut down on March 19, 2020 and has not reopened. High rates of Coronavirus infections in Maverick County (3,293 cases, of which 539 are active) (rates as published August 28, 2020) have made this region of Texas a COVID-19 hotspot. In fact, on August 28, 2020, The New York Times reported that Eagle Pass, Texas had the greatest number of new cases, relative to its population, of all metro areas in the United States (11.1 cases per 1,000 people).¹ Across the border in Mexico, the data available is less reliable, yet evidence indicates that the infection rates are even higher. Under these circumstances the Tribe cannot yet forecast when we will be able to return to our normal business and governmental operations.

Even before the Pandemic, however, our experience made clear that to meet the needs of our growing population and to establish greater capacity and self-sufficiency, it will not be enough for the federal tax code to simply provide tribal governments with the same tax immunities and privileges as state and local governments. Tax parity standing alone is not enough. The tax code and tax procedures must also be updated to recognize and accommodate the unique challenges faced by tribal governments and their citizens. These challenges stem from the lack of a tax base on our reservation lands, since they are held in trust by the United States. Additionally, tribal governments face persistent, significant difficulties obtaining access to capital to create jobs and diversify our tribal economy. The establishment of Revenue Procedure 2014-35 and the enactment of the Tribal General Welfare Exclusion Act represent important positive actions that recognize and accommodate the unique circumstances facing tribes and tribal citizens.

The Tribal General Welfare Exclusion Act and the Federal Action that Undermined our Tribe's General Welfare Program

The Kickapoo Traditional Tribe of Texas implemented general welfare programs based on Rev. Proc. 2014-35 and § 139E. Most importantly, under our general welfare policy, we implemented a program to preserve and protect our culture while supporting our Elders through housing assistance that would ensure our members could afford to remain in their homes on our Reservation. The Social Security

¹ Monitoring the Coronavirus Outbreak in Metro Areas Across the U.S., Aug. 28, 2020, *The New York Times*, at <https://www.nytimes.com/interactive/2020/04/23/upshot/five-ways-to-monitor-coronavirus-outbreak-us.html>

Administration (SSA), however, directly undermined our efforts. Instead of our general welfare program serving as an additional pillar of support to vulnerable members of our tribal community, the SSA eliminated or reduced the Supplemental Security Income (SSI) assistance many tribal members relied upon. Due to ambiguity in the terms of the Tribal General Welfare Exclusion Act (26 U.S.C. § 139E), the most vulnerable members of our tribal community have seen their SSI assistance eliminated or reduced because they received general welfare program assistance from the Tribe.

The Tribal General Welfare Exclusion Act (26 U.S.C. § 139E) authorizes a tribal government to make general welfare assistance payments to tribal members that are excluded from the recipient's gross income for tax purposes. That Act is silent, however, as to whether the SSA may consider these tribal payments in determining the SSI eligibility of tribal members.

The SSA has been engaged in targeted audits of Kickapoo tribal members who receive SSI assistance. For those members that the SSA determined to have received assistance from our Tribal General Welfare assistance programs, the SSA has eliminated or reduced the SSI assistance because the tribal assistance payments increased those individuals' incomes above the SSI eligibility thresholds. The SSA's actions to reduce or eliminate SSI assistance has harmed tribal citizens, particularly elders who rely on SSI assistance and are a vulnerable population. We view this SSA action as having undermined fundamental purposes of the Tribal General Welfare Exclusion Act.

Our Request for TTAC and Treasury Department to Support Legislative Adoption of a Clarification of § 139E and to Work for its Prompt and Effective Implementation

In light of this alarming situation, the Kickapoo Traditional Tribe of Texas submits this statement to the TTAC and the TTAC GWE Subcommittee. Please note that we do not view our concerns as matters for further studies or reports. Rather, we view this situation as urgent and seek an immediate legislative clarification of the Tribal General Welfare Exclusion Act. We call for TTAC and Treasury's active support and engagement.

As many of you know, the Kickapoo Traditional Tribe of Texas and other tribal representatives initially sought an administrative correction to address the problem. The existing SSA regulations list the types of program benefits that will not be considered "income" in determining SSI eligibility. Amounts paid pursuant to the listed programs are not considered income for the purpose of determining SSI eligibility because, by federal law, such payments are excluded from individual income. These include nutrition and meal support; housing and utilities support; education, including BIA student assistance; elder ("Older American") assistance; disability assistance; child care support for workers; employment training; TANF assistance; restitution; etc. These categories of assistance are the same or similar to the support provided to tribal citizens pursuant to the Tribal General Welfare Exclusion Act. Under that Act, the benefit payments tribal citizens receive under qualified tribal general welfare programs are excluded from individual income. Tribal advocates urged SSA to update its list of programs to include Tribal General Welfare assistance programs as among those exclusions not taken into consideration for SSI benefits.

The SSA advised that the change cannot be made administratively because Congress did not directly address this issue in the language of Section 139E of the tax code. The Kickapoo Traditional Tribe of Texas has called for Congress to amend Section 139E to make such a clarification, which we view as

wholly consistent with the purposes and intent of the Tribal General Welfare Exclusion Act. NCAI Resolution #MOH-17-019 also supports the enactment of federal legislation to amend the Tribal General Welfare Exclusion Act to exclude tribal general welfare benefits from income for federal program benefits purposes.

Section 139E acknowledges the cultural values tribes place on community wellness, and exempts tribal government programs, services, and benefits for tribal members from income under the tax code. These tribal services improve the welfare of tribal members and should be excluded from consideration in federal benefit formulas. Congress should clarify that a general welfare assistance benefit provided by a tribal government pursuant to Section 139E is excluded from consideration for purposes of determining the recipient's eligibility to receive supplemental security and disability income benefits (42 U.S.C. § 1381 et seq.).

The Kickapoo Traditional Tribe of Texas has presented the following terms to its Congressional Representatives, to congressional committee staff and to other tribes and tribal organizations.

Proposed amendment to clarify that a benefit provided by a tribal government pursuant to the Tribal General Welfare Exclusion Act (26 U.S.C. § 139E) is excluded income for purposes of determining the recipient's eligibility to receive supplemental security income benefits (42 U.S.C. § 1381 et seq).

“26 U.S.C. § 139E is amended by adding at the end a new subsection (d) as follows:

(d) COORDINATION WITH CERTAIN MEANS-TESTED PROGRAMS. For purposes of Title XVI of the Social Security Act (Supplemental Security Income for the Aged, Blind and Disabled), any amount excluded from gross income under this section shall not be treated as income (and shall not be taken into account in determining resources).”

We call on the TTAC and Treasury to support the enactment of this provision and to work for its prompt and effective implementation.

Thank you for your consideration of the concerns and requests of the Kickapoo Traditional Tribe of Texas.

Sincerely,


Juan Garza, Jr.
Chairman

cc: Senator John Cornyn
Senator Ted Cruz
Representative Will Hurd