

LUMMI INDIAN NATION-

TITLE 42- FOREIGN TAX CODE -

Statement of Sovereign Relationship: The Lummi Nation has a nation-to-nation relationship with the United States established by a peace treaty (Treaty of Point Elliot, 12 Stat. 927, 1855 Negotiated, Ratified & Proclaimed in 1859). The Lummi Nation proclaims it's inherent sovereignty is intact; although, under duress from the US Termination Policy and attempts to "*Kill the Indian to Save the Man*" policy & programs, it has ratified a "Lummi Constitution" to guide its exercise of modern self-determination and self-governance. The Lummi Nation claims the U.S. Constitution was written in such fashion as to assure "Tribal Indians" were not a part of "*We the People of the United States*" and would not be taxed or represented by the US Government (Art. I, Sec. 2, Cl. 3 and 14th Amendment). The Indian Nations were not a part of the United States system of government, and this is why the US entered treaties with the tribes (Art. II, Sec. 2, Cl. 2; See: Kapplers, Volume II). Once the Senate ratified and the President proclaimed the treaty-made then it became a part of the "Supreme Law of the Land" (Art. VI, Sec. 2). Disputes over the treaties-made could be reviewed by the Supreme Court (Art. III, Sec. 2, Cl. 1). The US Congress could regulate commerce *with* the tribes as delegated by the Commerce Clause (Art. I, Sec. 8, Cl. 3). Individual states could not enter treaties with the tribes (Art. I, Sec. 10, Cl. 1 and Reconstruction Debates of 39th & 40th US Congresses) or govern commerce with the tribes (Dormancy Aspect of Indian Commerce Clause). To join the Union on an Equal Footing (See: NW Ordinance 1787, and History of Article IV US Constitution), the states disclaimed jurisdiction over Indian Affairs (by territorial act or constitutional article). The State of Washington included this "Disclaimer" in its constitution as Article XXVI- Disclaimer.

Federal and state powers to enter Indian Country for purposes of taxation has resulted from decisions that came from the Tax Courts, and supported by the Supreme Court, mainly since 1956. Primary examples of damaging decisions are- Squire (1956) as regards federal taxation, and Cotton Petroleum (1989) as regards state taxation. Taxation of Tribal Indians are resultant from the 1924 Indian Citizenship Act (contrary to constitutional intent, See: Elk v. Wilkins, 1884, as well as language inserted in the citizenship act itself). The Department of Interior's Solicitor's Opinion (1940) on "Excluding Indians not Taxed" also weakened tribal rights and protections against taxation. This opinion concluded that there are no more "Excluding Indians not taxed" in existence (however, there are over 565 Federally Recognized Tribes today with an estimated three million tribal Indian members). This "Opinion" meant there were no more "Tribal

Indians” protected or excluded from taxation by language of the Constitution- even though the constitution was not amended for this. In fact, the 14th Amendment was worded to prevent this very conflict. The Lummi Nation believes the taxation campaign waged by the IRS against Indian Country, and tribal Indians, is unconstitutional. Until we prevail in a constitutional challenge, this “Foreign Tax Code” is hereby enacted by the Lummi Nation.

In addition, the State of Washington had attempted to comply with the federal authorizations for specific types of assumption of jurisdiction inside the boundaries of the Lummi Reservation - under the authority of Public Law 280. This act provided authorization for the state to assume jurisdiction over mandatory school attendance, juveniles, and traffic type of offenses. It has, today, limited authorization. This law required the individual states, before assuming this type of jurisdictional authority, to amend either the organic laws of the original territory that proclaimed it did not have jurisdiction over Indians and Indian Affairs, or to amend the state constitution- if the “Disclaimer” was included therein. Washington State assumed claims to jurisdiction over Lummi Tribal Indians and the Lummi Reservation without compliance with the amendment requirement, and Article XXVI of the Washington State Constitution is still legally binding on the state. The Supreme Court has ruled that it is a “matter of state” law for enforcement of the state constitutional amendment matter. The Lummi Nation has always denied the State of Washington has lawfully assumed jurisdiction over the Lummi Reservation and People. However, the state governor, the state legislature, and the state supreme court have not fallen into compliance with the state constitution and it will require a major lawsuit of “We the People of the State of Washington” to force compliance. This may be partially avoided if the State seeks Retrocession of PL 280 Jurisdiction over the Lummi Reservation as authorized by the amended federal law. This retrocession is not done solely upon the request of the tribe.

However, it is the position of the Lummi Nation that the State of Washington has never had the legal authority to exercise taxation jurisdiction inside the boundaries of the Lummi Reservation and any such authority exercised is based on legal fictions created by the courts and not by Acts of Congress, US constitutional amendment, state constitutional amendment, or treaties-made. The State of Washington has entered into Tobacco and Fuel “Compacts” with the Washington Tribes, including the Lummi Nation, and as a result of the legal fictions created by the U.S. Supreme Court. Under duress the tribes had agreed to enter such compacts. However, such compacts are constitutionally (national constitution) limited in the negative to the states unless approved by Congress (Article I, Section 10, Cl.1). Such limited congressionally authorized tribal/state compacts were authorized (under Article I, Section 10, Clause 1) for gaming purposes only, in the Indian Gaming Regulatory Act (1988). This placed tribes at the level of “states” for the purposes of compacts.

The Lummi Nation believes the State of Washington, and the United States, are both constitutionally liable for unconstitutional taxation of Indian revenues, gross income, and commerce or trade inside Indian Country.

CHAPTER 42.1. - “TRIBAL GENERAL WELFARE EXCLUSIONS CODE”- PER TITLE 26 U.S. INTERNAL REVENUE CODE SECTION 139E

Chapter/Subchapter/Section

42.1..010 General

1. Purpose
2. Background and Intent
3. Definitions

42.1.100 Ratification of Prior Acts: Intent of Legislation

42.1.1 10 General Welfare Doctrine; Rules of Construction

42.1.120 Non-Resources Designation

42.1.130 Federal Trust Obligations; Executive Orders

42.1.200 Indian General Welfare Benefits (Code Section 139E)

42.1.201 Safe Harbor Programs

42.1.202 Programs Meeting the General Test

42.1.203 Purpose

42.1.204 Eligibility and Application Procedures

42.1.205 Limited Use of Assistance; Substantiation

42.1.300 Limitation on Payments; Annual Budgeting

42.1.400 Forfeiture of General Welfare Assistance

- 42.1.500 Programs not Limited to Means Testing
 - 42.1.501 Privacy; Information Sharing
 - 42.1.502 Government-to-Government Relationship; Executive Order 13175
 - 42.1.503 Other Tax Exclusions or Exemptions
- 14
- 42.1.600 Governing Law
 - 42.1.700 Severability

LUMMI INDIAN NATION GENERAL WELFARE EXCLUSIONS CODE

42.1.010 General.

This code shall be known as the Lummi Indian Nation General Welfare Exclusions Code

(1) Purpose- The first purpose of this code is to memorialize the procedures used by the Lummi Nation to determine what services or programs are needed to promote public health, safety and other basic need service(s) for the promotion of the general welfare of the Nation – such as but not all inclusive, sewer, water, electrical service/power, infrastructure, housing, public sanitation services, public education and other such functions that support the long historical, social, and cultural general welfare of the Nation. The second purpose of this code is to establish basic guidelines and procedures for programs to follow in ensuring compliance with the general welfare exclusions doctrine and Internal Revenue Code Section 139E. In addition, it is intended herein to provide guidance and definition to what is composed of “Ceremonial Activity” as included in the Act of 2014.

- A.** The primary purpose is to assure that General Welfare Benefits that are excluded from “Gross Incomes” by the Tribal General Welfare Exclusions Act of 2014 are readily and easily provided to the qualified tribal members, and their spouses and dependents, and are delivered through qualified tribal programs and departments and are broad enough benefits and services to help tribal members overcome the burdens of financial and social hardship;
- B.** The secondary purpose is to assure that the application of the “Ceremonial Activity” Exclusions provided for within the Tribal General Welfare Exclusions Act of 2014 are large enough in scope to assure that ceremonial activity is not taxed by the United States under allegations it is includable under “Gross

Income” of Section 61 Internal Revenue Code of the United States. The 2014 Act excluded such activities from taxation, and it is herein partially defined by the Nation as to what is excludable.

(2) Background and Intent -

The Lummi Nation is a federally recognized tribe. It purposely chooses to exercise its inherent rights of sovereignty to promote & protect the general welfare of the Nation, exercise its self-determination and self-government, to assure protection & preservation of traditional culture & traditional knowledge, and guarantee the preservation and practice of ceremonial activities amongst its individual members and within the tribal collective, and guarantee the transmission of its traditions & customs to the next generations, by providing general welfare assistance and protection of “Ceremonial Activity” as included in the Tribal General Welfare Exclusions Act of 2014, as recognized in Title 26 U.S. Internal Revenue Code Section 139E.

Both the United States Congress, through its enactment of the Tribal General Welfare Exclusion Act of 2014, and the U.S. Internal Revenue Service, through its traditional application of the general welfare doctrine, have recognized the sovereign right of Indian Tribal Governments to provide financial assistance to individuals under certain circumstances on a non-taxable basis- services and benefits otherwise excluded from taxation by the Act of 2014.

This code is intended to affirm the Lummi Nation’s inherent sovereign right to promote the general welfare of the tribe and provide qualifying assistance and program benefit(s) on a tax free, tax exclusion basis. In this light, the 2014 Act excludes “welfare benefits” and “ceremonial activity” from the definition of “Gross Income” and therefore not included as taxable activity. In this regard, the Constitution of the Lummi Nation confirms the sovereign duty and responsibility of the Lummi Nation 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, elevate their common welfare, and protect their cultural heritage and ceremonial health. The Assistance authorized by this code is intended to qualify individuals, groups of qualified members or qualified non-member Indians for tax free treatment to the fullest extent permitted by applicable law. Without limitations, the following benefits shall be treated as non-taxable activity excluded from the definition of “Gross Income” hereunder:

- (a)** Benefits that satisfy the requirements for exclusion under Title 26 U.S. IRC Section 139E;

- (b) Benefits that are provided under an IRS Safe Harbor Program;
- (c) Benefits that qualify for exclusion under the IRS General Welfare Test; or
- (d) Benefits that meet another express exclusion or exemption under Title 26 U.S. Internal Revenue Code, such as the exclusions provided tribal medical expenses under IRC Section 139D, or that meet other recognized exemptions or exclusions including, for example, resource or land-based exemptions under 25 U.S.C. Section 117a-b, 1407 and 1408.
- (e) Benefits of tribal support for, but not interference within, “Ceremonial Activities” common to the traditional culture and spiritual practices of the indigenous peoples, in this case the Lummi Nation.

(3) **Definitions** In construing the provisions of this code, the following words and phrases shall have the meaning designated in this section unless a different meaning is expressly provided or the context provides otherwise.

- (a) **“Assistance”** Any Program benefits or payments that qualify for tax free treatment under the Tribal General Welfare Exclusions Act of 2014,
- (b) **“Benefits”** Any persons or persons entitled to receive Assistance in accordance with specific Program Guidelines. Programs designated to qualify for exclusion under Title 26 U.S. Code Section 139E may benefit Members, spouses of Members, and /or Dependents of a Member. Programs designed to meet the Safe Harbors may benefit any Member or Qualified Non-member.
- (c) **“Code”** means the Title 26 U.S. Internal Revenue Code of 1986, as amended.
- (d) **“Compensation”** for services should reflect that qualifying Programs are not disguised employment. However, this shall not prevent the Nation from structuring Programs with community service ties so long as such ties are consistent with the Tribal General Welfare Exclusions Act of 2014. For example, Programs similar to the Workforce Investment Act may include tax free Assistance.
- (e) **“Constitution”** means the Constitution of the Lummi Nation.
- (f) **“Disability”** or **“Disabled”** – The term disability or disabled as used for purposes of Programs covered by this code shall refer to the inability of an individual to care for himself/herself due to physical or mental limitations and shall be determined in accordance with tribal law.
- (g) **“Dependent”** – The term “Dependent,” for purposes of Title 26 U.S. IRC Section 139E, has the meaning given such term by U.S. IRC Code Section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B).

- (h) “Tribal General Welfare Exclusion”** - Assistance to tribal members or otherwise qualified persons shall be treated as excluded from taxation, so long as it satisfies the requirements for exclusions under Title 26 U.S. IRC Section 139E, as may be provided under a Safe Harbor Program, or it meets the General Test.
- (i) “General Test”** – Assistance will be treated as meeting the General Test under the Tribal General Welfare Exclusion Act of 2014 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.
- (j) “Lavish” or “Extravagant”** – Except as otherwise required for compliance with final guidance issued under Title 26 U.S. IRC 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. *[Note: Based on preliminary research, Poverty level income is at \$24,600 for a family of four, adding \$4320 for each additional person. Median Income is at about \$57,000 annual net for family of four. Mean Income is about \$72,641 annual net for family of four. Moderate Income is about \$95,000 annual net for family of four. Court case (2018) of “Sally Jim” (Miccousukee Tribe) ruled that \$272,000 is “lavish or extravagant.”]*
- (k) “Member”** - The term “Member” shall mean enrolled members of the Tribe and such other individuals who may be treated as members for Assistance as determined by the Tribal Council in accordance with the laws, customs, culture and traditions of the Tribe. Spouses and dependents of Enrolled Tribal members shall be treated the same as the qualified tribal member provided all parties are still members of the same household unit, or the spouse and relevant dependents are covered by a court order holding the missing spouse responsible for care and assistance.
- (l) “Code”** means the Tribal General Welfare Exclusions Code.
- (m) “Pay” or “paid” or “payment”** means pay or reimburse in whole or in part.
- (n) “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.

- (o)** “**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/self-government, socio-economic improvement, education and training, and ceremonial/cultural/traditional health.
- (p)** “**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 Non-members.
- (q)** “**Reservation**” means the reservation of the Lummi Nation or, if the context so permit, any other Indian reservation as defined in U.S. Internal Revenue Code Section 162(j).
- (r)** “**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. Further clarification shall apply once IRS/Tribal Consultations are finalized or otherwise challenged before Congress.
- (s)** “**Service area**” has the same meaning as in USC 25 C.F.R. Section 20.100.
- (t)** “**Service unit area**” means an area designated for purposes of administration of Indian Health Service programs under USC 42 C.F.R. Section 136.21(l).
- (u)** “**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 business grants in part to promote on reservation employment).
- (v)** “**Spouse**” and “**Dependents**” shall be determined in accordance with Tribal laws, customs and traditions.
- (w)** “**Tribal Council**” or “**Council**” means the Lummi Indian Business Council.
- (x)** “**Ceremonial Activities**” are those activities common to traditional cultural and spiritual practices of the tribal and intertribal social collectives, as intentionally excluded from federal taxation by the Act of 2014.

42.1.100 **Ratification of Prior Acts; Intent of Legislation.** This code does not establish a new program or programs. This code is intended to memorialize and confirm existing procedures used in the administration of tribal 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 code is hereby ratified and confirmed as tribal general welfare assistance pursuant to the authority of the

Tribal Constitution. It is intended to establish a framework to improve the coordination of general welfare doctrine compliance and to provide protection of tribal Beneficiaries that have received such services or benefits. Programs and services referred to herein must be authorized by independent action of the Council or its designees. It is, further more, not the intent of this code to create new, modern tribal governmental control over “traditional knowledge transmission through ceremonial activities.” Any “ceremonial activities” mentioned herein is only for the purpose of clarifying what is excluded from federal taxation.

42.1.110 Tribal General Welfare Doctrine; Rules of Construction. The U.S. Internal Revenue Service has historically recognized that payments by a 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. The Tribe participated in that process through comments and supported similar efforts by the National Congress of American Indians, the United South and Eastern Tribes, Inc., the California Association of Tribal Government and the Affiliated Tribes of the Northwest Indians, all seeking clarity with regard to the sovereign right of tribes to provide tax free assistance based on non-financial need criteria including the preservation of tribal culture and tradition.

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. The Tribe asserted all protections provided under the proposed rule and made certain operational changes to Programs where possible to secure additional Member protections under the interim relief. On June 3, 2014, the U.S. Treasury Department issued formal guidance in the form of Revenue Procedure 2014-35 confirming that the 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. 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:

1. 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.”
2. The bill requires that “any ambiguities in new Code section 139E shall be 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.”
3. It “would be contrary to the intent of Congress” if the 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. Proc. 2014-35 after enactment of the bill.”
4. The Congressional intent “is to expand rather than restrict the safe harbor provisions in Rev. Proc. 2014-35.”
5. “The purpose of this legislation is to further empower Tribal self-determination.”
6. “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.”

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. The Tribal Council now expressly embraces the forgoing principles as an integral part of this code and as guiding principles in construing the Tribe’s compliance with Code Section 139E, the Safe Harbor Rules, and the General Test.

The assistance payments and services authorized by this Ordinance 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.

42.1.120 Non-Resource Designation. 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. Benefits paid hereunder on the basis of need shall not be treated as a resource of the Member for any purpose. The Council reserves the right to cancel, adjust, modify or revoke any benefits that are treated as a resource of the Tribal Member. The socio-

economic sufferance of qualified tribal members and their spouses or dependents mandates tribal assistance when said qualified persons are below recognized thresholds that limit their qualification for tribally funded assistance, such as the “Lavish and Extravagant” Ruling in the Sally Jim Case (2018)- provided such assistance that exceeds federal program funding limits are otherwise covered by tribal hard dollar accounts.

42.1.130 **Federal Trust Obligations; Executive Orders.** The Tribe reserves the right to provide Assistance including circumstances where federal funding is insufficient to operate federal programs designed to benefit Tribal Members, their spouses or dependents, 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 obligations 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 Ordinance, in it’s quest to secure such federal funds. Such additional tribal assistance, added to otherwise qualified status under externally funded programs shall not be damaged by disclosure of financial assistance or contributions made by the tribe that is otherwise qualified as not included under “gross income” of the qualified member applying for tribal hard dollar assistance under this code.

42.1.200 **Indian General Welfare Benefits (Code Section 139E).** Programs that meet the following criteria for Exclusion under Code Section 139E shall be treated as non-taxable Assistance under the General Welfare Exclusions Act of 2014 (law) without the applicant having to demonstrate individual need.

(1) General Criteria for Qualification under 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 Ordinance shall be treated as non-taxable Assistance under the General Welfare Exclusions Act (law) 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 such 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 or activity of traditional cultural significance and purpose, reimbursement of costs, or transmission of cash honorarium for participation in cultural or ceremonial activities for the transmission of traditional tribal culture and ceremonial knowledge shall not be treated as Compensation for services.

Caveat: It is not the intent of the Lummi Nation to limit the “exclusion” protection for “Ceremonial Activities” included in the Act of 2014 and made law (Title 26, U.S. Internal Revenue Code, Section 139E) to only tribally managed programs. The Lummi Nation recognizes the “individual aspects” of preservation of traditional ceremonial activities and recognizes that the tribal and federal law is intended to protect all “ceremonial activities” from federal taxation (tribal and tribal member activity).

(3) Special Effective Dates: Code Section 139E is effective for Assistance in taxable years for which the period of limitations on a refund or credit under U.S. IRC Section 6511 has not expired. If the period of limitation on a refund or credit resulting from the application of Code Section 139E (a) would otherwise expire before the one-year period beginning on the date of the enactment of 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.

42.1.201 Safe Harbor Programs. 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 Act (law) 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 Non-member, or identified group of Tribal Members or Qualified Non-members 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.

(g) The benefit of exclusions extended to “Ceremonial Activities” by tribal and federal law is purposely extended to the tribal contributions made through tribally authorized programs as well as intentionally extended to any and all “ceremonial activities” practiced by the traditionalistic individuals and subparts of the social collective active with the tribal and intertribal societies practicing such activities of the Lummi Nation.

(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, rather than 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--

- * Pay mortgage payments, down payments, or rent payments (including but not limited to security deposits) for principal residences;
- * 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;
- * Provide basic housing repairs or rehabilitation (including but not limited to roof repair and replacement);
- * Pay utility bills and charges (including but not limited to water, electricity, gas, and basic communications services such as phone, internet, and cable);
- * Pay property taxes or make payments in lieu of taxes (PILOTs).

(b) Educational Programs. Programs to--

- * 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;
- * 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;

* 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; and

* 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 and above or are mentally or physically disabled (as defined under applicable law, including but not limited to tribal government disability codes or laws) that provide-

- Meals through home-delivered meal programs or at a community center or similar facility;
- Home care such as assistance with preparing meals or doing chores, or day care outside the home;
- Local transportation assistance;
- Improvements to adapt housing to special needs (including but not limited to grab bars and ramps).

(d) Cultural and religious programs. Programs to—

* 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;

* 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 on or off their reservation, including but not limited to other Indian reservations;

* Pay the costs of receiving or giving instruction about an Indian tribe's culture, history, and traditions (including but not limited to traditional language, music, dances, symbolic arts and crafts, creation of ceremonial regalia, and participation within ceremonies);

- * Pay funeral and burial expenses and expenses of hosting or attending wakes, funerals, burials, other bereavement events, and subsequent honoring events; and
- * Pay transportation costs and admission fees to attend educational, social, or cultural/ceremonial programs activities offered or supported by the Tribe as a matter of modern governance or as a matter of traditional practices or participation within such activities of another tribe, located on or off an established Indian Reservation.

(e) Other qualifying assistance programs. Programs to—

- * 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);
- * Pay for the cost of transportation, temporary meals, and lodging of a Tribal Member or Qualified Non-member while the individual is receiving medical care away from home;
- * 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;
- * 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, or other damages that limit or prevent the home from being safe for living within);
- * Provide assistance for transportation emergencies (for example, when stranded away from home) in the form of transportation costs, a hotel room, and meals; and
- * Pay the cost of non-prescription 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 ceremonial participants, religious leaders or spiritual officials or leaders (including but not limited to traditional spiritual/cultural society members, 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 ceremonial participants, religious or spiritual participants and officials or leaders (including but not limited to medicine men, medicine women, and shamans) to recognize their participation in cultural, religious, ceremonial social events (including but not limited to pow-wows, rite of passage ceremonies, funerals, wakes, burials, other bereavement events, and subsequent honoring events, and other traditional ceremonial events common to the specific tribal people or intertribal traditional activities).

- (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 the U.S. Internal Revenue Code Section 6511 has not expired.
- (5) Non-Safe Harbor Programs: Nothing in this Ordinance or the IRS safe harbor guidance shall limit the Tribe's right to provide Assistance outside of the safe harbor rules. This guidance policy recognizes that "ambiguities" shall be resolved in the tribe's favor, and it is not concluded that this code is an exhaustive listing of activities excluded from taxation, especially in the realm of ceremonial activities, as intended by the Exclusions Act (law).

42.1.202 **Programs Meeting the General Test.** Programs that do not qualify for non-taxable treatment under 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.

(2) Community Needs. Certain Programs may be based on community needs, which are so important to the self-determination, self-government, self-regulation, and self-guidance of culture, traditions, and ceremonial activities 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, traditions, traditional ceremonial activity, 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 ceremonial culture. A Program will be deemed to be based on community or non-financial needs if so designated by the Council.

42.1.203 Purpose. 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 Ordinance. 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, ceremonial & 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 or other qualified persons (spouses and dependents). Designation by the Tribal Council of a Program as falling under this Ordinance shall be conclusive evidence that the Tribal Council, following a good faith review of Tribal needs and goals, has determined that said program, benefits, and services is established to achieve a social or cultural (ceremonial) benefit and to promote the general welfare of the Tribe. . The tribe shall 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. Qualification for exclusions under this section may be subject to the conclusions of “consultations” with the IRS on what is defined and accepted as “ceremonial activity” and any otherwise clarifications secured through congress as a result of a “ambiguity” challenge by the tribes or the Internal Revenue Service.

All Assistance disbursed pursuant to this Ordinance shall be designed to promote the general welfare, self-determination, self-governance, self-regulation, as well as protection of the indigenous inherent right to self-guidance of culture, traditions, and ceremonial activities of the Tribe. The Tribal Council seeks to establish criteria for the furtherance of the “Ceremonial Activities” exclusions recognized by the Act of 2014 (Title 26 U.S. Internal Revenue Code, Section 139E). The tribes advocates and protects its rights to self-determination & self-governance over culture, traditions, and the definition of what composes “Ceremonial Activities” of the Tribal people and interacting traditional social collective. Therefore, the Tribe has, hereby, declared that the following types of activities comply with the definition of what are ceremonial practices and activities within the Lummi Tribal Society, as a participating entity identified within the intertribal Coast Salish collectives of Indigenous Peoples and Communities, as follows, but not all conclusive: .

PART I. PROTECTION OF TRADITIONAL SPIRITUALITY & CULTURE

- Article 1. Protection of Native Language
- Article 2. Protection of Native Knowledge of Aboriginal Land & Territory
- Article 3. Protection of of Spiritual Societies- All Seasons
- Article 4. Protection of Identification of Intertribal Spiritual Practices
- Article 5. Protection of Traditional Songs
- Article 6. Protection of Traditional Dances
- Article 7. Protection of Traditional Ceremonials
- Article 8. Protection of Traditional Sacred Knowledge
- Article 9. Protection of Traditional Tribal Collective
- Article 10. Protection of Traditional Regalia & Clothing
- Article 11. Protection of Sacred Philosophy/Cosmology
- Article 12. Protection of Traditional Intergenerational Relationships
- Article 13. Protection of Sacred Contract with Creation
- Article 14. Protection of Traditional Rules of Conduct
- Article 15. Protection of Traditional Mythology
- Article 16. Protection of Intertribal Marriage Rights
- Article 17. Protection of Sacred Sites and Places
- Article 18. Protection of Traditional Plants and Medicines
- Article 19. Protection of Native Genetic Code
- Article 20. Protection Against Extinction of Ceremonial Foods
- Article 21. Protection of Relationships with the Elemental
- Article 22. Protection Against Ceremonially Accessing Contaminated Sites
- Article 23. Protection of Traditional Subsistence Foods
- Article 24. Protection of Traditional Housing Constructs

PART II. PROTECTION OF TRADITIONAL HUMAN RELATIONSHIPS

Article 25. Protection of Inherent Gifts

Article 26. Protection of Sacred Union of Couples

Article 27. Protection of the Traditional Family

Article 28. Protection of the Traditional Extended Family

Article 29. Protection of the Traditional Community

Article 30. Protection of Intertribal Relationships

Article 31. Protection of Traditional Rights to Become Spiritual Practitioner

Article 32. Protection of Respect for Other Tribes' Leadership

Article 33. Protection of Trans-boundary Rights as Indian Nations

Article 34. Protection of Respect for the Elderly

PART III. PROTECTION OF THE TRADITIONAL CHILD

Article 35. Rights of the Child

PART IV. PROTECTION OF TRIBAL RIGHTS TO DEFINE REALITY

Article 36. Protection of Traditional Measurement of Reality

PART V. PROTECTION OF TRADITIONAL LAWS OF BALANCE

Article 37. Protecting Basic Laws of Balance

PART VI. PROTECTION AND RECOVERY FROM NON-INDIAN INFLUENCES UPON TRIBAL COLLECTIVE

Article 38. Historical Trauma, Historical Truth, and Native Science

Article 39. Right to Express Indian View of History

Article 40. Nation's Right to Represent the Tribal Collective

Article 41. Right to Develop Tribal/Intertribal Institutes

Article 42. Protection of Traditional Clusters of Knowledge

It is the clear intent of the Lummi Nation to recognize this partial list of Ceremonial Activities, specific to the Lummi Nation as co-participating Coast Salish Peoples, as qualified under the language of Title 26, U.S. Internal Revenue Code, Section 139E, as so much pertains to "Ceremonial Activities" that are excluded from federal taxation. It is understood that this listing is not conclusive as to what is intended and included within each subpart listed. And, that the final definitions of excluded activity is subject to

conclusive “Consultations” of the tribes and the Internal Revenue Service specific to Section 139E as so much especially relates to the “ceremonial activity” part. Thereafter, this code provision may be subjected to more restriction or expansion. The Lummi Nation specifically seeks to prevent external interference with traditional “Ceremonial Activity.”

42.1.204 Eligibility and Application Procedures.

(A) 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 Non-members, 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 US IRC Section 139E.

(B) In order to provide the most effective means to qualify tribal members, their spouses, and dependents, for authorized assistance or benefits or services otherwise excluded from taxation under this code (as authorized by Title 26 US Code, Section 139E), the tribe may authorize a “One Stop Application” process in which the qualifying persons apply with a single set of forms that are used to certify their financial needs or qualification for services or benefits or assistance, in which said single set of “forms” can be electronically shared with all approved programs or departments or agencies that implement the qualified tribal programs covered by this code, and in a manner that does not violate the need for client confidentiality requirements but can automatically be shared with listed tribal programs in manner that readily (re)certifies the applicant’s qualifications without a constant repeat of forms for the diverse programs that applicant may qualify for. The applicant shall sign a release form to authorize the sharing of this information between said programs or services or tribal agencies. Electronic sharing does not automatically entitle the applicant to all such services, benefits, and assistance. The applicant is required to contact all other such programs or entities to further clarify qualifications.

42.1.205 Limited Use of Assistance; Substantiation. All Assistance disbursed or provided pursuant to this Ordinance must be used for the purpose stated in the approved Program description, and any application for the applicable Assistance. While it is the intent of the tribe to be self-determining, self-governing, self-regulating, self-accounting, and self-disclosing of all events that are non-taxable or taxable and not in compliance with the Exclusions Act (law), it is hereby noted that the Tribe or its designee shall keep books or records deemed appropriate to

demonstrate compliance with the Ordinance. Recipients of benefits hereunder are responsible for maintaining their own books or records as may be required for substantiation to the IRS for individual income tax purposes if challenged on eligibility for exclusion. 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. No such challenge may be made upon a "ceremonial activity" assistance already provided and cleared at time of request, due to traditional protocols practiced in association with ceremonial activities. 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.

42.1.300 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, their spouse or dependents, for certain specified purposes or programs or may delegate the establishment of such limitations to the program level. Such guidelines may also include, by way of example, 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.

42.1.400 Forfeiture of General Welfare Assistance.

(1) Forfeiture. 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. Any assistance that was appropriately utilized within “ceremonial activity” is not subject to challenge post-qualification.

(2) 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.

(3) Anti Alienation. A Tribal member’s rights to apply for General Welfare assistance payments and/or services under this Ordinance are not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, levy, attachment or garnishment by creditors.

42.1.500 Programs not Limited to Means Testing. Programs that qualify under 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. Ceremonial Activities shall not be subjected to any tribal or external means testing.

42.1.501 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.

42.1.502 Government-to-Government Relationship; Executive Order 13175.

Coordination with IRS and the United States Treasury Department on Tribal 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.

42.1.503 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 Titles 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.

42.1.600 Governing Law. All rights and liabilities associated with the enactment of this code, or the welfare assistance payments made hereunder, shall be construed and enforced according to the laws of the Lummi Nation.

42.1.700 Severability. If any provision of this code is held to be invalid, the remainder of this code shall not be affected.

**CHAPTER 42.2: INDIAN FISHING RIGHTS EXEMPTIONS PER U.S. INTERNAL REVENUE CODE
SECTION 7873**

INDEX

CHAPTER/SUBCHAPTER/SECTION

42.2.010 . GENERAL

1. PURPOSE

2. BACKGROUND STATEMENT

3. DEFINITIONS

42.2.100. Qualified Indian Fishers

42.2.110. Qualified Lummi Fishing Vessel Operation

42.2.120. Qualified Lummi Fishing Assistant

42.2.130. Qualified (Fishing) Entity

42.2.140. Lummi Fisher Income Qualified for Exemption Status

42.2.150. Types of Qualified Fishing Activity

42.2.160. Any Lummi Fishing Gear Processing, Preparing, or Construction

42.2.170. Any Training of Future Tribal Fishers

42.2.180. Directly Related Fishing Activity of Cooperative, Association, or Fisher Corporation

42.2.190. Any Qualified & Enrolled Tribal Member Involved in Directly Related Activity

42.2.200. Percentage of Directly Related Activity

42.2. 210. Lummi Nation Duty to Represent Protected Treaty Rights

42.2.220. Internal Revenue Service Challenges to Section 7873.

42.2.230. All are "Tribal Indians."

42.2.240. Lummi Treaty Protected Rights.

42.2.250. Treaty Relationship.

42.2.260. Treaty Rights Abrogation.

42.2.270. Lummi and the Claims Commission

42.2.280. Lummi Specifically Reserves all Economic Rights to Reef-Netting.

42.2.290. Lummi Eco-Fishing Tourism- Grounds, Camps, Sites

42.2.300. LIBC May Designate Investigations

42.2.310. Internal Revenue Audits and Findings.

42.2.320. Lummi Nation Accounting Office.

42.2.330. Lummi Accounting Office and Ceremonial/Cultural Activity.

42.2.340. Directly Related Activity Exemptions Limited:

42.2.350. Does Not Limit Lummi Nation.

42.2.360. Expansion under Federal Determinations

42.2.370. Severability.

42.2.O10 GENERAL

This Chapter of the Lummi Foreign Tax Code shall be known as the Lummi Fishing Rights Exclusions Code. Title 26 United States Internal Revenue Code Section 7873 Provides: Income derived by Indians from exercise of fishing rights are excluded from federal, state, Social Security, and unemployment taxes.

(i) Income and self-employment taxes

No tax shall be imposed by the federal and state governments on income derived—

(A) by a member of an Indian tribe directly or through a qualified Indian entity, or

(B) by a qualified Indian entity,

from a fishing rights-related activity of such tribe.

(ii) Employment taxes

No tax shall be imposed by the federal or state governments on remuneration paid for services performed in a fishing rights-related activity of an Indian tribe by a member of such tribe for another member of such tribe or for a qualified Indian entity.

1. **Purpose:** The purpose is to memorialize the procedures used by the Lummi Indian Nation to determine which parts of the protected Indian Fishing Rights are excluded fully or partially from external taxation by foreign governments (state or federal) as provided for under the U.S. Internal Revenue Code Section 7873, in regards to cited language above (i) Income and self-employment taxes and (ii) Employment taxes.

2. **Background and Intent:** the Lummi Indian Nation is a federally recognized Indian Tribe. It has a government to government treaty relationship with the United States (12 Stat. 927, negotiated in 1855, ratified by the Senate in 1859, and Proclaimed by the President in 1859). The Lummi Nation is self-determining and self-governing and has exercised both modern-limited constitutional governance and inherent sovereignty. It, like other Indian Nations, has “fishing rights” protected by treaty, act of congress, or executive orders. The U.S. Congress, in 1989, as signed into law by the President, had Amended the 1986 Internal Revenue Code adding Section 7873 which proclaimed that Indian Fishing Rights protected by treaty, act of congress, or executive order are excluded from taxation by the United States and the individual states. The intent of this chapter is to further define the limits and boundaries of the tax exclusions as a matter of tribal law so as to avoid conflicts with the U.S. Internal Revenue Service or individual state over implementation of this law.

3. **Definitions:** In construing the purposes of this Chapter of the Lummi Foreign Tax Code, the following works and phrases shall have the meaning designated in this section unless a different meaning is expressly provided or the context provides otherwise.

(a) **“Lummi Indian Nation”** or **“Lummi Tribe”** or **“Tribe”** shall mean the Lummi Indian Nation unless otherwise stated;

(b) **“Lummi Indian Treaty”** shall be a reference to the Treaty of the Dwamish, Suquamish and Allied Tribes, otherwise known as the Point Elliot Treaty (12 Stat. 927, as negotiated in 1855 and ratified and proclaimed in 1859), any reference to the treaty shall include any applicable act of congress or executive order intended to implement or limit the original respective treaty or other applicable treaties;

(c) **“Lummi Fishermen”** shall mean every enrolled man, woman, and child of the Lummi Indian Nation actively engaged in some form of fishing rights activity protected by law, unless otherwise provided in the specific language used herein. Based on the laws of the Lummi Nation spouses may be included in the definition of eligible fisher persons;

(d) “**Lummi Government**” shall include all parts of the Lummi government, its departments, agencies, companies, corporations (profit or non-profit), groups, associations, etc., unless otherwise specified. The Lummi government is composed of persons or employees that perform services for , or protect benefits or rights of Lummi People and Fishermen as a direct or indirect duty, responsibility, or obligation of tribal governmental protection of Indian Fishing Rights;

(e) “**Indian Fishing Rights**” are all aspects and parts of the “rights” that are protected by treaty, executive order, or act of congress, as have been or may be adjudicated under federal law;

(f) “**Indian Treaty Fishing Rights**” are rights owned by every man, woman, and child of the Lummi Indian Nation, as if each and every one of them had individually signed the treaty.

(g) For purposes of this part, the IRS has provided the following definitions for implementation of the law- as (Added Pub. L. 100–647, title III, §3041(a), Nov. 10, 1988, 102 Stat. 3640.)

(1) **Fishing rights-related activity**: The term “fishing rights-related activity” means, with respect to an Indian tribe, any activity directly related to harvesting, processing, or transporting fish harvested in the exercise of a recognized fishing right of such tribe or to selling such fish but only if substantially all of such harvesting was performed by members of such tribe.

(2) **Recognized fishing rights**: The term “recognized fishing rights” means, with respect to an Indian tribe, fishing rights secured as of March 17, 1988, by a treaty between such tribe and the United States or by an Executive order or an Act of Congress.

(3) **Qualified Indian entity**:

(A) “**Qualified Indian Entity**” In general, the term “qualified Indian entity” means, with respect to an Indian tribe, any entity if—

(i) such entity is engaged in a fishing rights-related activity of such tribe,

(ii) all of the equity interests in the entity are owned by qualified Indian tribes, members of such tribes, or their spouses,

(iii) except as provided in regulations, in the case of an entity which engages to any extent in any substantial processing or transporting of fish, 90 percent or more of the annual gross receipts of the entity is

derived from fishing rights-related activities of one or more qualified Indian tribes each of which owns at least 10 percent of the equity interests in the entity, and

(iv) substantially all of the management functions of the entity are performed by members of qualified Indian tribes.

For purposes of clause (iii), equity interests owned by a member (or the spouse of a member) of a qualified Indian tribe shall be treated as owned by the tribe.

(B) Qualified Indian tribe

For purposes of subparagraph (A), an Indian tribe is a qualified Indian tribe with respect to an entity if such entity is engaged in a fishing rights-related activity of such tribe.

(C) Special rules defined as applied to protected fishing rights:

(1) **Distributions from qualified Indian entity:** For purposes of this section, any distribution with respect to an equity interest in a qualified Indian entity of an Indian tribe to a member of such tribe shall be treated as derived by such member from a fishing rights-related activity of such tribe to the extent such distribution is attributable to income derived by such entity from a fishing rights-related activity of such tribe.

(2) **De minimis** unrelated amounts may be excluded: If, but for this paragraph, all but a de minimis amount—

(A) derived by a qualified Indian tribal entity, or by an individual through such an entity, is entitled to the benefits of paragraph (1) of subsection (a), or

(B) paid to an individual for services is entitled to the benefits of paragraph (2) of subsection (a), then the entire amount shall be entitled to the benefits of such paragraph.

42.2.100: Qualified Lummi Fishers: All persons that claim to be legally entitled to fish under the laws and rights of the Lummi Indian Nation must be enrolled with the Lummi Indian Nation, exceptions being applicable to qualified spouses or dependents participating in the fishing activity, as determined to be qualified by the Lummi Nation. And, in addition to this Qualified Enrollment status they must register with the Lummi Fisheries Department as an active fisherman. In exercising any fishing rights, as a Lummi Indian Fisherman, protected by any applicable federal law, treaty, executive order, or act of congress then any compensation or share of any income or revenues they receive derived from such directly related activity or

operations are qualified as excluded from federal and state taxation, including any qualified de minimus amounts.

42.2.110. Qualified Lummi Fishing Vessel Operations: All fishing vessels operating under authorization of the Lummi Indian Nation must be registered with the Lummi Fisheries Division as governed over by the Lummi Natural Resources Department and receive and display on their fishing vessel the respective tribal identification numbers or plates if they choose to harvest fishing products or other floral and faunal species for commercial, ceremonial, or subsistence purposes. Such fisherperson must provide proof, as required by the Lummi Fisheries Divisions, of ownership of said vessel regardless of size and dimension. Any compensation or share of any income or revenues they receive derived from such operations are qualified as excluded from federal and state taxation, including any qualified de minimus amounts, as authorized by Title 26 U.S. Internal Revenue Code, Section 7873.

42.2.120. Qualified Lummi Fishing Assistant: Any enrolled tribal member, or dependent of a tribal member or spouse of an enrolled tribal member may provide assistance as a worker or fishing employee or deck hand for any Qualified Lummi Fisherman that owns a Qualified Lummi Fishing Vessel. Provided, when located on the waters and in actual control of or participating as a deck hand or assistant the said Fishing Assistant had his or her tribal fishing card or other form of authorized participation upon their person. Any compensation or share of any income or revenues they receive derived from such operations are qualified as excluded from federal and state taxation, including any qualified de minimus amounts.

(a) This section does not provide authorization for “spouses” that are not qualified for enrollment within the Lummi Nation to be on-board assisting in the fishing operations or operating the fishing vessel, unless otherwise specifically authorized by the Lummi Nation elsewhere in governance over the implementation of fishing rights.

42.2.130. Qualified (Fishing) Entity. See definition above per Qualified Indian Entity. Any qualified tribal member may own, operate, or partially own or operate any entity that specializes in the harvesting, purchasing, handling, processing, marketing, and transporting fish or fish products taken or harvested from within the adjudicated ‘Usual and Accustomed Fishing Grounds and Stations’ of the Lummi Nation. Any compensation or share of any income or revenues they individually receive derived from such operations are qualified as excluded from federal and state taxation, including any qualified de minimus amounts.

(a) income of such “entity” must meet the Qualified Entity test provided herein to assure their right to fully or partially exempt income or revenue from federal and state taxation.

42.2.140. Lummi Fisher Income Qualified for Exclusion Status. Any income that is directly related to the fishing rights activity of the Lummi Nation, as protected by treaty, federal law, or executive order, as exercised by qualified tribal fishers (and their spouses or dependents), shall be excluded from federal or state taxation under Title 26 U.S. Internal Revenue Code Section 7873, provided the income is derived from fish or fish products, or other floral or faunal products protected by law and included within the fishing harvest rights of the Lummi People, and harvested from within Lummi Usual and Accustomed Fishing Grounds and Stations, including any qualified de minimus amounts.

(a) It is, hereunder, noted that Title 26 U.S. Internal Revenue Code Section 7873 provides for inclusion of a de minimus amount in the calculation of non-taxable status of income.

42.2.150. Types of Qualified Fishing Activity: .Any activity, authorized under Lummi Law (and thereby federal or state law as a matter of extension), that is associated with the harvest, catch, transporting, hauling, selling, trading, processing, or marketing of anadromous or non-anadromous fish, shell fish, bottom fish, or other plants or animals or sea life that results in profits, revenue, or income to Qualified Lummi Fishers is considered qualified fishing activity and any compensation or share of any income or revenues they receive derived from such operations are qualified as excluded from federal and state taxation, , including any qualified de minimus amounts.

42.2.160. Any Lummi Fishing Vessel or Gear Processing, Preparing, Assembly, Maintenance, or Constructing: Any qualified Lummi Fisher or their dependents or spouse that is involved in any activity associated with or involved with the processing, preparing, assembly, maintenance, or construction of any fishing vessel or associated fishing gear or machinery to be used or is used in the harvest activity, or other qualified fishing activity, and where a compensation or share of any income or revenues was received or derived from such activity or operations then the same shall be considered as qualified as excluded from federal and state taxation, including any qualified de minimus amounts.

42.2.170. Any Training of Future Tribal Fishers. Any training or education or instruction of qualified tribal members, regardless of their age or gender, in the history, culture, laws, economics, and politics associated with the exercise of and protection of Lummi Fishing Rights, Usual and Accustomed Ground and Stations, essentials of fish population management, habitat protection, and the transmission of any cultural or traditional knowledge associated with said fishing rights or other relevant issues where the instructor or elder is paid compensation for such work then such compensation shall be considered as directly derived from exercising the fishing right and shall be considered qualified as excluded from federal and state taxation, including any qualified de minimus amounts.

42.2.180. Directly Related Fishing Activity of Cooperative or Association or Fisher Corporation. Any Qualified Entity activity associated with the harvesting, hauling, unloading, processing, marketing of fish products or floral & faunal products protected by Lummi law and taken under color of Lummi law by a group of Lummi fishers, operating as a cooperative, association, or fishers corporation mutually owned, where income is produced and distributed to the owners then said distributions, dividends, or income shall be considered as quailed as excluded from federal and state taxation, including any qualified de minimus amounts.

42.2.190. Any Qualified & Enrolled Tribal Member Involved in Directly Related Activity. Modern Fisheries is managed, per order of the federal courts, as adjudicated, for the protection and enhancement of the relevant species, and conservation necessity activity is a manifest duty of tribal government in exercising the protected fishing rights. Phase I rights adjudicated the types of harvest activity (commercial, ceremonial, subsistence) and who and where the harvests can take place per each tribe and their members. Phase II identified the right to earn a moderate living income and to have the salmon habitat/environment protected from degradation activity. Qualified Tribal Members may be involved in the following types of activity and still meet the “directly related test” as follows-

- (a) fisheries executive management staff
- (b) fisheries enforcement officers
- (c) fish technicians or scientists or assistants
- (d) in-stream data collection activity
- (e) spawning grounds quality & protection
- (f) policy management and decisions making activities
- (g) fishing court proceedings and staffing
- (h) management of fish processing and marketing plants or operations
- (i) intergovernmental negotiations and representation on fishing rights
- (j) fish habitat and correlated environmental restoration (e.g., spawning grounds enhancement or recovery, stream buffer zones)
- (k) hatchery maintenance, financing, construction, and operations
- (l) wild stock protection, species perpetuation, sustained yield management
- (m) river water flow protection
- (n) protecting, practicing, and transmission of traditional knowledge and cultural ceremonial activities & practices associated with perpetuation, protection, and social responsibility to assure sustainable and viable fish populations and habitat protection.

42.2.200. Percentage of Directly Related Activity. All Lummi employees (that are qualified Lummi Tribal Members and Enrolled) that believe they are qualified for a percent of their compensation or employment income to be tax exempt, based on the amount of time they dedicate to “directly related” fishing activity, must provide a written and signed statement as to

how much of their regular forty hour work week is allocated between fishing related activity and non-fishing related activity. Any such statement must be approved by their immediate supervisor or department director who is acknowledging the estimated percentage of exempt activity being addressed with each employee/tribal member seeking a qualified percentage exemption. Current job descriptions for the relevant position shall be attached to the memorandum and kept with the file. This statement shall be filed with the Lummi Personnel Office. *For example, an employee or staff person may be assigned to protect fish habitat and fishing rights two full days of the week. This translates into a forty percent exempt activity determination that is approved by his supervisor and filed with the Personnel Office. And salary and taxes shall be logged and paid out according to this formula, for this specific employee. Time cards shall reflect the allocation. Another example, is a member of the LIBC or other authorized tribal delegates are assigned by resolution or executive order of the chairman to represent the Lummi Nation at the NWIFC and intertribal and intergovernmental negotiations & conferencing on fishing rights protection and implementation. If paid, then his time is allocated based on percentage of work week hours dedicated to this representation/policy level work. Neither of these two examples can claim exemption status of the other activity that is not fisheries related.*

42.2. 210. Lummi Nation Duty to Represent Protected Treaty Rights. Based on traditional, inherent forms of tribal governance, and modern constitutional forms of tribal popular sovereignty, the Lummi Indian Nation is represented by the Lummi Indian Business Council in all matters relevant to the Protection of Lummi Treaty Rights. All intergovernmental relationships are matters of diplomacy and must be governed over and managed by action of the LIBC or their authorized delegates. All representation by tribal members, in lieu of direct LIBC delegates, must be approved by LIBC Resolution per its power to delegate authorization under by the Lummi Constitution or memorialized by the Chairman's office on his/her delegation of official representation by a non-LIBC member but qualified as a enrolled tribal person. Any compensation, payment, or reimbursement associated with this representation is excluded under Title 26, U.S. Internal Revenue Code, Section 7873 from federal or state taxes, including any qualified de minimus amounts.

42.2.220. Internal Revenue Service Challenges to Section 7873. Any challenges to the tax exemptions claimed by Lummi Fishers or persons or personnel involved in "Directly Related Activities" shall be considered a challenge to Lummi Treaty Rights and Tribal Sovereignty. The LIBC shall represent the Tribe and Fishers in such legal proceedings, provided the challenged action was addressed by this code and the qualified tribal fisher or tribal employee was in compliance with requirements of this code.

42.2.230. All are "Tribal Indians." Contrary to the 1940 Department of Interior Solicitor's Opinion ("Excluding Indians not taxed"), and in conformity with the U.S. Constitution, as amended (See: Elk v. Wilkins, 1884 and Reconstruction Debates of 39th & 40th U.S. Congresses regarding 14th Amendment), the Lummi Nation believes all enrolled tribal members are "Tribal Indians" that are not to be taxed by foreign/external governments (USA or individual states).

And, the LIBC holds that such qualified members still meet the constitutional qualifications of “Excluding Indians not taxed.”

42.2.240. Lummi Treaty Protected Rights. Not all treaty protected rights of the Lummi Nation have been adjudicated. The Lummi Nation protects, as a matter of law and governmental policy, all Lummi Rights to harvest, collect, process, manage, or otherwise, any natural resources reserved by the treaty but not specifically delineated or adjudicated.

42.2.250. Treaty Relationship. The treaties are a “*Grant of rights not from the United States to the Indian Tribes but a grant of rights from the tribes to the United States.*” And, any rights not ceded or transferred to the United States by treaty-made are reserved as inherently still owned by the Lummi Nation and People. (See: United States v. Winans, 1905).

42.2.260. Treaty Rights Abrogation. Once the United States ratified the Point Elliot Treaty, by constitutional process or by act of taking the benefits of the treaty, it was bound by its honor in perpetuity, unless it returns all it gained from the treaty cessions it cannot abrogate the treaties-made. . Lummi Nation rejects the conclusion of Lonewolf v. Hichcock (1903) on the power of the US to unilaterally abrogate the treaty without returning its gains. Lummi Nation, hereby, declares that no rights secured by or reserved by the nation, per the treaty, has been surrendered by the nation or lawfully abrogated by the United States.

42.2.270. Lummi and the U.S. Claims Commission. The Lummi Nation, as authorized by US Congressional waiver of its sovereignty immunity, had made legal claims to its pre-treaty aboriginal territory, that included the waters and lands of the San Juan Islands network from Straits of Juan de Fuca northward and its associated US main-lands to and across the Canadian Border. Lummi never accepted any unconscionable offer by the US to purchase its aboriginal territories or waters originally ceded by treaty agreement provided the US comply with the treaty terms, and reserves all rights to harvest resources from all those areas it claimed as within it’s aboriginal territory and associated usual and accustomed fishing grounds and stations.

42.2.280. Lummi Specifically Reserves all Commercial, Ceremonial, and Subsistence Rights to Reef-Netting Fishing Operations. The Lummi Nation, along with the Semiahmoo, Samish, Sklallum, Sokes, Songish, and Sannich, have and own rights to all reef net sites individually & historically owned by prominent members of the respective nation(s) within their relevant Usual and Accustomed Fishing Grounds and Stations, as governed by the traditional tribal and intertribal laws and customs. The rights to the sites of the Lummi Nation has been partially adjudicated in U.S. v. Washington (1974), and has therein partially established such operations and sites as a property and treaty right of the Lummi Nation. This right includes the rights to the commercial, ceremonial, and subsistence value of the sites. All qualified tribal members that are traditionally and genetically family members from historic reef net site(s) owners or captains are entitled to exercise these rights. Such rights cannot be transferred or extended to family members that are enrolled in other tribes and operate as fishers therein. However, such inherited rights to harvest by qualified fishers enrolled in any one of the other Reef Net Tribes can be authorized by the Lummi Nation as may be needed for management purposes.

42.2.290. Lummi Eco-Fishing Tourism- Grounds, Camps, Sites: Lummi Nation authorizes Qualified Tribal Fishers to develop teaching, training, or cross-cultural seminars or camps or operations to be formed and operated as a means of “Fishing Eco-tourism.” Such activity may operate within Lummi Adjudicated Usual and Accustomed Fishing Grounds and Station and correlated aboriginal territory. And in exercise of Lummi Treaty Rights, such entities or parties of traditionalists or tribal fishers may erect temporary shelters therein, as adjudicated. Lummi Nation considers all economic value of such activity to be “Directly Related” for all those persons that are Enrolled Lummi Tribal members and/or from tribes that exercise mutual fishing rights within Lummi Usual and Accustomed Fishing Grounds and Stations.

42.2.300. LIBC May Designate Investigations. The Lummi Indian Business Council is responsible for protecting the rights of Lummi Fishers. It, also, has a duty to assure that tribal members, in this case tribal fishers (including their qualified spouses and dependents) or others involved in directly related fishing activity as a matter of employment in lieu of fishing, are in compliance with this code. The LIBC may designate its members, or others due to their layman status or professionalism, to investigate any activity or persons that claims exclusions not authorized by this code. The investigation is limited to:

- (a) Determine if the person is enrolled in Lummi or qualified spouse or dependent(s);
- (b) Determine if they are in a job authorized by Lummi law;
- (c) Determine if the job is “directly related” Lummi fishing activity; and they complied with the requirements of this code in the performance of their job duties;
- (d) Determine the amount of activity determined or qualified as directly related;
- (e) Determine if the “Activity” should be considered as “Oversight” of what Lummi considers as “directly related” and “qualified” under this code;
- (f) Determine whether the tribe or Person was in error and assess the Risk of IRS Audit and Challenges;
- (g) Determine Tax Liability of Tribe or Person;
- (h) Make Recommendations to LIBC on Resolution of Conflict;
- (i) Make Recommendation of Whether Legal Counsel is Needed from Office of Reservation Attorney or as contracted by authority of the LIBC.

42.2.310. Internal Revenue Audits and Findings. The Lummi Nation objects to any unannounced requests or actions of the U.S. Department of Treasury, Internal Revenue Service, to seeks to conduct unauthorized audits of tribal accounting office records in search of possible tribal or individual failures to properly record and file proper tax forms associated with payments made to Qualified Tribal Members that conduct “Directly Related” activity associated

with the Lummi Treaty Fishing Rights implementation, as required per orders of the U.S. Federal District Court or U.S. Supreme Court (Phase I and Phase II). Lummi Nation indemnifies its employees and shall protect their rights to Exclusion under Title 26 U.S. Internal Revenue Code Section 7873. Further,

(a) Lummi Accounting must inform the Office of the Chairman and Reservation Attorneys Office of all cases or incidents in which the IRS has served notice they believe there has been failure(s) to file needed taxable income forms on allegedly questionable "Directly Related" fishing activity. Such reception of an IRS notice of intent to conduct audits must be provided immediately after first contact by the IRS with any and all Lummi Accounting Staff or personnel. Accounting staff or personnel shall follow the directives of the Chairman and Reservation Attorneys. Such directives shall be tailored to assure compliance with applicable tribal and federal law and specifically be tailored toward avoidance of unnecessary IRS audits, and shall hold said tribal employees harmless.

(b) Lummi Accounting must inform, in writing, the Office of the Chairman and the Office of the Reservation Attorneys about any conflicts they have with the Tax Exclusions Claimed as Valid by the Nation or its qualified employees, staff, personnel, where Accounting Office believes they are compelled to file respective IRS forms on what they have concluded was a questionable qualified exclusion, before they file any such form with the US Internal Revenue Service.

42.2.320. Lummi Nation Accounting Office. Lummi Nation Accounting Office is obligated to inform or give notice to the Office of the Reservation Attorneys and Office of the Chairman in any and all cases in which the U.S. Dept. of Treasury, Internal Revenue Service initiates contact and gives notification of intent to conduct an investigative audit of tribal records. Said Accounting Office is ordered to Notify any and all IRS Officials that they cannot cooperate with any audits until this notification has been provided to said tribal officials and official guidance response has been received and placed on file with Accounting Records.

(a) if necessary, the Lummi Accounting Office shall close down all respective operations until such conflict is addressed by the LIBC. Accounting Office personnel shall be held harmless for compliance with this code.

42.2.330. Lummi Accounting Office and Ceremonial/Cultural Activity. The Lummi Accounting Office is not authorized to file any routine taxable income tax forms on any financial payments made to Qualified Enrolled Lummi Indians that have sold to or provided the Lummi Nation with any traditional, cultural, ceremonial arts and crafts associated with traditional tribal mythology and symbolism of Lummi Creation Mythology associated with "fishing activity" of the Lummi Nation. In addition, such exclusion is found under Chapter 42.1 Tribal General Welfare Exclusions Act. For example, traditional fisheries sustainability was transmitted inter-generationally by the Salmon Woman Myths and the Creation Myths of the Reef Nets and

symbolic manifestation through the totemic arts and regalia symbolism was a part of the Native Science that taught intergenerational respect for sustained yield.

42.2.340. Directly Related Activity Exclusions Limited: Any claims to exclusion from taxation under Title 26 U.S. Internal Revenue Code Section 7873, and the laws of the Lummi Nation, are valid if and only if it is established as taking place within Lummi adjudicated usual and accustomed fishing grounds and stations, unless such activity is an extension of valid reasons for operating outside of this adjudicated area (e.g., marketing the products outside the area or advocating intertribal and interstate protection measures for the treaty fishing rights or species involved).

42.2.350. Does Not Limit Lummi Nation. This code does not limit the rights and powers of the Lummi Nation to impose its own taxes upon any fishing activity or directly related fishing activity authorized under the laws of the Lummi Nation.

42.2.360. Expansion under Federal Determinations. It has been presented that the U.S. Internal Revenue Service has sought clarification that Section 7873 Qualified Income is not taxable but may be treated as “compensation” for the purpose of establishing an individual’s eligibility for participation in certain qualified retirement plans. Such final determinations, therefore, are adopted and authorized by this section of the code until otherwise changed by applicable law.

42.2.360 Severability. If any provision of this code is held to be invalid, the remainder of this code shall not be affected.