

November 18, 2019

SENT VIA EMAIL: Tribal.Consult@treasury.gov

Treasury Tribal Advisory Committee
Department of the Treasury
1500 Pennsylvania Avenue NW, Room 1426G
Washington, D. C. 20220

*Re: Public Comment in advance of December 3, 2019 TTAC meeting
Redding Rancheria*

Dear Committee:

The Redding Rancheria of California (the “Tribe”) appreciates the opportunity to present comments to the Treasury / Tribal Advisory Committee (the “TTAC” or “Committee”) in connection with its consideration of Tribal Taxation and General Welfare Exclusion (“GWE”) guidance under Internal Revenue Code (the “Code”) Section 139E. We understand that the guidance process has just begun, and the Tribe is planning to provide more comprehensive comments as specific guidance proposals are considered. In the interim, we want to highlight a few key areas for consideration:

Employment Tax / 941 Examinations:

Many tribes throughout the country have experienced “941” and “945” examinations where IRS field agents review whether payments to individuals should be reported on Form 1099 or Form W2. IRS routinely recommends that tribal boards and committees should be classified as “employees” and reported on Form W2, even when paid nothing more than modest and infrequent meeting stipends or honorariums. The Tribe respectfully requests that the TTAC consider guidance and IRS field agent training on applying the “common law” test for determining employment and independent contractor status for tribal boards and committees.

The Tribe also requests TTAC to consider guidance for purposes of training IRS field agents with regard to when tribes should be entitled to “Section 530” relief in the context of these employment tax examinations. We understand that field agents have denied relief, in part, based on the assertion that tribes cannot prove a “long standing industry practice” in reporting tribal board or committee stipends on Form 1099. However, we understand that many tribes across the country in fact have historically reported board and committee stipends or honorariums on Form 1099. Our understanding is that many tribes have changed these practices in recent years based on

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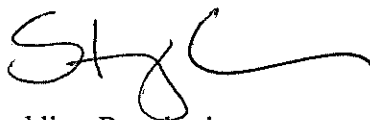
field agent advice and/or to resolve individual field agent findings. It would be helpful if the TTAC could confirm with ITG (who has this historic information) that such practices have in fact been long standing, and that tribes should be entitled to rely on those historic practices in securing Section 530 relief. If ITG cannot provide that confirmation, perhaps TTAC can consider coordinating a survey of tribal practices that tribes could then look to when audited in order to support Section 530 relief.

GWE Lavish and Extravagant (benefits accrued over time):

In determining the value of benefits for purposes of the lavish or extravagant limitation under Code Section 139E, the Tribe would request that the Committee take into account benefits that accrue over time. For example, a tribe may provide housing assistance benefits by budgeting a modest amount each year for eligible members who continue to meet program guidelines over time. A member who continues to meet program guidelines, perhaps over the next twenty years, may eventually qualify for significant down payment assistance equal to the amount of assistance that has accrued over that period of time. In valuing the benefit to determine whether it is lavish or extravagant, the Tribe would request that IRS take into account the annual benefit amounts accrued each year, rather than just the final year payment.

The Tribe will provide additional comments as the Committee considers specific GWE guidance, such as options to substantiate program compliance. We look forward to working with the TTAC on these matters.

Sincerely,



Redding Rancheria